

SENATE BILL REPORT

E2SHB 2065

As of February 23, 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: Passed House: 2/12/24, 56-41.

Committee Activity: Law & Justice: 2/19/24, 2/20/24 [DP-WM, DNP].

Ways & Means: 2/23/24.

Brief Summary of Bill

- Allows a person who was sentenced for an offense committed before July 23, 2023, whose offender score was increased due to juvenile adjudications which are not scorable under current law to petition for a resentencing hearing if the person is currently incarcerated in total confinement and other restrictions apply.
- Provides appointed counsel to petitioners who cannot afford legal counsel.
- Requires the Office of Crime Victims Advocates to provide victim advocacy and other services for victims and survivors impacted by this act.

SENATE COMMITTEE ON LAW & JUSTICE

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.

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L..

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sarian Scott (786-7729)

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 EHB 1324 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. This bill was applied prospectively to criminal acts arising after July 23, 2023.

Summary of Bill: A person sentenced for an offense committed before July 23, 2023, whose offender score was increased due to juvenile adjudications which are not scorable under current law may petition for a resentencing hearing if the person is currently incarcerated in total confinement and has a release date of January 1, 2025 or after. Until January 1, 2027, this law only applies to a person who:

- has a release date on the sentence within three years;
- would be eligible for release within three years if resentenced to a standard range sentence which is not enhanced by currently unscorable juvenile adjudications;
- has served over 15 years of their sentence; or
- has served at least 50 percent of their sentence.

The court must immediately set an expedited date for resentencing; however, no resentencing hearing may be scheduled before January 1, 2025. There is a rebuttable

presumption that the court must resentence a petitioner who meets the foregoing conditions; however, the court may deny the resentencing motion by written decision 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 behavioral while incarcerated;
- the court determines by a preponderance of the evidence that the person will commit new criminal law violations if resentenced; or
- the court determines there would be 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 sex offenses and domestic violence offenses committed against an intimate partner.

Appointed counsel is available to file a petition for individuals who are unable to afford counsel. An individual who is resentenced may not be released from confinement until six months after the resentencing hearing. An individual whose resentencing petition is denied may petition again after three years, or sooner with permission from the court. An individual may appeal denial of resentencing. The individual reentry plan which the Department of Corrections must prepare within 95 days of their original sentencing for all incarcerated individuals who are not subject to a life sentence or an order of deportation must be prepared for an individual who is resentenced under this act within six months of their expected release date.

The Office of Crime Victims Advocacy (OCVA) must contract with prosecuting attorneys offices to offer victim advocacy services for victims impacted by this act, including legal advocacy, safety planning, options to participate in restorative justice, and case management. OCVA must establish a flexible fund to support victims and survivors impacted by this act and defray expenses related to relocation, travel, or the out-of-pocket costs of psychotherapy. OCVA must provide training for victim advocates.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 22, 2024.

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

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony (Law & Justice): PRO: This bill is about bringing hope and healing, and justice for those left behind when we passed EHB 1324 last session. Native kids are three times as likely to be referred into the juvenile system as white kids. Hundreds remain stuck in Washington prisons serving sentences enhanced by juvenile

points. The majority are persons of color because of the disproportionate treatment of youth in our judicial system. More than 40 percent of these are indigenous. Current knowledge about cognitive development and juvenile sentencing show the error of our former ways. Those incarcerated based on youth crimes should be given the chance to reconcile the choices they made as young people when they did not have the tools to choose the right path. When you know better, you do better. What I have learned as a survivor of violence is that my healing is not tied up in the punishment handed down by the criminal justice system. Look at what truly makes a difference in healing communities from harm. Punishing people twice for crimes committed as children does not make us safer. Long sentences deepen the impact of generational trauma. The same marginalized groups overrepresented in our prisons are the most likely to be victimized by violence. Trauma is the number one predictor of future incarceration. Children are different from adults, which has been recognized in major justice reforms. We must address inequities and act in the now. People now serve vastly different sentences for the same offense.

CON: We are talking about people who were convicted as adults after offending as juveniles, 75 percent of them for murders, sex crimes, or serious assaults. We are going back on promises made to victim's families. This is changing the rules after the game has been played, and is not trauma-informed. This policy asks counties to use judge time, prosecutor time, defense time, and court clerk resources for resentencing. The state should pay for the resentencing costs. The courts are already backlogged. We think this creates public safety concerns. Prosecutors and courts are already overtaxed. Resentencing causes pain, grief, and new trauma for victims and families. The finality of sentencing brings a sense of closure, and it should only be done once.

OTHER: OCVA works with community-based organizations to provide trauma-informed services. This bill would cause significant growth in victim advocate services. Programs are available to help implement this policy.

Persons Testifying (Law & Justice): PRO: Representative Chris Stearns, Prime Sponsor; Jarred-Michael Erickson, Confederated Tribes of the Colville Reservation; Judge David Keenan, Washington Supreme Court Minority and Justice Commission; Beth Ebel, Washington Chapter of the American Academy of Pediatrics; Kari Reardon, Washington Defender Association/Washington Association of Criminal Defense Lawyers; Maria Buxbaum; Cassandra Butler, Collective Justice; Jeremy Takala, Yakama Tribal Council.

CON: Tiffany Attrill; Juliana Roe, Washington State Association of Counties; James McMahan, Washington Association of Sheriffs & Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys.

OTHER: Dave Pringle, Department of Commerce.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: Restorative justice for our

culture and people. Help bring healing to our state. This bill is resolving the disproportionate treatment of youth who have sentences that are longer than they should be. Many of these individuals are people of color, including tribal members, and experience multiple diagnoses such as drug and alcohol abuse, mental health issues, and childhood trauma. Addressing existing sentencing disparities is going to cost money. You are resolving an issue, which is the disproportionate treatment of youth. Help us solve this problem. Progressions towards reform, this needs to be done. It is anticipated that the number of cases that would need to be resentenced yearly is small and the time spent on resentencing would take a few minutes. Resentencing is needed to correct past wrongs. Some of the amendments made to this bill restricted what could be accomplished so I'm not sure if it is worth the cost. Research shows that the brain is not fully developed until beyond 18 years of age. In 2023 this body found that continuing the practice of punishing individuals for crimes they committed as children is not justice, and the work from 2023 is not complete. An average of five to seven resentencing cases for each judge in this state, and that is easily manageable in our current judicial structure. It need not have the negative fiscal impact, it is simply the recalculation of the offender score. Many are caught up in the cycle of incarceration, please help those already incarcerated.

CON: Only individuals who were previously adjudicated in juvenile court and then go on to commit crimes as an adult receive increased sentences. The cost of this bill is enormous and this is a voluntary resentencing. Bill provides options. Sentencing decisions should be made upfront. This bill creates a new administrative action that does not currently exist and costs to the counties are anticipated to be \$15 million per year at a minimum for this new service and this does not include public defense. Counties receive less than \$6 million per year currently for trial court public defense services statewide. The House operating budget does not provide funding for the local government costs and this is ultimately a state responsibility.

Persons Testifying (Ways & Means): PRO: Michael Moran, 1. Chehalis Tribe 2. Coville Tribes; Jarred-Michael Erickson, Confederated Tribes of the Colville Reservation; Maria Buxbaum; Judge Veronica Galvan, King County Superior Court Judge and Minority & Justice Commission Co-Chair; Anthony Powers, SEATTLE CLEMENCY PROJECT; David Trieweiler, Washington Association of Criminal Defense Lawyers/Washington Defender Association; Kimberly Romero.

CON: James McMahan, WA Assoc Sheriffs & Police Chiefs; Russell Brown, WA Association of Prosecuting Attorneys; Juliana Roe, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.