

# HOUSE BILL REPORT

## E2SHB 2065

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**As Passed House:**

February 12, 2024

**Title:** An act relating to recalculating sentencing ranges for currently incarcerated individuals whose offender score was increased by juvenile convictions no longer scorable under current law and allowing them to apply for resentencing without scoring those juvenile convictions.

**Brief Description:** Recalculating sentencing ranges for currently incarcerated individuals whose offender score was increased by juvenile convictions.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Stearns, Hackney, Ramel, Simmons, Reed, Ormsby, Street, Gregerson, Doglio, Lekanoff, Fosse, Santos, Reeves and Pollet).

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 1/22/24, 1/30/24 [DPS];  
Appropriations: 2/3/24, 2/5/24 [DP2S(w/o sub CSJR)].

**Floor Activity:**

Passed House: 2/12/24, 56-41.

**Brief Summary of Engrossed Second Substitute Bill**

- Creates a rebuttable presumption that a person whose offender score was increased by juvenile adjudications that are no longer scored under state law, and meets other specified criteria, is entitled to resentencing.
- Provides that a person resentenced may not be released from total confinement sooner than six months from the date of the resentencing hearing.
- Requires the Department of Corrections to complete individualized reentry plans within specified time periods.

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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.*

- Requires the Office of Crime Victims Advocacy to establish a flexible fund to support victims and survivors of victims impacted by this act and contract with prosecuting attorneys' offices to offer specified victim advocacy services.

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## 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:** Michelle Rusk (786-7153).

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## 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 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Callan, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Stonier, Tharinger and Wilcox.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Dye and Rude.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Harris, Schmick and Stokesbary.

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

### **Background:**

#### Sentencing.

The Sentencing Reform Act provides a determinate sentencing system under which sentencing courts generally impose sentences within a standard range. The standard range for a person is determined by reference to a grid, which provides a base sentence according to the person's offender score and the seriousness level of the present offense. The offender score is a point total based on a person's qualifying prior convictions. Certain prior

convictions are excluded from offender score calculations if the person remains crime free in the community for a specified period of time following release.

#### Juvenile Points.

In 2023 the state passed legislation providing that a person's prior juvenile dispositions may not be included in the person's offender score calculations for any subsequent adult convictions, except for adjudications of guilt for Murder in the first degree, Murder in the second degree, and class A felony sex offenses. Out-of-state or federal convictions that would have been presumptively adjudicated in juvenile court under Washington law may not be included in the offender score unless they are comparable to Murder in the first or second degree, or a class A felony sex offense.

### **Summary of Engrossed Second Substitute Bill:**

#### Rebuttable Presumption of Resentencing.

##### *Resentencing Motion.*

Beginning July 1, 2024, any person sentenced for an offense committed prior to July 23, 2023, whose offender score was increased by juvenile adjudications that are no longer scorable under state law, is entitled to a resentencing hearing upon the person's motions for relief if:

1. the person is currently incarcerated in total confinement with a release date of July 1, 2025, or later; and
2. until January 1, 2027, the person has:
  - a release date within three years, or would be eligible for release within three years if resentenced based on an offender score that excludes juvenile adjudications that are not scorable under state law;
  - served over 15 years of their sentence; or
  - served at least 50 percent of their sentence.

If a petitioner meets the foregoing criteria, the court must grant the petitioner's motion and immediately set an expedited date for resentencing. However, courts may not schedule resentencing hearings before January 1, 2025.

##### *Rebuttable Presumption at Resentencing Hearing.*

At the resentencing hearing, there is a rebuttable presumption that a petitioner is entitled to be resentenced by the court. The court may deny a motion for resentencing only if:

- the petitioner has a significant disciplinary record while incarcerated, which may be overcome by a substantial period free from significant infractions preceding the petition;
- the petitioner has an insignificant record of rehabilitation while incarcerated;
- the petitioner has engaged in pervasive and persistent antisocial behavior while incarcerated;
- the court determines by a preponderance of the evidence that it is more likely than not that the person will commit new criminal law violations if resentenced; or

- the court determines there is evidence of an extraordinary adverse impact of the petitioner's release on the victim or survivors of the victim of the crime for which the petitioner is presently incarcerated, with special consideration given to the impact on any victims of sex offenses or domestic violence offenses committed against an intimate partner.

If the court grants a petitioner's motion for resentencing, the petitioner must be resentenced as if any juvenile adjudications that are no longer scored under state law were not part of the petitioner's offender score at the time the original sentence was imposed. Upon resentencing, the soonest allowable release date from total confinement for a petitioner may be no sooner than six months after the date of the petitioner's resentencing hearing.

Beginning January 1, 2027, resentencing as provided above is available to any individual in total confinement with a release date of July 1, 2025, or later, whose previous offender score was increased due to any juvenile adjudications that are no longer scored under state law.

The act applies retroactively to persons incarcerated on July 1, 2024, regardless of the date of the offense or conviction.

*Denial of a Petition.*

If a court declines to set a hearing, or grants a hearing but declines to modify a petitioner's sentence, a person may, upon a showing of a change in circumstances, file a new petition no earlier than: (1) three years after the date the court denied the petition or declined to modify the petitioner's sentence; or (2) an earlier date if the court so authorizes.

A petitioner may appeal the denial of a hearing or an order entered at a resentencing hearing. Denial of a petition does not reopen a petitioner's conviction or sentence to any other challenge otherwise barred.

*Appointed Counsel.*

Any eligible and incarcerated person unable to afford counsel is entitled to have counsel appointed at no cost to represent the person for a petition and resentencing proceedings. The foregoing right to appointed counsel does not apply for any appeal or second or subsequent petition.

*Persons Sentenced after July 1, 2024.*

Any person sentenced on or after July 1, 2024, for an offense committed prior to July 23, 2023, must have their offender score calculated based on the law in effect as of July 1, 2024, for calculating offender scores.

*Requirements for the Department of Corrections and Office of Crime Victims Advocacy.*

The Department of Corrections must prepare and make available an individualized reentry plan, and the resources necessary for a petitioner to complete it, once a petitioner

resentenced under the act is within six months of their expected release date from total confinement.

The Office of Crime Victims Advocacy (OCVA) must:

- contract with prosecuting attorneys' offices to offer specified victim advocacy services for victims impacted by resentencing;
- establish a flexible fund for specified purposes to support victims and survivors of victims impacted by resentencing. Permissible purposes include, for example, relocation assistance related to changes in safety planning; and
- contract with an entity with expertise in victim services to train victim advocates embedded in prosecuting attorneys' offices regarding safety planning and other case management services that may be required for victims impacted by resentencing.

**Appropriation:** None.

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

**Effective Date:** The bill takes effect on July 1, 2024. However, the bill is null and void unless funded in the budget.

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

(In support) A similar bill was passed last year, concerning prospective application of what this bill aims to do now. This bill is about healing intergenerational trauma. Native Americans have suffered for numerous generations more than anyone can remember, from experiences like war, foster care, relocation programs, and more. The criminal justice system affects Native Americans disproportionately and this policy is about righting certain historical wrongs. Disproportionate sentencing is a reality and juvenile points drive this reality. This bill is really aimed at individuals who are rehabilitated and working on their rehabilitation.

Native youth are hurting from many generations of historical trauma. Adolescents do not understand the consequences of their actions fully. This bill is about restorative justice, fairness, and justice. It is known that after serving many years in prison people are much older and age is a strong factor in low recidivism. People who are released and return to the community play important roles as parents and caretakers.

This bill will help the process of healing a community and individuals. Survivor healing is not necessarily based on the continued incarceration of a person based on their juvenile mistakes.

(Opposed) The practical reality is, this state's judicial system is at a crisis point with the level of public defense and prosecution resources required for resentencing. The system is completely overwhelmed. This policy goes back and undoes promises to families and is not

a victim-centric policy. Every one of these crimes has a victim behind it. Any consideration of bills requiring resentencing should also include a careful review of the impacted victims in those cases. Anything short of that minimizes the victimization our laws are trying to prevent. Additionally, because crimes are overwhelmingly intraracial, the perpetrators of crimes may end up coming out of total confinement to disproportionately victimize their same racial group.

The cost is also a concern. This bill will cost counties money, and if the state chooses to make a policy change, it should pay for the resulting costs, including prosecutors, defense attorneys, courts, clerks, and more. Prosecution alone for resentencing is around \$10 million for counties. The state is paying for resentencing under the Blake decision and it should also do so here.

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

(In support) Out of all the tribes in Washington, the Colville tribe has the most adult members in correctional care based upon juvenile points with 39 members currently incarcerated. The fiscal note is indeterminate, but it seems like this is a modest investment for a significant change in equity. There is support for this bill as it affects all communities of color.

In addition, there is a growing awareness that the brain does not stop developing until the age of 25, which requires some grace in how juvenile history is handled. This bill does not provide amnesty. Each resentencing judge will consider juvenile history with the discretion to move up or down the sentencing range considering all relevant content. Some resentencing cases will be difficult, but the state will save money by cutting short any unnecessary sentences.

(Opposed) There is no opposition to the policy but there is opposition regarding the fiscal impact of the bill. There are other resentencing bills being considered by the Legislature and there is concern with how to practically accomplish complying with the bill. Currently, the courts are behind in hearing cases and in some counties, additional judges are needed to handle caseloads. There is also a shortage of public defenders and prosecutors. The state needs to start thinking about how to fund counties for these new services that we are not currently providing. These individuals have already been sentenced once. Funding needs to be provided to counties for this very burdensome process.

**Persons Testifying (Community Safety, Justice, & Reentry):** (In support)

Representative Chris Stearns, prime sponsor; Travis Comeslast; Gracie Pakosz, University of Washington Race and Justice Clinic; Avery Doutré; André Peñalver; Katherine Beckett, University of Washington; Patrick Brown; and Misty Napeahi, Tulalip Tribes.

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

of Sheriffs and Police Chiefs.

**Persons Testifying (Appropriations):** (In support) Andre Penalver, Minority and Justice Commission; and Michael Moran, The Confederated Tribes of the Colville Reservation.

(Opposed) Juliana Roe, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying (Community Safety, Justice, & Reentry):** None.

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