

HOUSE BILL REPORT

HB 1125

As Reported by House Committee On:
Community Safety

Title: An act relating to providing judicial discretion to modify sentences in the interest of justice.

Brief Description: Providing judicial discretion to modify sentences in the interest of justice.

Sponsors: Representatives Simmons, Obras, Scott, Stearns, Ryu, Taylor, Peterson, Reeves, Tharinger, Fey, Morgan, Alvarado, Macri, Ormsby, Stonier, Doglio, Berg, Fosse, Reed, Berry, Duerr, Kloba, Goodman, Farivar, Street, Donaghy, Pollet, Bernbaum, Nance, Ortiz-Self, Ramel, Mena, Gregerson, Wylie, Hill and Salahuddin.

Brief History:

Committee Activity:

Community Safety: 1/23/25, 1/30/25, 2/6/25 [DPS].

Brief Summary of Substitute Bill

- Establishes a process for certain persons convicted of a felony offense to petition the sentencing court for a modification of the original sentence upon meeting specific eligibility criteria.
- Requires the Office of Public Defense to provide representation for eligible petitioners within existing resources.
- Requires the Office of Crime Victims Advocacy to establish a flexible fund for certain affected victims, contract with prosecuting attorney's offices to offer related victim advocacy services, and contract with an entity with expertise in victim services to provide related training for victim advocates.
- Requires the Department of Corrections (DOC) to provide notice of the petition process and information about the Accountability Letter Bank to specified persons.

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 DOC to make an individual reentry plan and the resources necessary to complete the plan available to incarcerated petitioners within six months of their expected release dates from total confinement.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Goodman, Chair; Simmons, Vice Chair; Farivar, Fosse and Obras.

Minority Report: Do not pass. Signed by 4 members: Representatives Graham, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Burnett and Davis.

Staff: Corey Patton (786-7388).

Background:

Modifying Sentences in the Interests of Justice.

When a person is convicted of a criminal offense, the person generally may not appeal the imposed sentence if it is consistent with the standard sentencing range and other guidelines provided in state law. However, the person may appeal other legal errors. Direct appeals must be filed within 30 days, while collateral attacks must typically be filed within one year. A "collateral attack" is any form of postconviction relief other than a direct appeal, and includes personal restraint petitions, habeas corpus petitions, motions to vacate judgment, motions to withdraw guilty pleas, motions for a new trial, and motions to arrest judgment. There are some exceptions to the one-year time limit on collateral attacks, such as where a collateral attack is based on newly discovered evidence or a significant change in the law.

The prosecutor of a county in which an offender was sentenced for a felony offense may petition the sentencing court or the sentencing court's successor to resentence the offender if the original sentence no longer advances the interests of justice. If the court grants the petition, the court must resentence the defendant in the same manner as if the offender had not previously been sentenced, provided the new sentence is no greater than the initial sentence. The court may consider postconviction factors including, but not limited to, the following:

- the inmate's disciplinary record and record of rehabilitation while incarcerated;
- evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence; and
- evidence that reflects changed circumstances since the inmate's original sentencing such that the inmate's continued incarceration no longer serves the interests of justice.

The prosecuting attorney must provide victims and survivors of victims access to available victim advocates and other related services, and make reasonable efforts to notify victims and survivors of victims of any petition for resentencing and the date of the resentencing hearing. The court must provide an opportunity for victims and survivors of victims of any crimes for which the offender has been convicted to present a statement personally or by representation. A resentencing does not reopen the defendant's conviction to challenges that would otherwise be barred.

Accountability Letter Bank.

The Department of Corrections (DOC) offers an Accountability Letter Bank (ALB) that provides incarcerated persons an opportunity to communicate with a victim or survivor of a victim to convey responsibility for past criminal conduct and demonstrate steps taken towards rehabilitation. The DOC reviews any communication submitted to the ALB to ensure appropriate content and holds the communication indefinitely or until the victim or survivor of the victim requests to receive the communication. An incarcerated person who submits a communication to the ALB is not informed whether the victim or survivor of the victim has requested to receive the communication.

Summary of Substitute Bill:

A process is established for certain persons convicted of a felony offense to petition the sentencing court for a modification of the original sentence upon meeting specific eligibility criteria.

Any person under a term of total confinement for a felony conviction, other than a person sentenced as a persistent offender or for Aggravated Murder in the first degree, or a person who has served less than 20 years of a sentence for Murder in the first degree, 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 either has the prosecuting attorney's consent or, beginning on the date indicated, meets any of the following criteria:

Date	Eligibility Criteria to Petition
Beginning July 1, 2026	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2027	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 20 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1,	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 13 years; or

2028	<ul style="list-style-type: none"> • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2029	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 13 years; • committed offense at age 25 or older, and served at least 20 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2030	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 10 years; • committed offense at age 25 or older, and served at least 17 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2031	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 10 years; • committed offense at age 25 or older, and served at least 13 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2032	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18 or older, and served at least 10 years; or • is terminally ill or has a permanent or degenerative medical condition.

The one-year time limit on collateral attacks does not apply to any such petition. 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 and supporting documentation demonstrating that the petitioner meets at least one of the following criteria:

- positive, engaged, and productive behavior while in the custody of the Department of Corrections (DOC) that indicates substantial rehabilitation; or
- a minimal risk of reoffense, which may include, but is not limited to, a demonstration of medical frailty.

Upon request, the DOC must assist in compiling the petitioner's disciplinary record and record of rehabilitation at no cost to the petitioner.

If the court determines by a preponderance of the evidence that the petitioner meets one or more eligibility criteria, the court must grant a hearing to consider the petition and hold the hearing within 120 days, unless continued for good cause. The prosecuting attorney must make reasonable efforts to notify specified victims and survivors of victims of any petition for modification of sentence and the date of any hearing to consider the petition.

At the hearing to consider the petition, the court must review the original sentence de novo and 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. The court must take any such statements into consideration. Victims and survivors of victims are encouraged to articulate what outcome would make them feel safe as a part of any such

statements. The court may grant the petition and modify the petitioner's original sentence if the sentence no longer advances the interests of justice, provided that any new sentence imposed must not be greater than the original sentence and must be consistent with the following requirements:

- If the petitioner's original sentence is an indeterminate sentence imposed for certain sex offenses, the court may modify the minimum term of the sentence but may not modify the maximum term of the sentence or order the petitioner's release from custody.
- If the petitioner's original sentence includes a mandatory minimum term for certain class A felony offenses, the court may not modify the sentence below the mandatory minimum term required by law.
- The soonest allowable release date from total confinement may be no sooner than six months after the date of the hearing to consider the petition.
- The court must impose five years of community custody in addition to any other terms of the modified sentence.

The court may consider the following nonexhaustive list of factors when making its decision:

- the petitioner's disciplinary record and record of rehabilitation while incarcerated;
- evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the petitioner's risk for future violence;
- evidence regarding the petitioner's level of culpability for the offense;
- evidence that reflects changed circumstances since imposing the petitioner's original sentence such that the sentence no longer serves the interests of justice;
- demonstration of an extraordinary adverse impact of release on the victim or survivors of the victim of the offense for which the petitioner is incarcerated, with special consideration given to the impact of release on any victims of sex offenses or domestic violence offenses committed against an intimate partner; and
- whether the petitioner participated in the Accountability Letter Bank (ALB), provided that a victim or survivor of a victim of the offense for which the petitioner is incarcerated has enrolled to receive notification of deposited letters.

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. If the petitioner's original sentence included one or more specified mandatory sentencing enhancements, the court may impose a sentence below the enhancement term.

If the court denies the petition, or grants a hearing but declines to modify the petitioner's sentence at the hearing, the court must state the basis for its decision on the record and provide a written order explaining its decision. The petitioner may, upon a showing of a change in circumstances, file a new petition no earlier than three years after the date of the court's decision, unless the court authorizes an earlier date. The petitioner may appeal the denial of a hearing or an order entered pursuant to a resentencing hearing, but denying a petition does not reopen the petitioner's conviction or sentence to any other challenges that

would otherwise be barred.

The court may not permit any person to waive the right to petition, and any such waiver is void. An incarcerated person who is eligible to file a petition, who the court has determined meets eligibility criteria, and who is unable to afford counsel is entitled to have counsel appointed at no cost, unless the person expressly waives the right to counsel after being fully advised by the court. The Office of Public Defense must provide representation within available resources and prioritize representation based on indicated eligibility criteria and timelines. A person who files a pro se petition and subsequently retains or is appointed counsel may amend the petition at least once with the assistance of counsel. Subsequent amendments may be permitted by leave of court.

The Office of Crime Victims Advocacy (OCVA) must:

- create a flexible fund to serve certain affected victims and survivors of victims, which may be used for purposes including relocation assistance related to a change in safety planning associated with the petitioner's resentencing, traveling to and from court for resentencing hearings, and out-of-pocket expenses for psychotherapy associated with the committed offense or resentencing;
- contract with prosecuting attorney's offices to offer victim advocacy services for affected victims, including legal advocacy to understand the resentencing process and how victims can exercise their rights, safety planning, options to participate in a restorative justice program with the petitioner, and case management to address needs that may arise as a result of resentencing; and
- contract with an entity with expertise in victim services to provide training for victim advocates embedded within prosecutor's offices regarding safety planning and other case management services for affected victims.

The DOC must provide information about the ALB to any incarcerated person sentenced to a term of confinement longer than seven years, and to any victims or survivors of victims who inquire with the DOC's Victim Services Program about options for victim notification or other services. The DOC must provide written notice of the petition process to any incarcerated person sentenced to a term of confinement longer than 10 years, and the applicable sentencing court, prosecuting attorney, and public defense agency for the judicial district in which the person was sentenced, within the following time frames:

- for any person serving an applicable sentence for an offense committed at age 18 or older, the DOC must provide written notice no later than 180 days before the date on which the person's tenth year of confinement begins; and
- for any person serving an applicable sentence for an offense committed at age 17 or younger, the DOC must provide written notice no later than 180 days before the date on which the person's seventh year of confinement begins.

The DOC must make an individual reentry plan and the resources necessary to complete the plan available when any person granted a modified sentence is within six months of the person's expected release date from total confinement.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) prohibits a person serving a sentence for Murder in the first degree from petitioning for a modification of sentence unless the person has served at least 20 years of the original sentence; (2) authorizes the court to consider a petitioner's participation in the Department of Correction's (DOC's) Accountability Letter Bank (ALB) if a victim or survivor of a victim has enrolled to receive notification of letters; (3) requires the DOC to provide information about the ALB to any person sentenced to a term of confinement of seven years or longer, and any victim or survivor of a victim who inquires with the DOC's Victim Services Program; (4) requires the court to impose five years of community custody as a part of any granted modification of sentence; and (5) requires the court to consider statements by victims and survivors of victims, and encourages victims and survivors of victims to articulate what outcome would make them feel safe at the sentence modification hearing.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 6, 2025.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) Sentences that no longer serve any penological purpose are not in the interests of justice, and disproportionate sentences should never be ministerial. There are incarcerated persons who could be contributing to society from within the community, instead of being confined for lengthy periods. The cycle of violence does not break through incarceration. Healing only happens through supporting victims, perpetrators, and people who have been both. This bill does not open the floodgates for releases; it only provides the opportunity for careful review of cases where incarcerated persons have shown extraordinary rehabilitation but are serving lengthy sentences from a more punitive era.

Currently, prosecutors evaluate requests for resentencing in the dark without publicly recorded decisions and explanations. Judges can be fallible, but the same is true of prosecutors. There is a growing list of cases where prosecutorial decisions were brought into the open, and jurors ultimately disagreed with those decisions. The population of incarcerated persons who would be eligible to petition under this bill have a very low recidivism rate. Giving someone a lengthy sentence at a young age does not incentivize rehabilitation, and the price of housing incarcerated persons has greatly increased in the most recent decade. A lot of money will be saved by letting safe people out of confinement and redirecting funding to victim services and law enforcement.

Many victims' tragedies are co-opted to forward a political agenda. Those who favor rehabilitative justice are far from the exception, but they are rarely invited to discuss their views. Some want to understand why crimes occurred, and want restoration and healing. However, resentencing may be retraumatizing to others, which is why this bill creates a flexible fund to provide supports. Engaging in true restorative justice allows the centering of victims, which is something the current criminal justice system is not good at.

(Opposed) This bill jeopardizes public safety, retraumatizes victims and their families, and fails to address the irreversible damage caused by violent offenders who have demonstrated a willingness to assault and kill others. The government should protect citizens from harm and uphold the law. This bill will cause additional harm and reopen victims' wounds. There is no one right way for victims to feel in the aftermath. If victims or their families oppose this bill, that should not be viewed as a failure in their healing journey. This is not about seeking revenge.

People are redeemable and should have an opportunity for redemption. However, there are practical concerns with focusing on past harms when the criminal justice system is overwhelmed, overworked, and at overcapacity. Adding more inputs to a burdened system is irresponsible. Although there is value in a rehabilitative focus, prioritizing rehearing cases that occurred several years ago will detract from efforts to hear cases that are occurring today. The clemency and pardons process in the state constitution is a better mechanism for addressing these cases. There should also be more programming opportunities at the Department of Corrections.

This is one of the most disgusting bills and will enable activist judges in certain counties. Identity politics does not change the intent to commit a crime. The state needs to start enforcing law and order.

Persons Testifying: (In support) Representative Tarra Simmons, prime sponsor; Veronica Galvan, Minority and Justice Commission; Amanda Knight, Department of Corrections - WCCW; Azias Ross; Jacob Schmitt, Just Us Solutions, LLC; Aswad Thomas, Crime Survivors for Safety and Justice; Kim Gordon, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Annie Nichol, Crime Survivors for Safety and Justice; and Anthony Powers, Individual.

(Opposed) Leslie Paine; Anthony Mixer, Washington State Young Republicans; Krista Stogner; Brad Banks, Washington State Association of Counties; Russell Brown, WA Association of Prosecuting Attorneys; Tiffany Attrill; and James McMahan, WA Assoc Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: Larry Jefferson, Director, Washington State Office of Public Defense; PERCY LEVY; Esther Matthews; Anthony Powers; Kristin Ang, Faith Action Network; Rachael SeEVERS, Disability Rights Washington; Katrin

Johnson, Washington State Office of Public Defense; Charleen Kriens; Matthew Jackmond; PATRICK HUSTING; Cait Lang-Perez, Washington State Board of Health; and Mark Millenaar, L,b,g,q,t,.