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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2065**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Stearns, Hackney, Ramel, Simmons, Reed, Ormsby, Street, Gregerson, Doglio, Lekanoff, Fosse, Santos, Reeves, and Pollet)

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; adding a new section to chapter 9.94A RCW; creating new sections; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that, with the support of eight Washington tribal governments and indigenous organizations along with a broad array of other advocates, the legislature passed Engrossed House Bill No. 1324 in 2023 to end the practice of assigning "juvenile points" to lengthen state prison sentences. The legislature finds that incarcerated indigenous people are the most disproportionately impacted by prior juvenile felony adjudications, followed closely by black people, Pacific Islanders, and Hispanic people.

The legislature further finds that the grave disproportionality within the juvenile legal system has the downstream effect of impacting sentencing ranges in adult court. The legislature recognizes that because of the expansive body of scientific research on brain development, which shows that adolescent's perception, judgment, and decision making differs significantly from that of adults, and based on the need to redress the harms of the past, it is sound public policy to make the changes enacted in Engrossed House Bill No. 1324 retroactive.

NEW SECTION. **Sec.**  A new section is added to chapter 9.94A RCW to read as follows:

(1) Any person sentenced for an offense committed prior to July 23, 2023, whose offender score was increased due to any juvenile adjudications that are not scorable under RCW 9.94A.525 as enacted at the time the petition is filed shall be entitled to a resentencing hearing upon the offender's motion for relief from sentence to the original sentencing court if:

(a) The person is currently incarcerated in total confinement with a release date on the sentence of July 1, 2025, or later; and

(b) Until January 1, 2027, the person:

(i) Has a release date on the sentence within three years, or the person would be eligible for release on the sentence within three years if they were resentenced to a standard range sentence based on an offender score which does not include juvenile adjudications that are not scorable under RCW 9.94A.525 as enacted at the time the petition is filed; or

(ii) Has served over 15 years of their sentence; or

(ii) Has served at least 50 percent of their sentence.

(2) The sentencing court shall grant the motion if it finds that the person is currently incarcerated in total confinement, has a release date of July 1, 2025, or later, and the previous offender score was increased due to any juvenile adjudications that are not scorable under RCW 9.94A.525 as enacted at the time the petition was filed. Subject to (c) of this subsection, the court shall immediately set an expedited date for resentencing. At the resentencing hearing, there is a rebuttable presumption that the petitioner is entitled to be resentenced by the court.

(a) The court may deny a motion for resentencing only if:

(i) The petitioner has a significant disciplinary record while incarcerated. A petitioner's significant disciplinary record may be overcome by a substantial period free from significant infractions that precedes the petition;

(ii) The petitioner has an insignificant record of rehabilitation while incarcerated;

(iii) The petitioner has engaged in pervasive and persistent antisocial behavior while incarcerated;

(iv) The court determines by a preponderance of the evidence that it is more likely than not that the person will commit new criminal law violations if resentenced; or

(v) The court determines there is evidence of 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 the impact of release on any victims of sex offenses or domestic violence offenses committed against an intimate partner.

(b) If the court grants a petitioner's motion for resentencing, the court shall sentence the offender as if any juvenile adjudications that are not scorable under RCW 9.94A.525 as enacted at the time the petition was filed were not part of the offender score at the time the original sentence was imposed. Notwithstanding the foregoing, the soonest allowable release date from total confinement for an individual resentenced under this section may be no sooner than six months after the date of the individual's resentencing hearing.

(c) A court may not schedule a resentencing hearing under this section before January 1, 2025.

(3) If the court denies a petition filed pursuant to this section and declines to set a hearing, or grants a hearing but declines to modify the petitioner's sentence at the hearing, the petitioner may, upon a showing of a change in circumstances, file a new petition no earlier than three years after the date the court denied the previous petition or declined to modify the petitioner's sentence, unless the court authorizes the petitioner to file a new petition at an earlier date. If the court denies the petition or declines to modify the petitioner's sentence, the court shall state the basis for its decision on the record. The petitioner may appeal the denial of a hearing or an order entered pursuant to a resentencing hearing, provided, however, that denying a petition filed pursuant to this section shall not reopen the petitioner's conviction or sentence to any other challenges that would otherwise be barred.

(4) When an individual who has been resentenced under this section is within six months of their expected release date from total confinement, the department of corrections must prepare and make available an individualized reentry plan under chapter 72.09 RCW and the resources necessary for the individual to complete it.

(5) Any incarcerated individual who is eligible to file a petition under this section and unable to afford counsel is entitled to have counsel appointed, at no cost to the individual, to represent the individual for the petition and proceedings under this section, unless the individual expressly waives the right to counsel after being fully advised of this right by the court. The right to appointed counsel under this subsection does not establish a right to appointed counsel for any appeal or second or subsequent petition under this act.

(6) The office of crime victims advocacy shall contract with the prosecuting attorneys offices to offer victim advocacy services for victims impacted by this act. The victim services must include:

(a) Legal advocacy to understand the resentencing process and how to exercise their rights;

(b) Safety planning;

(c) Options to participate in a restorative justice program with the petitioner; and

(d) Case management to address needs that may arise as a result of resentencing.

(7) The office of crime victims advocacy must establish a flexible fund to support victims and survivors of victims impacted by this act. The office may contract for administration of this fund. Uses of the fund may include, but are not limited to:

(a) Relocation assistance related to a change in safety planning associated with resentencing;

(b) Traveling to and from court for resentencing hearings; and

(c) Out-of-pocket expenses for psychotherapy associated with the committed offense and the potential resentencing.

(8) The office of crime victims advocacy shall contract with an entity with expertise in victim services to provide training for victim advocates embedded within prosecuting attorneys' offices regarding safety planning and other case management services that victims impacted by this act may require.

(9) Beginning January 1, 2027, this section applies to all individuals meeting the requirements of subsection (2) of this section.

(10) Any person sentenced on or after July 1, 2024, for an offense committed prior to July 23, 2023, shall have their offender score calculated based on RCW 9.94A.525 as enacted as of July 1, 2024.

(11) This section applies retroactively to persons incarcerated on the effective date of this section, regardless of the date of the offense or conviction.

NEW SECTION. **Sec.**  This act takes effect July 1, 2024.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2024, in the omnibus appropriations act, this act is null and void.

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