
SUBSTITUTE HOUSE BILL 2001

State of Washington

68th Legislature

2024 Regular Session

By House Community Safety, Justice, & Reentry (originally sponsored by Representatives Simmons, Farivar, Reed, Ormsby, Peterson, Macri, Street, Stearns, Santos, and Pollet)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to providing judicial discretion to modify
2 sentences in the interests of justice; amending RCW 10.73.100 and
3 9.94A.535; adding a new section to chapter 9.94A RCW; and creating
4 new sections.

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

6 NEW SECTION. **Sec. 1.** This act shall be known and may be cited
7 as the judicial discretion act.

8 NEW SECTION. **Sec. 2.** (1) The legislature finds that long-term
9 incarceration disproportionately impacts poor communities and
10 communities of color. The legislature further finds that an expansive
11 body of research demonstrates that lengthy sentences can increase,
12 rather than reduce, recidivism. The legislature further finds that
13 the potential to reduce a sentence encourages incarcerated
14 individuals to engage in good behavior and to take advantage of
15 rehabilitative programming. The legislature further finds that
16 because the cost of long-term incarceration is substantial and the
17 state must use its resources responsibly, providing judges the
18 opportunity to modify lengthy sentences in the interests of justice
19 will result in significant cost savings to the state.

1 (2) Therefore, the legislature intends to authorize sentencing
2 courts to review lengthy sentences upon a showing that a person's
3 original sentence no longer serves the interests of justice.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A
5 RCW to read as follows:

6 (1) Except as provided in subsection (15) of this section, and
7 notwithstanding any other provision of this chapter, any person under
8 a term of partial or total confinement or subject to conditions of
9 supervision by the department for a felony conviction may petition
10 the sentencing court or the sentencing court's successor for a
11 modification of sentence if the original sentence no longer serves
12 the interests of justice and the person meets any of the following
13 criteria:

14 (a) If the person is serving a sentence for a felony offense
15 committed at 18 years of age or older, the person is eligible to
16 petition after serving at least 10 years of their sentence;

17 (b) If the person is serving a sentence for a felony offense
18 committed at 17 years of age or younger, the person is eligible to
19 petition after serving at least seven years of their sentence; or

20 (c) If the petitioner does not meet the criteria under (a) or (b)
21 of this subsection, the person is eligible to petition with the
22 consent of the prosecuting attorney.

23 (2) A person eligible to file a petition for modification of
24 sentence pursuant to subsection (1)(a) or (b) of this section may
25 file the petition no earlier than 180 days prior to the date on which
26 the person will have served 10 years in confinement, or, if the
27 person is serving a sentence for an offense committed at 17 years of
28 age or younger, no earlier than 180 days prior to the date on which
29 the person will have served seven years in confinement.

30 (3) The petitioner must file the petition in writing with the
31 sentencing court in the judicial district in which the original
32 sentence was imposed and serve the prosecuting attorney. The petition
33 may include affidavits, declarations, letters, prison records, or
34 other written or electronic materials. The petition must include a
35 statement by the petitioner that they meet one or more of the
36 following requirements for a hearing:

37 (a) The petitioner has demonstrated positive, engaged, and
38 productive behavior while in the custody of the department that
39 indicates rehabilitation or the potential for rehabilitation;

1 (b) The petitioner has otherwise demonstrated a minimal risk of
2 reoffense; or

3 (c) The petitioner has presented evidence of some significant
4 material fact not related to the crime and not in existence at the
5 time of conviction, and such fact is relevant to the necessity of the
6 current terms of sentence.

7 (4) The department shall assist the petitioner or the
8 petitioner's counsel in compiling the petitioner's disciplinary
9 record and record of rehabilitation to submit with the petition.

10 (5) Upon a substantial showing that the petitioner meets one or
11 more of the criteria under subsection (3) of this section, the court
12 shall grant a hearing to consider the petition, which must be heard
13 within 120 days. The hearing may be continued upon motion of the
14 petitioner or the prosecuting attorney for good cause.

15 (6)(a) At the hearing to consider the petition, the court may
16 grant the petition and modify the petitioner's original sentence if
17 the court finds that the sentence no longer advances the interests of
18 justice, provided that any new sentence imposed shall not be greater
19 than the original sentence, and provided that any new sentence
20 imposed shall be subject to the following restrictions:

21 (i) If the petitioner's original sentence is an indeterminate
22 sentence imposed under RCW 9.94A.507, the court may modify the
23 minimum term of the sentence but may not modify the maximum term of
24 the sentence or order the petitioner's release from custody; and

25 (ii) If the petitioner's original sentence includes a mandatory
26 minimum term imposed pursuant to RCW 9.94A.540, the court may not
27 modify the sentence below the mandatory minimum term required by law.

28 (b) In addition to the mitigating factors provided under RCW
29 9.94A.535(1), the court may consider the following nonexhaustive list
30 of factors when determining whether to modify the petitioner's
31 sentence:

32 (i) The petitioner's disciplinary record and record of
33 rehabilitation while incarcerated;

34 (ii) Evidence that reflects whether age, time served, and
35 diminished physical condition, if any, have reduced the petitioner's
36 risk for future violence;

37 (iii) Evidence regarding the petitioner's circumstances at the
38 time of the offense, or regarding the petitioner's level of
39 culpability for the offense;

1 (iv) Evidence that reflects changed circumstances since imposing
2 the petitioner's original sentence such that the sentence no longer
3 serves the interests of justice; and

4 (v) Evidence of some significant material fact, not related to
5 the offense and not in existence at the time of conviction, that is
6 relevant to the necessity of the current terms of sentence.

7 (7) When modifying a sentence pursuant to this section:

8 (a) The court may impose an exceptional sentence below the
9 standard range based on evidence of significant rehabilitation since
10 the offense or any other applicable factors; and

11 (b) If the petitioner's original sentence included one or more
12 mandatory enhancements that were imposed under RCW 9.94A.533, the
13 court may impose a sentence below the mandatory minimum enhancement
14 term.

15 (8) If the court denies a petition filed pursuant to this section
16 and declines to set a hearing, or grants a hearing but declines to
17 modify the petitioner's sentence at the hearing, the petitioner may
18 file a new petition no earlier than three years after the date the
19 court denied the previous petition or declined to modify the
20 petitioner's sentence, unless the court authorizes the petitioner to
21 file a new petition at an earlier date. If the court denies the
22 petition or declines to modify the petitioner's sentence, the court
23 shall state the basis for its decision on the record. The petitioner
24 may appeal the denial of a hearing or an order entered pursuant to a
25 resentencing hearing, provided, however, that denying a petition
26 filed pursuant to this section shall not reopen the petitioner's
27 conviction or sentence to any other challenges that would otherwise
28 be barred.

29 (9) The prosecuting attorney shall make reasonable efforts to
30 notify victims and survivors of victims of any petition for
31 modification of sentence filed pursuant to this section and the date
32 of any hearing to consider the petition. The prosecuting attorney
33 shall provide victims and survivors of victims access to available
34 victim advocates and other related services. The court shall provide
35 an opportunity for victims and survivors of victims of any crimes for
36 which the petitioner has been convicted to present a statement
37 personally or by representation at the hearing. The prosecuting
38 attorney and the court shall comply with the requirements set forth
39 in chapter 7.69 RCW.

1 (10) The court shall not permit any person to waive the right to
2 petition pursuant to this section. Any agreement to waive the right
3 to petition pursuant to this section shall be void.

4 (11) The time limit for collateral attacks established under RCW
5 10.73.090 does not apply to any petition filed pursuant to this
6 section.

7 (12) Any incarcerated individual who is eligible to file a
8 petition pursuant to this section and who is unable to afford counsel
9 shall be entitled to have counsel appointed, at no cost to the
10 individual, to represent the individual for the petition and
11 proceedings under this section, unless the individual expressly
12 waives the right to counsel after being fully advised of this right
13 by the court.

14 (13) Any person who files a pro se petition and subsequently
15 retains or is appointed counsel shall be entitled to amend such
16 petition at least once as of right with the assistance of counsel.
17 Subsequent amendments may be permitted by leave of court.

18 (14) The department shall provide written notice of this section
19 to any incarcerated individual sentenced to a term of confinement of
20 more than 10 years, and the applicable sentencing court, prosecuting
21 attorney, and public defense agency for the judicial district in
22 which the individual was sentenced, within the following time frames:

23 (a) For any incarcerated individual serving an applicable
24 sentence for a felony offense committed at 18 years of age or older,
25 the department shall provide written notice of this section no later
26 than 180 days before the date on which the person's 10th year of
27 confinement begins; and

28 (b) For any incarcerated individual serving an applicable
29 sentence for a felony offense committed at 17 years of age or
30 younger, the department shall provide written notice of this section
31 no later than 180 days before the date on which the person's seventh
32 year of confinement begins.

33 (15) A person may not petition for a modification of sentence
34 pursuant to this section if the person's original sentence was
35 imposed under RCW 9.94A.570 or 10.95.030.

36 **Sec. 4.** RCW 10.73.100 and 1989 c 395 s 2 are each amended to
37 read as follows:

1 The time limit specified in RCW 10.73.090 does not apply to a
2 petition or motion that is based solely on one or more of the
3 following grounds:

4 (1) Newly discovered evidence, if the defendant acted with
5 reasonable diligence in discovering the evidence and filing the
6 petition or motion;

7 (2) The statute that the defendant was convicted of violating was
8 unconstitutional on its face or as applied to the defendant's
9 conduct;

10 (3) The conviction was barred by double jeopardy under Amendment
11 V of the United States Constitution or Article I, section 9 of the
12 state Constitution;

13 (4) The defendant (~~(pled)~~) pleaded not guilty and the evidence
14 introduced at trial was insufficient to support the conviction;

15 (5) The sentence imposed was in excess of the court's
16 jurisdiction; (~~(or)~~)

17 (6) A petition for a modification of sentence pursuant to section
18 3 of this act; or

19 (7) There has been a significant change in the law, whether
20 substantive or procedural, which is material to the conviction,
21 sentence, or other order entered in a criminal or civil proceeding
22 instituted by the state or local government, and either the
23 legislature has expressly provided that the change in the law is to
24 be applied retroactively, or a court, in interpreting a change in the
25 law that lacks express legislative intent regarding retroactive
26 application, determines that sufficient reasons exist to require
27 retroactive application of the changed legal standard.

28 **Sec. 5.** RCW 9.94A.535 and 2019 c 219 s 1 are each amended to
29 read as follows:

30 The court may impose a sentence outside the standard sentence
31 range for an offense if it finds, considering the purpose of this
32 chapter, that there are substantial and compelling reasons justifying
33 an exceptional sentence. Facts supporting aggravated sentences, other
34 than the fact of a prior conviction, shall be determined pursuant to
35 the provisions of RCW 9.94A.537.

36 Whenever a sentence outside the standard sentence range is
37 imposed, the court shall set forth the reasons for its decision in
38 written findings of fact and conclusions of law. A sentence outside
39 the standard sentence range shall be a determinate sentence.

1 If the sentencing court finds that an exceptional sentence
2 outside the standard sentence range should be imposed, the sentence
3 is subject to review only as provided for in RCW 9.94A.585(4).

4 A departure from the standards in RCW 9.94A.589 (1) and (2)
5 governing whether sentences are to be served consecutively or
6 concurrently is an exceptional sentence subject to the limitations in
7 this section, and may be appealed by the offender or the state as set
8 forth in RCW 9.94A.585 (2) through (6).

9 (1) Mitigating Circumstances - Court to Consider

10 The court may impose an exceptional sentence below the standard
11 range if it finds that mitigating circumstances are established by a
12 preponderance of the evidence. The following are illustrative only
13 and are not intended to be exclusive reasons for exceptional
14 sentences.

15 (a) To a significant degree, the victim was an initiator, willing
16 participant, aggressor, or provoker of the incident.

17 (b) Before detection, the defendant compensated, or made a good
18 faith effort to compensate, the victim of the criminal conduct for
19 any damage or injury sustained.

20 (c) The defendant committed the crime under duress, coercion,
21 threat, or compulsion insufficient to constitute a complete defense
22 but which significantly affected his or her conduct.

23 (d) The defendant, with no apparent predisposition to do so, was
24 induced by others to participate in the crime.

25 (e) The defendant's capacity to appreciate the wrongfulness of
26 his or her conduct, or to conform his or her conduct to the
27 requirements of the law, was significantly impaired. Voluntary use of
28 drugs or alcohol is excluded.

29 (f) The offense was principally accomplished by another person
30 and the defendant manifested extreme caution or sincere concern for
31 the safety or well-being of the victim.

32 (g) The operation of the multiple offense policy of RCW 9.94A.589
33 results in a presumptive sentence that is clearly excessive in light
34 of the purpose of this chapter, as expressed in RCW 9.94A.010.

35 (h) The defendant or the defendant's children suffered a
36 continuing pattern of physical or sexual abuse by the victim of the
37 offense and the offense is a response to that abuse.

38 (i) The defendant was making a good faith effort to obtain or
39 provide medical assistance for someone who is experiencing a drug-
40 related overdose.

1 (j) The current offense involved domestic violence, as defined in
2 RCW 10.99.020, and the defendant suffered a continuing pattern of
3 coercion, control, or abuse by the victim of the offense and the
4 offense is a response to that coercion, control, or abuse.

5 (k) The defendant was convicted of vehicular homicide, by the
6 operation of a vehicle in a reckless manner and has committed no
7 other previous serious traffic offenses as defined in RCW 9.94A.030,
8 and the sentence is clearly excessive in light of the purpose of this
9 chapter, as expressed in RCW 9.94A.010.

10 (l) The defendant petitions the court for modification of
11 sentence pursuant to section 3 of this act, and the court considers
12 the nonexhaustive list of additional factors provided under section
13 3(6)(b) of this act at a hearing on the petition.

14 (2) Aggravating Circumstances - Considered and Imposed by the
15 Court

16 The trial court may impose an aggravated exceptional sentence
17 without a finding of fact by a jury under the following
18 circumstances:

19 (a) The defendant and the state both stipulate that justice is
20 best served by the imposition of an exceptional sentence outside the
21 standard range, and the court finds the exceptional sentence to be
22 consistent with and in furtherance of the interests of justice and
23 the purposes of the sentencing reform act.

24 (b) The defendant's prior unscored misdemeanor or prior unscored
25 foreign criminal history results in a presumptive sentence that is
26 clearly too lenient in light of the purpose of this chapter, as
27 expressed in RCW 9.94A.010.

28 (c) The defendant has committed multiple current offenses and the
29 defendant's high offender score results in some of the current
30 offenses going unpunished.

31 (d) The failure to consider the defendant's prior criminal
32 history which was omitted from the offender score calculation
33 pursuant to RCW 9.94A.525 results in a presumptive sentence that is
34 clearly too lenient.

35 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
36 the Court

37 Except for circumstances listed in subsection (2) of this
38 section, the following circumstances are an exclusive list of factors
39 that can support a sentence above the standard range. Such facts
40 should be determined by procedures specified in RCW 9.94A.537.

1 (a) The defendant's conduct during the commission of the current
2 offense manifested deliberate cruelty to the victim.

3 (b) The defendant knew or should have known that the victim of
4 the current offense was particularly vulnerable or incapable of
5 resistance.

6 (c) The current offense was a violent offense, and the defendant
7 knew that the victim of the current offense was pregnant.

8 (d) The current offense was a major economic offense or series of
9 offenses, so identified by a consideration of any of the following
10 factors:

11 (i) The current offense involved multiple victims or multiple
12 incidents per victim;

13 (ii) The current offense involved attempted or actual monetary
14 loss substantially greater than typical for the offense;

15 (iii) The current offense involved a high degree of
16 sophistication or planning or occurred over a lengthy period of time;
17 or

18 (iv) The defendant used his or her position of trust, confidence,
19 or fiduciary responsibility to facilitate the commission of the
20 current offense.

21 (e) The current offense was a major violation of the Uniform
22 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
23 trafficking in controlled substances, which was more onerous than the
24 typical offense of its statutory definition: The presence of ANY of
25 the following may identify a current offense as a major VUCSA:

26 (i) The current offense involved at least three separate
27 transactions in which controlled substances were sold, transferred,
28 or possessed with intent to do so;

29 (ii) The current offense involved an attempted or actual sale or
30 transfer of controlled substances in quantities substantially larger
31 than for personal use;

32 (iii) The current offense involved the manufacture of controlled
33 substances for use by other parties;

34 (iv) The circumstances of the current offense reveal the offender
35 to have occupied a high position in the drug distribution hierarchy;

36 (v) The current offense involved a high degree of sophistication
37 or planning, occurred over a lengthy period of time, or involved a
38 broad geographic area of disbursement; or

39 (vi) The offender used his or her position or status to
40 facilitate the commission of the current offense, including positions

1 of trust, confidence or fiduciary responsibility (e.g., pharmacist,
2 physician, or other medical professional).

3 (f) The current offense included a finding of sexual motivation
4 pursuant to RCW 9.94A.835.

5 (g) The offense was part of an ongoing pattern of sexual abuse of
6 the same victim under the age of eighteen years manifested by
7 multiple incidents over a prolonged period of time.

8 (h) The current offense involved domestic violence, as defined in
9 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or
10 more of the following was present:

11 (i) The offense was part of an ongoing pattern of psychological,
12 physical, or sexual abuse of a victim or multiple victims manifested
13 by multiple incidents over a prolonged period of time;

14 (ii) The offense occurred within sight or sound of the victim's
15 or the offender's minor children under the age of eighteen years; or

16 (iii) The offender's conduct during the commission of the current
17 offense manifested deliberate cruelty or intimidation of the victim.

18 (i) The offense resulted in the pregnancy of a child victim of
19 rape.

20 (j) The defendant knew that the victim of the current offense was
21 a youth who was not residing with a legal custodian and the defendant
22 established or promoted the relationship for the primary purpose of
23 victimization.

24 (k) The offense was committed with the intent to obstruct or
25 impair human or animal health care or agricultural or forestry
26 research or commercial production.

27 (l) The current offense is trafficking in the first degree or
28 trafficking in the second degree and any victim was a minor at the
29 time of the offense.

30 (m) The offense involved a high degree of sophistication or
31 planning.

32 (n) The defendant used his or her position of trust, confidence,
33 or fiduciary responsibility to facilitate the commission of the
34 current offense.

35 (o) The defendant committed a current sex offense, has a history
36 of sex offenses, and is not amenable to treatment.

37 (p) The offense involved an invasion of the victim's privacy.

38 (q) The defendant demonstrated or displayed an egregious lack of
39 remorse.

1 (r) The offense involved a destructive and foreseeable impact on
2 persons other than the victim.

3 (s) The defendant committed the offense to obtain or maintain his
4 or her membership or to advance his or her position in the hierarchy
5 of an organization, association, or identifiable group.

6 (t) The defendant committed the current offense shortly after
7 being released from incarceration.

8 (u) The current offense is a burglary and the victim of the
9 burglary was present in the building or residence when the crime was
10 committed.

11 (v) The offense was committed against a law enforcement officer
12 who was performing his or her official duties at the time of the
13 offense, the offender knew that the victim was a law enforcement
14 officer, and the victim's status as a law enforcement officer is not
15 an element of the offense.

16 (w) The defendant committed the offense against a victim who was
17 acting as a good samaritan.

18 (x) The defendant committed the offense against a public official
19 or officer of the court in retaliation of the public official's
20 performance of his or her duty to the criminal justice system.

21 (y) The victim's injuries substantially exceed the level of
22 bodily harm necessary to satisfy the elements of the offense. This
23 aggravator is not an exception to RCW 9.94A.530(2).

24 (z) (i) (A) The current offense is theft in the first degree, theft
25 in the second degree, possession of stolen property in the first
26 degree, or possession of stolen property in the second degree; (B)
27 the stolen property involved is metal property; and (C) the property
28 damage to the victim caused in the course of the theft of metal
29 property is more than three times the value of the stolen metal
30 property, or the theft of the metal property creates a public hazard.

31 (ii) For purposes of this subsection, "metal property" means
32 commercial metal property, private metal property, or nonferrous
33 metal property, as defined in RCW 19.290.010.

34 (aa) The defendant committed the offense with the intent to
35 directly or indirectly cause any benefit, aggrandizement, gain,
36 profit, or other advantage to or for a criminal street gang as
37 defined in RCW 9.94A.030, its reputation, influence, or membership.

38 (bb) The current offense involved paying to view, over the
39 internet in violation of RCW 9.68A.075, depictions of a minor engaged

1 in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)
2 (a) through (g).

3 (cc) The offense was intentionally committed because the
4 defendant perceived the victim to be homeless, as defined in RCW
5 9.94A.030.

6 (dd) The current offense involved a felony crime against persons,
7 except for assault in the third degree pursuant to RCW
8 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's
9 chamber, or any waiting area or corridor immediately adjacent to a
10 courtroom, jury room, or judge's chamber. This subsection shall apply
11 only: (i) During the times when a courtroom, jury room, or judge's
12 chamber is being used for judicial purposes during court proceedings;
13 and (ii) if signage was posted in compliance with RCW 2.28.200 at the
14 time of the offense.

15 (ee) During the commission of the current offense, the defendant
16 was driving in the opposite direction of the normal flow of traffic
17 on a multiple lane highway, as defined by RCW 46.04.350, with a
18 posted speed limit of forty-five miles per hour or greater.

19 (ff) The current offense involved the assault of a utility
20 employee of any publicly or privately owned utility company or
21 agency, who is at the time of the act engaged in official duties,
22 including: (i) The maintenance or repair of utility poles, lines,
23 conduits, pipes, or other infrastructure; or (ii) connecting,
24 disconnecting, or recording utility meters.

25 NEW SECTION. **Sec. 6.** (1) A portion of the savings realized as a
26 result of section 3 of this act, but no less than 25 percent, shall
27 be designated for organizations primarily dedicated to serving and
28 supporting crime survivors.

29 (2) A portion of the savings realized as a result of section 3 of
30 this act, but no less than 25 percent, shall be designated to fund
31 the costs associated with petitions and proceedings under section 3
32 of this act.

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