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## Public Safety Committee

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### SSB 5361

**Brief Description:** Concerning the resentencing of persons convicted of drug offenses.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators McCune, Warnick and Wilson, J.).

#### Brief Summary of Substitute Bill

- Modifies the criteria for a person to qualify for resentencing for a drug offense committed prior to July 1, 2004 (which corresponds to the enactment of specialized drug sentencing laws).
- Provides that the court must resentence a qualifying person based on the current sentencing guidelines.

**Hearing Date:** 3/23/21

**Staff:** Kelly Leonard (786-7147).

#### **Background:**

##### Drug Offenses.

Under the Washington Uniform Controlled Substances Act (UCSA), a "controlled substance" means a drug or substance included in Schedules I through V, with some exceptions. Drugs and substances are placed on schedules based on their potential for abuse, medical use, and safety. Substances in Schedule I are the most tightly controlled, while those in Schedule V are the least tightly controlled. It is unlawful for any person to possess, manufacture, or distribute a controlled substance unless an exception applies. The criminal penalties for violating the UCSA depends upon the nature of the violation and the type of substance. Most violations are classified as felony offenses.

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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.*

State law also prohibits a person from manufacturing, distributing, or possessing with the intent to distribute, an "imitation controlled substance." An "imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Violations pertaining to imitation controlled substances are classified as felony offenses.

#### Sentencing of Drug Offenses Committed Before July 1, 2004.

Felony crimes are generally classified as A, B, or C. The classification generally determines the maximum term of confinement. However, the Sentencing Reform Act (SRA) controls the actual term of confinement for adults convicted of felonies. The SRA is a determinate sentencing system in which a judge selects a particular sentence from a standard range. The standard range is determined by reference to a statutory grid, which is based on the defendant's criminal history (converted into an offender score) and the severity of the offense (according to designated seriousness levels). While the standard range is presumed to be appropriate, additional sentencing policies can increase or decrease a sentence. This includes, for example, exceptional sentences and enhancements.

In 2004 the state made several changes to how felony drug offenses (under the UCSA as well as other state laws) were sentenced, including adopting a separate, simplified sentencing grid with broader ranges, eliminating double and triple scoring for certain offenses, and reducing seriousness levels for certain offenses. The changes generally resulted in lower sentences for felony drug offenses. However, when a defendant is convicted of a crime, the sentencing laws in place at the time of an offense generally apply to the sentencing proceedings, with some exceptions. Therefore, the changes to the sentencing for felony drug offenses were prospective and applied to offenses committed on or after July 1, 2004.

In 2020 the state passed remedial legislation entitling any defendant to a resentencing hearing if he or she is still serving a term of incarceration for a drug offense committed prior to July 1, 2004, including a violation of the UCSA or laws restricting imitation controlled substances, provided that he or she does not have a most serious offense or violent offense in his or her criminal history. If a defendant is entitled to a resentencing hearing, the prosecuting attorney must make a motion for relief from sentence to the original sentencing court. A defendant may also make a motion on his or her own accord. The sentencing court must grant the motion and immediately set an expedited date for resentencing. The court must sentence the defendant as if he or she had not previously been sentenced, provided the new sentence is no greater than the initial sentence. The provisions requiring resentencing expire July 1, 2021.

#### **Summary of Substitute Bill:**

The criteria for a person convicted of a drug offense committed prior to July 1, 2004, to qualify

for resentencing are modified. The person does not need to be currently incarcerated, but does need to be serving a sentence under the custody of the Department of Corrections. The provision disqualifying a person based on a most serious offense or violent offense in his or her criminal history is removed. Instead, the person is disqualified if he or she was convicted of a violent offense or sex offense involving a child.

When a court resentences a person, the new sentence must be based on the sentencing guidelines in effect on the effective date of the bill. The expiration date for the resentencing provision is extended to July 1, 2022.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.