

# SENATE BILL REPORT

## SB 6164

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As Amended by House, March 3, 2020

**Title:** An act relating to prosecutorial discretion to seek resentencing.

**Brief Description:** Concerning prosecutorial discretion to seek resentencing.

**Sponsors:** Senators Dhingra, Wilson, C., McCoy, Das, Darneille, Kuderer and Randall.

**Brief History:**

**Committee Activity:** Law & Justice: 1/28/20, 1/30/20 [DP, DNP].

**Floor Activity:**

Passed Senate: 2/19/20, 28-20.

Passed House: 3/03/20, 96-0.

**Brief Summary of Bill**

- Authorizes a county prosecutor to petition the sentencing court to resentence an offender if the original sentence no longer advance the interests of justice.
- Allows an inmate to present postconviction information to the court for resentencing including evidence of rehabilitation and reduced risk of future violence.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

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

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

**Staff:** Shani Bauer (786-7468)

**Background:** In 1981, the Legislature passed the Sentencing Reform Act (SRA), which established determinate sentencing for felony offenders. The SRA eliminated indeterminate sentences and parole in Washington, with some exceptions. Instead, the SRA determines a specific sentence within the statutory maximum. Judges select an offender's sentence within

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a standard sentence range provided in statute, which is calculated based on the statutorily designated seriousness level for the offense and the offender's criminal history score based on the offender's past convictions.

In addition to the standard range, other factors may affect the sentence, including sentencing enhancements, exceptional sentences, consecutive/concurrent sentences, whether the offender qualifies as a persistent offender under the three-strikes or two-strikes laws, and alternative sentences. Further, there are some instances where the law has been changed that may reduce sentences for certain offenses. For example, robbery in the second degree is no longer a third strike offense requiring a sentence of life without parole. Further, a separate drug grid was adopted in 2002, requiring a separate sentencing scheme for drug offenses.

**Summary of Bill:** The prosecutor of a county in which an offender was sentenced may petition the sentencing court or the sentencing court's successor to resentence an offender if the original sentence no longer advances the interests of justice. Upon receipt of a petition, the court must resentence the individual in the same manner as if the offender had not previously been sentenced. The new sentence may not be greater than the original sentence.

In making its sentencing determination, the court may consider postconviction factors, including:

- the inmate's disciplinary record and record of rehabilitation while incarcerated;
- evidence that reflects whether the age, time served, and diminished physical condition 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 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: We have learned a lot in the last several years about behavior modification, risk responsivity, and criminogenic needs. We need to ensure that thoughtful prosecutors have the tools to do justice where appropriate. This bill gives prosecutors discretion to seek resentencing when the original sentence no longer makes sense.

A prosecutor's obligation to do justice goes backwards as well as forwards. Washington's lack of a parole system is unique. There needs to be a way to look back at cases, because if

we do not, no one will. We need to look at cases with a view to whether we can reconcile the sentence with what we would do today. Prosecutors do not currently have the explicit authority to go back and take steps to render a just sentence.

We trust prosecutors to be the government and community's voice in sentencing. We assumed that prosecutors had this right already. This bill is an appropriate way to address this problem as opposed to others that have been proposed.

CON: There is a large range of opinions within the body of prosecutors. This idea originates in California where they have a different sentence structure. Some prosecutors are worried about unintended appellate consequences. The same conditions do not apply to sentencing in the past that apply now.

OTHER: While we welcome additional prosecutorial discretion, this bill would result in a lack of consistency across the state. Prosecutors across the state approach sentencing very differently. This bill potentially opens up the county for equal protection and due process claims. Some counties would utilize this more frequently than others leading to vast disparities around the state. Allowing postconviction factors to be considered in resentencing is also concerning.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; Dan Satterberg, King County Prosecuting Attorney.

CON: Russell Brown, Executive Director, Washington Association of Prosecuting Attorneys; Lawrence Haskell, Spokane County Prosecuting Attorney.

**Persons Signed In To Testify But Not Testifying:** No one.

**EFFECT OF HOUSE AMENDMENT(S):** The prosecuting attorney may only request resentencing for a felony offense, rather than any type of offense. Upon receipt of a petition for resentencing, the court may grant or deny the petition and is only required to resentence the person if the petition is granted. The prosecuting attorney must make reasonable efforts to notify victims and survivors of victims of a petition for resentencing and the date of any resentencing hearing. The prosecuting attorney and the court must comply with the rights of victims, survivors, and witnesses enumerated in current law and provide victims and survivors of victims access to available victim advocates and other related services.