

# HOUSE BILL REPORT

## HB 2065

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**As Reported by House Committee On:**  
Community Safety, Justice, & Reentry  
Appropriations

**Title:** 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.

**Brief Description:** Recalculating sentencing ranges for currently incarcerated individuals whose offender score was increased by juvenile convictions.

**Sponsors:** Representatives Stearns, Hackney, Ramel, Simmons, Reed, Ormsby, Street, Gregerson, Doglio, Lekanoff, Fosse, Santos, Reeves and Pollet.

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 1/22/24, 1/30/24 [DPS];  
Appropriations: 2/3/24, 2/5/24 [DP2S(w/o sub CSJR)].

**Brief Summary of Second Substitute Bill**

- Creates a rebuttable presumption that a person whose offender score was increased by juvenile adjudications that are no longer scored under state law, and meets other specified criteria, is entitled to resentencing.
- Provides that a person resentenced may not be released from total confinement sooner than six months from the date of the resentencing hearing.
- Requires the Department of Corrections to complete individualized reentry plans within specified time periods.
- Requires the Office of Crime Victims Advocacy (OCVA) to establish a flexible fund to support victims and survivors of victims impacted by this act.

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*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.*

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## HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

**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 Points.

In 2023 the state passed legislation 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.

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### **Summary of Substitute Bill:**

#### Rebuttable Presumption of Resentencing.

##### *Resentencing Motion.*

Beginning July 1, 2024, any person sentenced for an offense committed prior to July 23, 2023, whose offender score was increased by juvenile adjudications that are no longer scorable under state law, is entitled to a resentencing hearing upon the person's motions for relief if:

1. the person is currently incarcerated in total confinement with a release date of January 1, 2025, or later; and
2. until January 1, 2027, the person has:
  - a release date within three years, or would be eligible for release within three

- years if resentenced based on an offender score that excludes juvenile adjudications that are not scorable under state law;
- served over 15 years of their sentence; or
- served at least 50 percent of their sentence.

If a petitioner meets the foregoing criteria, the court must grant the petitioner's motion and immediately set an expedited date for resentencing.

*Rebuttable Presumption at Resentencing Hearing.*

At the resentencing hearing, there is a rebuttable presumption that a petitioner is entitled to be resentenced by the court. The court may deny a motion for resentencing only if:

- the petitioner has either a significant disciplinary record or an insignificant record of rehabilitation while incarcerated;
- the petitioner has engaged in pervasive and persistent antisocial behavior while incarcerated;
- 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
- the court determines that resentencing would cause an extraordinary negative impact on the victim or the victim's surviving family of the crime for which the petitioner is presently incarcerated.

If the court grants a petitioner's motion for resentencing, the petitioner must be resentenced as if any juvenile adjudications that are no longer scored under state law 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.

Beginning January 1, 2027, resentencing as provided above is available to any individual in total confinement with a release date of January 1, 2025, or later, whose previous offender score was increased due to any juvenile adjudications that are no longer scored under state law.

Any person sentenced on or after July 1, 2024, for an offense committed prior to July 23, 2023, must have their offender score calculated based on the law in effect as of July 1, 2024, for calculating offender scores.

The act applies retroactively to persons incarcerated on July 1, 2024, regardless of the date of the offense or conviction.

*Department of Corrections Requirements.*

The Department of Corrections (DOC) must:

- prepare and make available an individualized reentry plan, and the resources necessary for a petitioner to complete it, once a petitioner resentenced under the act is within six months of their expected release date from total confinement;

- provide victim advocate support to victims of any sex offenses or intimate partner domestic violence offenses for which an individual resentenced under the act was convicted of at any time, which must include: (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; and
- establish a flexible fund to support victims of gender-based violence committed by petitioners under this act. Uses of the fund may include, but are not limited to: (1) relocation assistance related to a change in safety planning associated with resentencing; (2) traveling to and from court for resentencing hearings; and (3) out of pocket expenses for psychotherapy associated with the qualifying offense committed.

### **Substitute Bill Compared to Original Bill:**

The substitute bill does the following:

- applies the act retroactively to persons incarcerated on the resentencing effective date, regardless of the person's offense or conviction date;
- clarifies that any person sentenced on or after July 1, 2024, for an offense committed before July 23, 2023, must have their offender score calculated based on state law as of July 1, 2024;
- establishes a rebuttable presumption that a petitioner is entitled to resentencing, provided that a court may deny a motion for resentencing based on specified factors;
- provides that the soonest allowable release date for an individual resentenced is no sooner than six months after the date of the individual's resentencing hearing;
- requires the Department of Corrections (DOC) to prepare an individualized reentry plan when an individual resentenced under the act is within six months of their expected release date;
- requires the DOC to provide victim advocate support to victims of any sex offenses or qualifying domestic violence offenses that a person seeking resentencing has been convicted of;
- requires the DOC to establish a flexible fund for specified purposes to support victims of gender-based violence committed by a petitioner under this act; and
- adds an effective date of July 1, 2024.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 31, 2024.

**Effective Date of Substitute Bill:** The bill takes effect on July 1, 2024.

### **Staff Summary of Public Testimony:**

(In support) A similar bill was passed last year, concerning prospective application of what

this bill aims to do now. This bill is about healing intergenerational trauma. Native Americans have suffered for numerous generations more than anyone can remember, from experiences like war, foster care, relocation programs, and more. The criminal justice system affects Native Americans disproportionately and this policy is about righting certain historical wrongs. Disproportionate sentencing is a reality and juvenile points drive this reality. This bill is really aimed at individuals who are rehabilitated and working on their rehabilitation.

Native youth are hurting from many generations of historical trauma. Adolescents do not understand the consequences of their actions fully. This bill is about restorative justice, fairness, and justice. It is known that after serving many years in prison people are much older and age is a strong factor in low recidivism. People who are released and return to the community play important roles as parents and caretakers.

This bill will help the process of healing a community and individuals. Survivor healing is not necessarily based on the continued incarceration of a person based on their juvenile mistakes.

(Opposed) The practical reality is, this state's judicial system is at a crisis point with the level of public defense and prosecution resources required for resentencing. The system is completely overwhelmed. This policy goes back and undoes promises to families and is not a victim-centric policy. Every one of these crimes has a victim behind it. Any consideration of bills requiring resentencing should also include a careful review of the impacted victims in those cases. Anything short of that minimizes the victimization our laws are trying to prevent. Additionally, because crimes are overwhelmingly intraracial, the perpetrators of crimes may end up coming out of total confinement to disproportionately victimize their same racial group.

The cost is also a concern. This bill will cost counties money, and if the state chooses to make a policy change, it should pay for the resulting costs, including prosecutors, defense attorneys, courts, clerks, and more. Prosecution alone for resentencing is around \$10 million for counties. The state is paying for resentencing under the Blake decision and it should also do so here.

**Persons Testifying:** (In support) Representative Chris Stearns, prime sponsor; Travis Comeslast; Gracie Pakosz, University of Washington Race and Justice Clinic; Avery Doutre; André Peñalver; Katherine Beckett, University of Washington; Patrick Brown; and Misty Napeahi, Tulalip Tribes.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys; Juliana Roe, Washington State Association of Counties; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

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

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Community Safety, Justice, & Reentry. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Callan, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Stonier, Tharinger and Wilcox.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Dye and Rude.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Harris, Schmick and Stokesbary.

**Staff:** Yvonne Walker (786-7841).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Community Safety, Justice, & Reentry:**

The second substitute bill:

- modifies the earliest release date a currently incarcerated individual must have to qualify for resentencing from January 1, 2025 to July 1, 2025;
- prevents courts from scheduling resentencing hearings until January 1, 2025;
- removes a requirement that the Department of Corrections (DOC) establish a flexible fund to support victims of gender-based violence committed by perpetrators seeking resentencing under the act, and instead requires the Office of Crime Victims Advocacy (OCVA) to establish the flexible fund to support victims and survivors of victims impacted by this act;
- removes a requirement that the DOC provide victim advocate support to victims of sex offenses or intimate partner domestic violence offenses, and instead requires the OCVA to contract with prosecuting attorneys' offices to offer victim advocacy services for victims;
- requires the OCVA to contract with an entity to provide training to victim advocates embedded in prosecuting attorneys' offices;
- clarifies that a court may, in addition to other stated factors, only deny a motion for resentencing if the petitioner has a significant disciplinary record while incarcerated or the petitioner has an insignificant record of rehabilitation while incarcerated; and
- adds a null and void clause making the act null and void unless funded in the budget.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 31, 2024.

**Effective Date of Second Substitute Bill:** The bill takes effect on July 1, 2024. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) Out of all the tribes in Washington, the Colville tribe has the most adult members in correctional care based upon juvenile points with 39 members currently incarcerated. The fiscal note is indeterminate, but it seems like this is a modest investment for a significant change in equity. There is support for this bill as it affects all communities of color.

In addition, there is a growing awareness that the brain does not stop developing until the age of 25, which requires some grace in how juvenile history is handled. This bill does not provide amnesty. Each resentencing judge will consider juvenile history with the discretion to move up or down the sentencing range considering all relevant content. Some resentencing cases will be difficult, but the state will save money by cutting short any unnecessary sentences.

(Opposed) There is no opposition to the policy but there is opposition regarding the fiscal impact of the bill. There are other resentencing bills being considered by the Legislature and there is concern with how to practically accomplish complying with the bill. Currently, the courts are behind in hearing cases and in some counties, additional judges are needed to handle caseloads. There is also a shortage of public defenders and prosecutors. The state needs to start thinking about how to fund counties for these new services that we are not currently providing. These individuals have already been sentenced once. Funding needs to be provided to counties for this very burdensome process.

**Persons Testifying:** (In support) Andre Penalver, Minority and Justice Commission; and Michael Moran, The Confederated Tribes of the Colville Reservation.

(Opposed) Juliana Roe, Washington State Association of Counties.

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