

# SENATE BILL REPORT

## SB 5361

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As Reported by Senate Committee On:  
Law & Justice, February 15, 2021

**Title:** An act relating to the resentencing of persons convicted of drug offenses.

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

**Sponsors:** Senators McCune, Warnick and Wilson, J..

**Brief History:**

**Committee Activity:** Law & Justice: 2/11/21, 2/15/21 [DPS, w/oRec].

**Brief Summary of First Substitute Bill**

- Expands the criteria by which a person convicted of a drug offense prior to July 1, 2004, may be re-sentenced.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5361 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer and Salomon.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Wagoner.

**Staff:** Shani Bauer (786-7468)

**Background:** In 1981, the Legislature passed the Sentencing Reform Act (SRA), which established determinate sentencing for felony offenders. The SRA eliminated indeterminate sentences and parole in Washington, with some exceptions. Instead, the SRA determines a specific sentence within the statutory maximum. Judges select an offender's sentence

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within a standard sentence range provided in statute, which is calculated based on the statutorily designated seriousness level for the offense and the offender's criminal history score based on the offender's past convictions.

In 2002, the Legislature made several changes to how drug offenses were sentenced, including the adoption of a separate sentencing grid with broader judicial discretion, reduced seriousness levels for certain drug offenses, and the elimination of double and triple scoring for certain drug offenses. The new drug offense sentencing grid took effect July 1, 2004.

Legislation passed in 2020, directed that any offender sentenced for a drug offense prior to July 1, 2004, and still serving a term of incarceration, be resentenced as if the offender had not previously been sentenced. An offender was not entitled to resentencing if the offender was convicted of a most serious offense or violent offense. A most serious offense includes all class A felonies as well as several other listed felonies. A violent offense also includes any class A felony as well as several second degree crimes such as manslaughter, kidnapping, arson, and assault. A serious violent offense is a subcategory of violent and includes the first degree crimes of murder, manslaughter, assault, kidnapping, rape, and assault of a child, as well as murder in the second degree and homicide by abuse.

The Uniform Controlled Substances Act is contained in chapter 69.50 RCW and the Imitation Controlled Substances Act is contained in chapter 69.52 RCW.

**Summary of Bill (First Substitute):** To qualify for resentencing for a drug offense committed prior to July 1, 2004, the person does not need to be currently incarcerated, but must be serving a current sentence under the custody of the Department of Corrections. The person must not have been convicted of a violent offense or sex offense involving a child

The new sentence must be based on the sentencing guidelines in effect on the effect date of the bill.

The expiration date for the resentencing provision is extended to July 1, 2022.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

An offender who qualifies for re-sentencing must be resentenced using the guidelines in effect on the effective date of this section. Disqualifying offenses are changed from sex offense and crime involving a child to sex offense involving a child.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Previous legislation lacked direction for courts to sentence these offenders using the current sentencing grid. The Pierce County prosecutor did not feel the language was specific enough to accomplish resentencing of those affected by this bill. This bill fixes that.

We were hopeful SB 5867 would provide relief for persons serving sentences under the old drug grid. That did not happen. The individuals who would qualify for resentencing have served many years, do not have a history of infractions, and should be released back to the community.

CON: The bill unreasonably excludes a number of offenders that had scores doubled and tripled. We support the previous guidelines from SB 5867.

**Persons Testifying:** PRO: Senator Jim McCune, Prime Sponsor; Chantel Sohayda; Joan Mell, III Branches Law; James Chambers.

CON: Neil Beaver, Washington Defenders Association and Washington Association of Criminal Defense Attorneys.

**Persons Signed In To Testify But Not Testifying:** No one.