

# HOUSE BILL REPORT

## SSB 5867

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### As Reported by House Committee On: Public Safety

**Title:** An act relating to the resentencing of persons convicted of drug offenses.

**Brief Description:** Resentencing of persons convicted of drug offenses.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Zeiger, Pedersen, Nguyen, Darneille, Ericksen, Walsh and Kuderer).

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 2/25/20, 2/27/20 [DP].

#### **Brief Summary of Substitute Bill**

- Requires courts to resentence qualifying defendants currently incarcerated for drug offenses committed prior to July 1, 2004 (corresponding to the enactment of specialized drug sentencing laws).

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 10 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Minority Report:** Do not pass. Signed by 1 member: Representative Klippert, Ranking Minority Member.

**Staff:** Kelly Leonard (786-7147).

#### **Background:**

##### Drug Offenses.

Under the Washington Uniform Controlled Substances Act (UCSA), a "controlled substance" means a drug or substance included in Schedules I through V, with some exceptions. Drugs

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and substances are placed on schedules based on their potential for abuse, medical use, and safety. Substances in Schedule I are the most tightly controlled, while those in Schedule V are the least tightly controlled. It is unlawful for any person to possess, manufacture, or distribute a controlled substance unless an exception applies. The criminal penalties for violating the UCSA depends upon the nature of the violation and the type of substance. Most violations are classified as felony offenses.

State law also prohibits a person from manufacturing, distributing, or possessing with the intent to distribute, an "imitation controlled substance." An "imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Violations pertaining to imitation controlled substances are classified as felony offenses.

### Sentencing Laws.

Felony crimes are generally classified as A, B, or C. The classification generally determines the maximum term of confinement. However, the Sentencing Reform Act (SRA) controls the actual term of confinement for adults convicted of felonies. The SRA is a determinate sentencing system in which a judge selects a particular sentence from a standard range. The standard range is determined by reference to a statutory grid, which is based on the defendant's criminal history (converted into an offender score) and the severity of the offense (according to designated seriousness levels). While the standard range is presumed to be appropriate, additional sentencing policies can increase or decrease a sentence. This includes, for example, exceptional sentences and enhancements.

In 2002 the Legislature made several changes to how felony drug offenses (under the UCSA as well as other state laws) were sentenced, including adopting a separate, simplified sentencing grid with broader ranges, eliminating double and triple scoring for certain offenses, and reducing seriousness levels for certain offenses. The changes generally resulted in lower sentences for felony drug offenses. The changes were prospective and took effect July 1, 2004.

### Sentencing Hearing.

When a defendant is convicted of a crime, the sentencing laws in place at the time of an offense apply to the sentencing proceedings. There are some exceptions, including when changes to sentencing laws are based in constitutional requirements or were expressly remedial and favorable to defendants. Before imposing a sentence, the court must conduct a sentencing hearing where it considers presentence reports, criminal history, arguments from the parties, and any victim statements.

A sentence within the standard range is generally not appealable, though a defendant may appeal other legal errors. If an appellate court finds an error in a conviction or sentence, the defendant may be retried and/or resentenced. In some cases, statute may direct resentencing of certain classes of defendants.

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**Summary of Bill:**

A defendant is entitled to a resentencing hearing if he or she:

- is currently serving a term of incarceration for a drug offense committed prior to July 1, 2004, including a violation of UCSA or laws restricting imitation controlled substances; and
- has not been convicted of a most serious offense or violent offense.

Prosecuting attorneys are required to review sentencing documents for defendants meeting the above criteria. If a defendant is entitled to a resentencing hearing, the prosecuting attorney must make a motion for relief from sentence to the original sentencing court. A defendant may also make a motion on his or her own accord.

The sentencing court must grant the motion and immediately set an expedited date for resentencing. At resentencing, the court must sentence the defendant as if he or she had not previously been sentenced, provided the new sentence is no greater than the initial sentence.

The provisions requiring resentencing expire July 1, 2021.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Back in 2002 the Legislature revised sentencing guidelines for drug offenses. However, there are a small number of persons who are still serving sentences from prior to July 1, 2004. This bill allows those persons to be resentenced. Drug offense sentencing has evolved over time, so this is an issue of fairness.

There is a particular case of a person who was convicted of a drug offense in 1999 and who is still serving a sentence for the offense. This would not be the case if he had been sentenced under the current drug sentencing grid. He has been infraction-free and has been a positive influence on his family and others during his time in prison. His family would like him to be able to come home.

(Opposed) None.

**Persons Testifying:** Senator Zeiger, prime sponsor; and Chantel Sohayda.

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