

HOUSE BILL REPORT

HB 1274

As Reported by House Committee On:
Community Safety

Title: An act relating to retroactively applying the requirement to exclude certain juvenile convictions from an offender score regardless of the date of the offense.

Brief Description: Concerning retroactively applying the requirement to exclude certain juvenile convictions from an offender score regardless of the date of the offense.

Sponsors: Representatives Stearns, Hackney, Doglio, Ramel, Reed, Ormsby, Parshley, Pollet, Macri, Simmons and Hill.

Brief History:

Committee Activity:

Community Safety: 1/28/25, 2/6/25 [DPS].

Brief Summary of Substitute Bill

- Entitles a person incarcerated in total confinement meeting specified criteria to be resentenced, subject to a rebuttable presumption, if the person's offender score was increased by juvenile adjudications that are no longer scored under state law at the time of filing a petition for resentencing.
- Allows specified individuals to be sentenced based on the laws for offender scoring of juvenile adjudications in effect at the time of sentencing.
- Directs the Office of Crime Victims Advocacy to undertake several actions relating to victim advocacy services.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

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.

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: Michelle Rusk (786-7153).

Background:

Sentencing.

The Sentencing Reform Act provides a determinate sentencing system in 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 Dispositions.

In 2023 legislation was enacted 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.

Rights of Crime Victims, Survivors of Victims, and Witnesses.

The Washington Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. A reasonable effort must be made to ensure that victims, survivors of victims, and witnesses of crimes have access to such rights in adult and juvenile criminal proceedings, and sexually violent predator or criminal insanity civil commitment proceedings.

Examples of statutory rights include the following:

- with respect to victims of violent and sex crimes, the right to have a crime victim advocate from a crime victim or witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim;
- with respect to victims and survivors of victims, the right to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified; and

- with respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing or disposition hearing upon request by a victim or survivor.
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Summary of Substitute Bill:

Resentencing Procedures Established.

Eligibility and Petition for Resentencing.

Any person sentenced for an offense committed prior to July 23, 2023, whose offender score was increased by juvenile adjudications that are not scorable under offender score laws at the time a person files a petition as provided below, is entitled to a resentencing hearing upon the person's motions for relief if the person is currently incarcerated in total confinement with a release date no earlier than July 1, 2026, and:

- until July 1, 2026, the person has served either at least 80 percent or 20 years of their sentence; or
- after July 1, 2026, the person has served either at least 60 percent or 15 years of their sentence; or
- after July 1, 2027, the person has served either at least 40 percent or 10 years of their sentence; or
- after July 1, 2028, the person has served any amount of time on their sentence.

Superior courts may hear a petition from an otherwise eligible petitioner outside of the above order of priority if the superior court's presiding judge determines they have capacity to do so.

If a petitioner meets the foregoing criteria, the court must grant the petitioner's motion and immediately set an expedited date for resentencing. There is a rebuttable presumption that the petitioner is entitled to be resentenced by the court. The court may deny a petition only if: (1) the petitioner has a significant disciplinary record while incarcerated; (2) the petitioner has an insignificant record of rehabilitation while incarcerated; or (3) the court determines it is more likely than not that the person will commit new felony criminal law violations.

If a petition is denied, the court must state the basis for its decision on the record, which a petitioner may appeal. A petitioner, upon a showing of changed circumstances, may file a subsequent petition no sooner than three years after denial, unless the court authorizes otherwise.

Subject to the availability of amounts appropriated for this purpose, eligible incarcerated individuals unable to afford counsel are entitled to have counsel appointed for the petition and proceedings. This right does not extend to any appeal or second or subsequent petition.

Resentencing.

If the court grants a petitioner's motion, at a resentencing hearing, the petitioner must be resentenced as if any juvenile adjudications no longer scored under offender score laws in effect at the time the petition was filed were not part of the petitioner's offender score at the time the original sentence was imposed. 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.

Rights of Victims, Survivors of Victims, and Witnesses.

Prior to and during a resentencing hearing, victims, survivors of victims, and witnesses of the crime have the following rights:

- to be informed of the date, time, and place of the resentencing hearing by the prosecuting attorney;
- to present a statement during the resentencing hearing; and
- all other rights afforded to victims and survivors of crime under the Washington Constitution and Washington laws.

The court may consider the impact of the petitioner's release on victims and survivors of victims of the crime for which resentencing is occurring, with special consideration given to the impacts on victims of sex offenses or domestic violence offenses.

Sentencing.

Any person sentenced on or after July 26, 2025, for an offense committed prior to July 23, 2023, and whose offender score would be increased due to juvenile adjudications that are not scorable under offender scoring laws at the time of sentencing, must have their offender score calculated based on the offender score laws in effect at the time of sentencing.

Office of Crime Victims Advocacy.

The Office of Crime Victims Advocacy (OCVA) must contract with prosecuting attorneys' offices to offer victim advocacy services including: (1) legal advocacy to understand the resentencing process and how to exercise the individual's rights; (2) safety planning; (3) options to participate in a restorative justice program with the perpetrator; and (4) case management needs that may arise. The OCVA must also contract with an entity with victim services expertise to provide training for victim advocates embedded in prosecuting attorneys' offices regarding safety planning and case management services.

Additionally, the OCVA must establish a flexible fund to support victims and survivors of victims impacted by resentencing. The fund must be used for purposes including relocation assistance due to changes in safety planning, traveling to court for resentencing hearings, and expenses for psychotherapy associated with the offense.

Substitute Bill Compared to Original Bill:

The substitute bill:

- modifies the resentencing eligibility criteria by changing the duration of confinement a person currently incarcerated in total confinement must have served, and also modifies the dates by which required years of confinement must have been served;
- permits a superior court to hear petitions outside of the eligibility order prescribed in the bill if the presiding judge of the superior court determines it has capacity; and
- removes the prohibition on scheduling resentencing hearings before January 1, 2026.

Appropriation: None.

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

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In 2023 the state recognized that the use of juvenile points results in unjust sentences and is not necessary for the preservation of public safety. However, we left a lot of people behind when the bill applied prospectively only, and in doing so we failed to address the historic disproportionalities caused by the prior offender scoring system. For example, almost one third of the people left behind are Native Americans, and there is an overwhelming amount of support from many tribes located in the Pacific Northwest region for this policy.

The Office of Public Defense was tasked by the Administrative Offices of the Courts with conducting an analysis of how many people this policy might effect. Statistically, about 700 to 850 people would be eligible, and on average their sentences would be reduced by about 107 months. The savings from the policy in this bill total in the millions, which could help support public defense. The bill provides staggered eligibility over a five-year period, so a strong effort is being made not to burden the court systems. Administrative concerns should not and cannot outweigh the demonstrated racial injustice which this bill directly addresses. Judges who conduct resentencings see that it is very challenging for everyone involved, including survivors, and this bill provides many resources for survivors, which there are not enough of in the current system.

Punishing people twice for crimes committed as a child does not make us safer. Patterns have emerged demonstrating the child abuse to prison pipeline. Many individuals in their early childhoods experience several forms of abuse, chronic instability, and poverty. Adolescents do not understand the consequences of their actions, and their minds take time to develop. This bill helps the process of healing our communities and individuals.

(Opposed) There is a finality in sentencing when imposed by a judge that brings an end to a

lengthy legal process. This sense of closure allows families to turn the page on a painful chapter. Resentencing reopens this wound and is retraumatizing. Many families are shocked, horrified, and confused by resentencing and do not understand why. Resentencing breaks promises to victims and families, and while helpful, the work of victims advocates does not prevent pain or retraumatization that comes from resentencing.

In many instances, a sentence is the result of plea negotiations, and when these negotiations involve a victim, many dynamics are at play. For instance, the parties may be considering other family members or individuals impacted by the criminal offense, and the desire to have those individuals graduate high school or allow for time and changes in circumstances because the conduct was so harmful and damaging. Going back and undoing that creates additional harms.

This bill is bad public policy. Prosecutors already do not have capacity to charge many serious offenses and it would not be prudent for court time to be taken up with resentencing. Juvenile points only count when someone as a juvenile commits an equivalent of a felony and then that person goes on to be convicted of additional felonies as adults, and most of these juvenile points count as a fraction and fractional points round down.

Persons Testifying: (In support) Representative Chris Stearns, prime sponsor; Avery Doutre; Cassandra Butler, Collective Justice; Bryin Thomas; Jarred-Michael Erickson, Confederated Tribes of the Colville Reservation; Michael McNeil, PVCA Law; Kathryn Loring, Washington State Minority and Justice Commission; Judge Breean Beggs, Washington State Minority and Justice Commission; and Larry Jefferson, Director, Washington State Office of Public Defense.

(Opposed) Tiffany Attrill; James McMahan, WA Assoc Sheriffs and Police Chiefs; and Russell Brown, WA Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: Emily Gause, WACDL and WDA; Dinah Coble; Caya Lenay, Capitol Classroom; Bryan Rodriguez, Capitol Classroom; and Kimberly Romeroi.