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By Representatives Simmons, Farivar, Reed, Ormsby, Peterson, Macri, Street, Stearns, Santos, and Pollet

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

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

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

7 NEW SECTION. **Sec. 2.** (1) The legislature finds that long-term
8 incarceration disproportionately impacts poor communities and
9 communities of color. The legislature further finds that an expansive
10 body of research demonstrates that lengthy sentences can increase,
11 rather than reduce, recidivism. The legislature further finds that
12 the potential to reduce a sentence encourages incarcerated
13 individuals to engage in good behavior and to take advantage of
14 rehabilitative programming. The legislature further finds that
15 because the cost of long-term incarceration is substantial and the
16 state must use its resources responsibly, providing judges the
17 opportunity to modify lengthy sentences in the interests of justice
18 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) Notwithstanding any other provision of this chapter, any
7 person under a term of partial or total confinement or subject to
8 conditions of supervision by the department for a felony conviction
9 may petition the sentencing court or the sentencing court's successor
10 for a modification of sentence if the original sentence no longer
11 serves the interests of justice and the person meets any of the
12 following criteria:

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

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

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

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

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

36 (a) The petitioner committed the offense at 24 years of age or
37 younger;

1 (b) The petitioner has demonstrated positive, engaged, and
2 productive behavior while in the custody of the department that
3 indicates rehabilitation or the potential for rehabilitation;

4 (c) The petitioner is 50 years of age or older;

5 (d) The petitioner suffers from a serious medical condition that
6 substantially reduces their risk of future violence; or

7 (e) Some significant material fact was not known to the
8 petitioner or their counsel at the time of conviction.

9 (4) Upon a substantial showing that the petitioner meets one or
10 more of the criteria under subsection (3) of this section, the court
11 shall grant a hearing to consider the petition and schedule it within
12 60 days. The hearing may be continued upon motion of the petitioner
13 or the prosecuting attorney for good cause.

14 (5) At the hearing to consider the petition, the court may grant
15 the petition and modify the petitioner's original sentence if the
16 court finds that the sentence no longer advances the interests of
17 justice, provided that any new sentence imposed shall not be greater
18 than the original sentence. The court may consider the following
19 nonexhaustive list of factors when determining whether to modify the
20 petitioner's sentence:

21 (a) The petitioner's disciplinary record and record of
22 rehabilitation while incarcerated;

23 (b) Evidence that reflects whether age, time served, and
24 diminished physical condition, if any, have reduced the petitioner's
25 risk for future violence;

26 (c) Evidence of mitigating factors regarding the petitioner's
27 circumstances at the time of offense or substantial mitigating
28 factors regarding the circumstances of the offense;

29 (d) Evidence that reflects changed circumstances since imposing
30 the petitioner's original sentence such that the sentence no longer
31 serves the interests of justice; and

32 (e) Evidence that some significant material fact was not known to
33 the petitioner or their counsel at the time of conviction.

34 (6) When modifying a sentence pursuant to this section, the court
35 may impose an exceptional sentence below the standard range based on
36 evidence of significant rehabilitation since the offense or any other
37 applicable mitigating factors.

38 (7) If the court denies a petition filed pursuant to this
39 section, the petitioner may file a new petition no earlier than two
40 years after the date the previous petition was denied. Denying a

1 petition filed pursuant to this section shall not reopen the
2 petitioner's conviction or sentence to any challenges that would
3 otherwise be barred.

4 (8) The prosecuting attorney shall make reasonable efforts to
5 notify victims and survivors of victims of any petition for
6 modification of sentence filed pursuant to this section and the date
7 of any hearing to consider the petition. The prosecuting attorney
8 shall provide victims and survivors of victims access to available
9 victim advocates and other related services. The court shall provide
10 an opportunity for victims and survivors of victims of any crimes for
11 which the petitioner has been convicted to present a statement
12 personally or by representation at the hearing. The prosecuting
13 attorney and the court shall comply with the requirements set forth
14 in chapter 7.69 RCW.

15 (9) The court shall not permit any person to waive the right to
16 petition pursuant to this section. Any agreement to waive the right
17 to petition pursuant to this section shall be void.

18 (10) The time limit for collateral attacks established under RCW
19 10.73.090 does not apply to any petition filed pursuant to this
20 section.

21 (11) Any incarcerated individual who is eligible to file a
22 petition pursuant to this section and who is unable to afford counsel
23 shall be entitled to have counsel appointed, at no cost to the
24 individual, to represent the individual for the petition and
25 proceedings under this section, unless the individual expressly
26 waives the right to counsel after being fully advised of this right
27 by the court.

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

32 (13) The department shall provide written notice of this section
33 to any incarcerated individual sentenced to a term of confinement of
34 more than 10 years, and the applicable sentencing court, prosecuting
35 attorney, and public defense agency for the judicial district in
36 which the individual was sentenced, within the following time frames:

37 (a) For any incarcerated individual serving an applicable
38 sentence for a felony offense committed at 18 years of age or older,
39 the department shall provide written notice of this section no later

1 than 180 days before the date on which the person's 10th year of
2 confinement begins; and

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

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

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

13 (1) Newly discovered evidence, if the defendant acted with
14 reasonable diligence in discovering the evidence and filing the
15 petition or motion;

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

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

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

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

26 (6) A petition for a modification of sentence pursuant to section
27 3 of this act; or

28 (7) There has been a significant change in the law, whether
29 substantive or procedural, which is material to the conviction,
30 sentence, or other order entered in a criminal or civil proceeding
31 instituted by the state or local government, and either the
32 legislature has expressly provided that the change in the law is to
33 be applied retroactively, or a court, in interpreting a change in the
34 law that lacks express legislative intent regarding retroactive
35 application, determines that sufficient reasons exist to require
36 retroactive application of the changed legal standard.

37 NEW SECTION. **Sec. 5.** (1) A portion of the savings realized as a
38 result of section 3 of this act, but no less than 25 percent, shall

1 be designated for organizations primarily dedicated to serving and
2 supporting crime survivors.

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

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