# HOUSE BILL REPORT
# 2SHB 2001

**As Passed House:**
February 13, 2024

**Title:** An act relating to providing judicial discretion to modify sentences in the interests of justice.

**Brief Description:** Providing judicial discretion to modify sentences in the interests of justice.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Simmons, Farivar, Reed, Ormsby, Peterson, Macri, Street, Stearns, Santos and Pollet).

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 1/23/24, 1/29/24 [DPS];
Appropriations: 2/2/24, 2/5/24 [DP2S(w/o sub CSJR)].

**Floor Activity:**

Passed House: 2/13/24, 51-46.

**Brief Summary of Second Substitute Bill**

- Establishes a process for certain persons convicted of a felony offense to petition the sentencing court for a modification of the original sentence upon meeting specific eligibility criteria.
- Requires the Office of Crime Victims Advocacy to establish a flexible fund for certain affected victims, contract with prosecuting attorney's offices to offer related victim advocacy services, and contract with an entity with expertise in victim services to provide related training for victim advocates.
- Requires the Office of Public Defense to develop a triage plan to prioritize representation of incarcerated petitioners based on specified factors.
- Requires the Department of Corrections (DOC) to provide written notice

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

of the petition process to certain incarcerated persons who are or will become eligible to petition, and other relevant entities in the applicable judicial district.

- Requires the DOC to make an individual reentry plan and the resources necessary to complete the plan available to incarcerated petitioners within six months of their expected release dates from total confinement.

## HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

**Staff:** Corey Patton (786-7388).

## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Community Safety, Justice, & Reentry. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Callan, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 11 members: Representatives Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Dye, Harris, Rude, Sandlin, Schmick, Stokesbary and Wilcox.

**Staff:** Yvonne Walker (786-7841).

**Background:**

When a person is convicted of a criminal offense, the person generally may not appeal the imposed sentence if it is consistent with the standard sentencing range and other guidelines provided in state law. However, the person may appeal other legal errors. Direct appeals must be filed within 30 days, while collateral attacks must typically be filed within one year. A "collateral attack" is any form of postconviction relief other than a direct appeal, and includes personal restraint petitions, habeas corpus petitions, motions to vacate

judgment, motions to withdraw guilty plea, motions for a new trial, and motions to arrest judgment. There are some exceptions to the one-year time limit on collateral attacks, such as where a collateral attack is based on newly discovered evidence or a significant change in the law.

The prosecutor of a county in which an offender was sentenced for a felony offense may petition the sentencing court or the sentencing court's successor to resentence the offender if the original sentence no longer advances the interests of justice. If the court grants the petition, the court must resentence the defendant in the same manner as if the offender had not previously been sentenced, provided the new sentence is no greater than the initial sentence. The court may consider postconviction factors including, but not limited to, the following:

- the inmate's disciplinary record and record of rehabilitation while incarcerated;
- evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence; and
- evidence that reflects changed circumstances since the inmate's original sentencing such that the inmate's continued incarceration no longer serves the interests of justice.

The prosecuting attorney must provide victims and survivors of victims access to available victim advocates and other related services, and make reasonable efforts to notify victims and survivors of victims of any petition for resentencing and the date of the resentencing hearing. The court must provide an opportunity for victims and survivors of victims of any crimes for which the offender has been convicted to present a statement personally or by representation. A resentencing does not reopen the defendant's conviction to challenges that would otherwise be barred.

**Summary of Second Substitute Bill:**

A process is established for certain persons convicted of a felony offense to petition the sentencing court for a modification of the original sentence upon meeting specific eligibility criteria.

Any person under a term of partial or total confinement or subject to conditions of supervision by the Department of Corrections (DOC) for a felony conviction, other than a person sentenced as a persistent offender or for Aggravated Murder in the first degree, may petition the sentencing court or the sentencing court's successor for a modification of sentence if the original sentence no longer serves the interests of justice and the person meets any of the following criteria:

- the person has served at least 10 years for an offense committed at age 18 or older;
- the person has served at least seven years for an offense committed at age 17 or younger; or
- the person has the prosecuting attorney's consent.

The one-year time limit on collateral attacks does not apply to any such petition. The

petitioner may not file the petition any earlier than 180 days prior to the date on which the petitioner will have served the minimum required portion of the petitioner's sentence, unless the prosecuting attorney consents to the petition. The petitioner must file the petition in writing with the sentencing court in the judicial district in which the original sentence was imposed, and serve the prosecuting attorney. The DOC must assist with compiling the petitioner's disciplinary record and record of rehabilitation. The petition may include affidavits, declarations, letters, prison records, or other written or electronic materials. The petition must include a statement and supporting documentation demonstrating that the petitioner meets one or more of the following criteria:

- the petitioner has demonstrated positive, engaged, and productive behavior while in the custody of the DOC that indicates substantial rehabilitation;
- the petitioner has otherwise demonstrated a minimal risk of reoffense, which may include a demonstration of medical frailty; or
- the petitioner has presented evidence of some significant material fact not related to the crime and not in existence at the time of conviction, and such fact is relevant to the necessity of the current terms of sentence.

If the court determines by a preponderance of the evidence that the petitioner meets one or more eligibility criteria, the court must grant a hearing to consider the petition and hold the hearing within 120 days, unless continued for good cause. The court must prioritize scheduling hearings for petitioners who are subject to total confinement. The prosecuting attorney must make reasonable efforts to notify specified victims and survivors of victims of any petition for modification of sentence and the date of any hearing to consider the petition. The court must provide an opportunity for victims and survivors of victims of any crimes for which the petitioner has been convicted to present a statement personally or by representation at the hearing.

At the hearing to consider the petition, the court may grant the petition and modify the petitioner's original sentence if the court finds that the sentence no longer advances the interests of justice, provided that any new sentence imposed must not be greater than the original sentence and must be consistent with the following limitations:

- if the petitioner's original sentence is an indeterminate sentence imposed for certain sex offenses, the court may modify the minimum term of the sentence but may not modify the maximum term of the sentence or order the petitioner's release from custody;
- if the petitioner's original sentence includes a mandatory minimum term for certain class A felony offenses, the court may not modify the sentence below the mandatory minimum term required by law; and
- the soonest allowable release date from total confinement may be no sooner than six months after the date of the hearing to consider the petition.

The court may consider the following nonexhaustive factors when making its decision:

- the petitioner's disciplinary record and record of rehabilitation while incarcerated;
- evidence that reflects whether age, time served, and diminished physical condition, if

any, have reduced the petitioner's risk for future violence;
- evidence regarding the petitioner's circumstances at the time of the offense, or regarding the petitioner's level of culpability for the offense;
- evidence that reflects changed circumstances since imposing the petitioner's original sentence such that the sentence no longer serves the interests of justice;
- evidence of some significant material fact, not related to the offense and not in existence at the time of conviction, that is relevant to the necessity of the current terms of sentence; and
- demonstration of an extraordinary adverse impact of release on the victim or survivors of the victim of the offense for which the petitioner is incarcerated, with special consideration given to the impact of release on any victims of sex offenses or domestic violence offenses committed against an intimate partner.

The court may impose an exceptional sentence below the standard range based on evidence of significant rehabilitation since the offense or any other applicable mitigating factors. If the petitioner's original sentence included one or more certain mandatory sentencing enhancements, the court may impose a sentence below the enhancement term.

If the court denies the petition, or grants a hearing but declines to modify the petitioner's sentence at the hearing, the court must state the basis for its decision on the record and the petitioner may, upon a showing of a change in circumstances, file a new petition no earlier than three years after the date of the court's decision. The petitioner may appeal the denial of a hearing or an order entered pursuant to a resentencing hearing, but denying a petition does not reopen the petitioner's conviction or sentence to any other challenges that would otherwise be barred.

The court may not permit any person to waive the right to petition, and any such waiver is void. An incarcerated person who is eligible to file a petition, who the court has determined meets eligibility criteria, and who is unable to afford counsel is entitled to have counsel appointed to represent the person for the petition and related proceedings at no cost, unless the person expressly waives the right to counsel after being fully advised by the court. The Office of Public Defense must develop a triage plan to prioritize representation of incarcerated petitioners who:
- were sentenced for crimes committed at age 24 or younger;
- are now over age 60 or suffering from a serious medical condition; or
- have served greater than 20 years in custody.

A person who files a *pro se* petition, and who subsequently retains or is appointed counsel, is entitled to amend the petition at least once with the assistance of counsel. Subsequent amendments may be permitted by leave of court.

The Office of Crime Victims Advocacy (OCVA) must:
- create a flexible fund to serve certain affected victims and survivors of victims, which may be used for purposes including relocation assistance related to a change in safety

planning associated with the petitioner's resentencing, traveling to and from court for resentencing hearings, and out-of-pocket expenses for psychotherapy associated with the committed offense or resentencing;
- contract with prosecuting attorney's offices to offer victim advocacy services for affected victims, including legal advocacy to understand the resentencing process and how victims can exercise their rights, safety planning, options to participate in a restorative justice program with the petitioner, and case management to address needs that may arise as a result of resentencing; and
- contract with an entity with expertise in victim services to provide training for victim advocates embedded within prosecutor's offices regarding safety planning and other case management services for affected victims.

The DOC must provide written notice of the petition process to any incarcerated person sentenced to a term of confinement longer than 10 years, and the applicable sentencing court, prosecuting attorney, and public defense agency for the judicial district in which the person was sentenced, within the following time frames:
- for any person serving an applicable sentence for an offense committed at age 18 or older, the DOC must provide written notice no later than 180 days before the date on which the person's tenth year of confinement begins; and
- for any person serving an applicable sentence for an offense committed at age 17 or younger, the DOC must provide written notice no later than 180 days before the date on which the person's seventh year of confinement begins.

The DOC must make an individual reentry plan and the resources necessary to complete the plan available when any person granted a modified sentence is within six months of the person's expected release date from total confinement.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 9, 2024.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Community Safety, Justice, & Reentry):**

(In support) The state imposes egregiously long sentences that cause generational trauma. People are incarcerated under varying circumstances, sometimes for crimes that they committed because of trauma that impacted their decision making. Many incarcerated persons have developed insight and true remorse and are ready to make a positive impact on society. These people have little to no risk of recidivism. When we take fathers and mothers out of our communities, they are unable to teach their children a different way of life. This bill is not about letting out convicts. It is about letting out fathers, brothers, and other people who want to return to and immediately strengthen our communities.

There is no secret that people of color serve longer sentences. One of the biggest drivers in these longer sentences is the stacking of sentencing enhancements. This bill will help address racial disproportionality in prisons and ameliorate the harms of lengthy sentences being served predominantly by black community members by providing an opportunity for people who have made mistakes to receive a second review based on their rehabilitation. Providing informed justice for victims means imposing sentences that serve a bigger purpose than just the passage of time, especially in consideration of juveniles and the science of adolescent brain development. The Legislature often pushes solutions in the name of survivors, but survivors are not a monolith. Many survivors do not believe that prison is the answer. There are many incarcerated persons who have taken accountability for what they have done and have put in the work to change and improve themselves. This bill breaks down the binary between victims and defendants by recognizing that humans can simultaneously commit harm and be harmed themselves. The savings realized by this bill will go towards victims' services, which are currently underfunded.

One of the hardest parts of being a judge is predicting how a defendant will change over time. Absent a crystal ball, judges can only guess at what may change. As a result, courts often fail to address existing trauma that lays the groundwork for additional crime in the future. This bill allows judges to review cases after sentencing so that they can reserve the use of incarceration for situations where it serves a purpose. Creating the opportunity for a review will replace despair with hope and encourage people to engage with rehabilitative programs and treatment while incarcerated. Prosecutors already have authority to make a motion for resentencing, but prosecutors should not be the only ones that can identify whether a wrong was done in the past. Prosecutor-initiated resentencing hearings have largely failed as a viable pathway because many counties have not granted any such hearings.

This bill should have a delayed implementation date to provide a timeframe for developing programs, policies, and resources for public defenders. Effectively establishing a communication plan with people who are currently incarcerated would also be helpful. If this bill takes effect immediately, public defenders would have to triage cases by prioritizing clients based on factors like health and age.

(Opposed) This bill is an unnecessary expansion of power, especially considering the grounds for early release that already exist in state law and the fact that the state has the worst officer-to-civilian ratio in the country. There have been similar movements around the country to grant courts the authority to resentence persons, but another state's Supreme Court found this provision unconstitutional because it would confer the Governor's pardoning power to the judicial branch. The timeframe where a person becomes eligible to petition the court under this bill is also concerning because it eliminates mechanisms that distinguish crimes, which minimizes some of the most significant crimes. The Washington State Criminal Sentencing Task Force previously looked at a similar proposal that had a different lookback period and even that proposal lacked strong consensus.

Implementing this bill is not functionally or practically possible given the current caseload that courts are working through. All counties are facing a shortage of public defenders and prosecutors, and there would need to be additional support. Reviewing old cases will also impact the ability to move forward on cases involving current crimes. The savings that this bill allocates for this purpose is not enough to cover the expected costs.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Washington imposes some of the longest incarceration sentences and there is no parole. Research shows that after serving 15 years of incarceration or when someone is over-punished then it decreases public safety. In Norway, people are treated humanely and the maximum sentence a person can receive is 22 years, even for heinous crimes. However, Norway does offer preventive detention for those individuals that show they are still a risk to the community after serving the 22 years. This bill will allow those that have caused harm and have been rehabilitated to return to their community.

Under this bill individuals will be able to have an inquiry before a judge if their incarceration sentence is no longer in the interest of justice. Currently, prosecutors already have the tools to bring cases forward and they should not be the only gateway to access the courts. Justice should provide the same authority to defense attorneys as it does prosecutors.

This bill diverts the extraordinary costs of imprisonment towards the needs of crime survivors. It is also designed to be a self-sustaining process with costs diverted to the work of crafting and reviewing petitions for release. This bill is structured so that it is scalable and given the number of current judges in Washington, that means each judge will be given approximately two additional cases per year.

(Opposed) The ongoing cost of this bill is significant as it can reach over $20 million when prosecutors, defense, and court costs are included in the fiscal impact. Washington's court systems are under serious strain as there is currently a shortage of defense attorneys, prosecutors, and even judges. This bill will just aggravate the current staffing crisis. In addition, these are cases that counties have already touched once and now counties will be required to touch them again during a time when local jurisdictions are already struggling financially.

Lastly, pardoning power currently is limited to governors and this bill is asking courts to exercise that pardoning power by reducing or minimalizing a person's sentence.

**Persons Testifying (Community Safety, Justice, & Reentry):** (In support) Representative Tarra Simmons, prime sponsor; Andre Penalver; Larry Jefferson, Washington State Office of Public Defense; Kimonti Carter; Maureen McKee; Cindy Elsberry, Washington Defender Association; Vidal Vincent, Freedom Project; Na'Quel

Walker; Heather Wehrwood, Washington State Coalition Against Domestic Violence; Kelly Olson; Sharonda Amamilo, Sentencing Guidelines Commission; and Antoine Coleman, AEJG/Free Minds Book Club and Writing Workshop.

(Opposed) Sam Spiegelman, Citizen Action Defense Fund; Juliana Roe, Washington State Association of Counties; and Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Testifying (Appropriations):** (In support) Representative Tarra Simmons, prime sponsor; Larry Jefferson, Washington State Office of Public Defense; Johanna Bender; and Em Stone, Washington State Coalition Against Domestic Violence.

(Opposed) Juliana Roe, Washington State Association of Counties; and Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying (Community Safety, Justice, & Reentry):** Charles Longshore; Ralph Dunuan; Sarah Leon; Emily Gause; J. Wesley Saint Clair, Sentencing Guidelines Commission; Andrea Shotwell; Rory Andes; Kehaulani Walker, Families of the Incarcerated and People United Alliance; Laura Robinett; Travis Comeslast; Jacob Schmitt, Just Us Solutions, LLC; Ramona Womack; and Ramona Womack, Fatherhood The Foundation, LLC.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.