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**SENATE BILL 6037**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senators Frame, Trudeau, Dhingra, Hasegawa, Kuderer, Nguyen, Nobles, Pedersen, Saldaña, and C. Wilson

AN ACT Relating to providing judicial discretion to modify sentences in the interests of justice; amending RCW 10.73.100; adding a new section to chapter 9.94A RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  This act shall be known and may be cited as the judicial discretion act.

NEW SECTION. **Sec.**  (1) The legislature finds that long-term incarceration disproportionately impacts poor communities and communities of color. The legislature further finds that an expansive body of research demonstrates that lengthy sentences can increase, rather than reduce, recidivism. The legislature further finds that the potential to reduce a sentence encourages incarcerated individuals to engage in good behavior and to take advantage of rehabilitative programming. The legislature further finds that because the cost of long-term incarceration is substantial and the state must use its resources responsibly, providing judges the opportunity to modify lengthy sentences in the interests of justice will result in significant cost savings to the state.

(2) Therefore, the legislature intends to authorize sentencing courts to review lengthy sentences upon a showing that a person's original sentence no longer serves the interests of justice.

NEW SECTION. **Sec.**  A new section is added to chapter 9.94A RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, any person under a term of partial or total confinement or subject to conditions of supervision by the department for a felony conviction 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:

(a) If the person is serving a sentence for a felony offense committed at 18 years of age or older, the person is eligible to petition after serving at least 10 years of their sentence;

(b) If the person is serving a sentence for a felony offense committed at 17 years of age or younger, the person is eligible to petition after serving at least seven years of their sentence; or

(c) If the petitioner does not meet the criteria under (a) or (b) of this subsection, the person is eligible to petition with the consent of the prosecuting attorney.

(2) A person eligible to file a petition for modification of sentence pursuant to subsection (1)(a) or (b) of this section may file the petition no earlier than 180 days prior to the date on which the person will have served 10 years in confinement, or, if the person is serving a sentence for an offense committed at 17 years of age or younger, no earlier than 180 days prior to the date on which the person will have served seven years in confinement.

(3) 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 petition may include affidavits, declarations, letters, prison records, or other written or electronic materials. The petition must include a statement by the petitioner that they meet one or more of the following requirements for a hearing:

(a) The petitioner committed the offense at 24 years of age or younger;

(b) The petitioner has demonstrated positive, engaged, and productive behavior while in the custody of the department that indicates rehabilitation or the potential for rehabilitation;

(c) The petitioner is 50 years of age or older;

(d) The petitioner suffers from a serious medical condition that substantially reduces their risk of future violence; or

(e) Some significant material fact was not known to the petitioner or their counsel at the time of conviction.

(4) Upon a substantial showing that the petitioner meets one or more of the criteria under subsection (3) of this section, the court shall grant a hearing to consider the petition and schedule it within 60 days. The hearing may be continued upon motion of the petitioner or the prosecuting attorney for good cause.

(5) 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 shall not be greater than the original sentence. The court may consider the following nonexhaustive list of factors when determining whether to modify the petitioner's sentence:

(a) The petitioner's disciplinary record and record of rehabilitation while incarcerated;

(b) Evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the petitioner's risk for future violence;

(c) Evidence of mitigating factors regarding the petitioner's circumstances at the time of offense or substantial mitigating factors regarding the circumstances of the offense;

(d) Evidence that reflects changed circumstances since imposing the petitioner's original sentence such that the sentence no longer serves the interests of justice; and

(e) Evidence that some significant material fact was not known to the petitioner or their counsel at the time of conviction.

(6) When modifying a sentence pursuant to this section, 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.

(7) If the court denies a petition filed pursuant to this section, the petitioner may file a new petition no earlier than two years after the date the previous petition was denied. Denying a petition filed pursuant to this section shall not reopen the petitioner's conviction or sentence to any challenges that would otherwise be barred.

(8) The prosecuting attorney shall make reasonable efforts to notify victims and survivors of victims of any petition for modification of sentence filed pursuant to this section and the date of any hearing to consider the petition. The prosecuting attorney shall provide victims and survivors of victims access to available victim advocates and other related services. The court shall 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. The prosecuting attorney and the court shall comply with the requirements set forth in chapter 7.69 RCW.

(9) The court shall not permit any person to waive the right to petition pursuant to this section. Any agreement to waive the right to petition pursuant to this section shall be void.

(10) The time limit for collateral attacks established under RCW 10.73.090 does not apply to any petition filed pursuant to this section.

(11) Any incarcerated individual who is eligible to file a petition pursuant to this section and who is unable to afford counsel shall be entitled to have counsel appointed, at no cost to the individual, to represent the individual for the petition and proceedings under this section, unless the individual expressly waives the right to counsel after being fully advised of this right by the court.

(12) Any person who files a pro se petition and subsequently retains or is appointed counsel shall be entitled to amend such petition at least once as of right with the assistance of counsel. Subsequent amendments may be permitted by leave of court.

(13) The department shall provide written notice of this section to any incarcerated individual sentenced to a term of confinement of more than 10 years, and the applicable sentencing court, prosecuting attorney, and public defense agency for the judicial district in which the individual was sentenced, within the following time frames:

(a) For any incarcerated individual serving an applicable sentence for a felony offense committed at 18 years of age or older, the department shall provide written notice of this section no later than 180 days before the date on which the person's 10th year of confinement begins; and

(b) For any incarcerated individual serving an applicable sentence for a felony offense committed at 17 years of age or younger, the department shall provide written notice of this section no later than 180 days before the date on which the person's seventh year of confinement begins.

**Sec.**  RCW 10.73.100 and 1989 c 395 s 2 are each amended to read as follows:

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

(4) The defendant ((~~pled~~)) pleaded not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; ((~~or~~))

(6) A petition for a modification of sentence pursuant to section 3 of this act; or

(7) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

NEW SECTION. **Sec.**  (1) A portion of the savings realized as a result of section 3 of this act, but no less than 25 percent, shall be designated for organizations primarily dedicated to serving and supporting crime survivors.

(2) A portion of the savings realized as a result of section 3 of this act, but no less than 25 percent, shall be designated to fund the costs associated with petitions and proceedings under section 3 of this act.

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