

Multiple Agency Fiscal Note Summary

Bill Number: 2001 HB	Title: Sentence modification
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Estimated Cash Receipts

NONE

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.					
Local Gov. Total						

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Office of Public Defense	.0	1,770,400	1,770,400	1,770,400	3.0	11,325,134	11,325,134	11,325,134	3.0	11,325,134	11,325,134	11,325,134
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Corrections	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Total \$	0.0	1,770,400	1,770,400	1,770,400	3.0	11,325,134	11,325,134	11,325,134	3.0	11,325,134	11,325,134	11,325,134

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of Public Defense	.0	0	0	.0	0	0	.0	0	0
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

Prepared by: Danya Clevenger, OFM	Phone: (360) 688-6413	Date Published: Final 1/31/2024
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Judicial Impact Fiscal Note

Bill Number: 2001 HB	Title: Sentence modification	Agency: 055-Administrative Office of the Courts
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Corey Patton	Phone: 360-786-7388	Date: 01/17/2024
Agency Preparation: Chris Conn	Phone: 360-704-5512	Date: 01/23/2024
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 01/23/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/23/2024

191,629.00

Request # 104-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

This bill relates to providing judicial discretion to modify sentences in the interests of justice.

II. B - Cash Receipts Impact

None

II. C - Expenditures

Indeterminate, but likely to increase the number of petitions. The Administrative Office of the Courts (AOC) has no data available in the case management systems to estimate the number of potential petitions that would be filed as a result of this bill. Nor can AOC provide exact workload metrics as the impact is unknown.

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditure By Object or Purpose (County)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Expenditure By Object or Purpose (City)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. D - FTE Detail

NONE

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

191,629.00

Form FN (Rev 1/00)

2

Request # 104-1

Bill # 2001 HB

None

191,629.00

Form FN (Rev 1/00)

3

Request # 104-1

Bill # 2001 HB

Individual State Agency Fiscal Note

Bill Number: 2001 HB	Title: Sentence modification	Agency: 056-Office of Public Defense
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.0	0.0	0.0	3.0	3.0
Account					
General Fund-State 001-1	0	1,770,400	1,770,400	11,325,134	11,325,134
Total \$	0	1,770,400	1,770,400	11,325,134	11,325,134

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Corey Patton	Phone: 360-786-7388	Date: 01/17/2024
Agency Preparation: Katrin Johnson	Phone: 360-586-3164 1	Date: 01/31/2024
Agency Approval: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 01/31/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/31/2024

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 3 of HB 2001 adds a new section to Chapter 9.94A RCW:

- (1) Individuals who are sentenced to felonies and confined at DOC may petition the sentencing court for a sentence modification if the sentence no longer serves the interests of justice and the person:
 - a. Is serving time for a felony committed as an adult and has served at least 10 years;
 - b. Is serving time for a felony committed as a minor and has served at least seven years; or
 - c. The prosecution consents to petition for a sentence modification.
- (2) If a person meets the criteria of a. or b. above, their petition may not be filed earlier than 180 days prior to eligibility.
- (3) The petition must be filed with the court that imposed the sentence, and served upon the prosecuting attorney. The petition may include supporting documents and must include a statement that the petitioner meets one or more of the following:
 - a. Committed the offense at age 24 or younger;
 - b. Has demonstrated behavior indicative of rehabilitation or the potential for rehabilitation;
 - c. Is age 50 or older;
 - d. Suffers from a serious medical condition that substantially reduces the risk of future violence; or
 - e. Some significant material fact was not known to the petitioner or their counsel at the time of conviction.
- (4) The court shall grant a hearing within 60 days if the petitioner makes a substantial showing of meeting one or more of the criteria under paragraph 3. The hearing date may be continued for good cause.
- (5) At the hearing the court may modify the sentence to a shorter time period if the court finds that the sentence no longer advances the interests of justice. The court may consider a variety of factors in making that determination.
- (6) The court may impose an exceptional sentence below the standard range upon proof of rehabilitation or other mitigating factors.
- (7) If a petition is denied, the petitioner may file again after two years.
- (8) The prosecutor shall engage with victims and survivors.
- (9) The court shall not permit petitioners to waive their right to petition under this section.
- (10) Collateral attack time lines do not apply.
- (11) Those who are eligible to petition for a sentence modification and unable to afford counsel shall have counsel appointed, unless the right to counsel is expressly waived.
- (12) If a person petitions the court pro se and subsequently is appointed counsel, they may amend the petition at least once.
- (13) DOC shall provide notice of this section to: incarcerated individuals sentenced to more than 10 years, the sentencing court, prosecution, and public defense.

Section 4 amends RCW 10.73.100 and provides that a petition pursuant to HB 2001 is not subject to the one-year time limit of RCW 10.73.090.

Section 5 directs a portion of any cost savings to services for crime survivors and to pay costs associated with petitions and proceedings identified in Section 3.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

It is assumed that the Office of Public Defense (OPD) will provide public defense assistance statewide under HB 2001 because of the following language in RCW 2.70.020(3): "The director shall... Subject to the availability of funds appropriated for this specific purpose, appoint counsel to petition the sentencing court if the legislature creates an ability to petition the sentencing court, or appoint counsel to challenge a conviction or sentence if the final decision of an appeal court creates the ability to challenge a conviction or sentence."

Based on OPD analysis of Department of Corrections data, OPD estimates that approximately 4,000 incarcerated individuals could potentially be eligible for resentencing consideration under HB 2001, depending on disciplinary records, records of rehabilitation, medical condition, age, and other mitigating factors. Following are estimates of the number of potentially eligible people based on certain factors identified in Section 3 of the bill:

- Incarcerated individuals who committed their offenses as adults and have served more than 10 years: 4,113
 - o Of those, the number of those who are currently 50 or older: 1,881

- Number of incarcerated individuals who committed their offenses between the ages of 18-24, who have served more than 10 years: 1,378
 - o Of those, the number of those who are currently 50 or older: 209

- Number of incarcerated individuals who committed their offenses at under 18, and have served more than 7 years: 152
 - o Of those, the number of those who are currently 50 or older: 13 people

Despite these calculations, there is still an indeterminate number of individuals from this group who will be eligible for resentencing under HB 2001. The financial calculations below assume that OPD will provide representation to 160 incarcerated individuals in Fiscal Year 2025 while the program is in its new development phase, and thereafter will provide counsel to an average of 480 individuals per year. These figures, however, are scalable subject to appropriations. OPD will engage in a triage process to review individuals' applications for representation, and will use a tiered approach for prioritizing assignment to counsel. For example, higher priority may be applied to people with serious medical conditions or persons who committed their offenses under age 18. OPD will engage with stakeholder communities to develop its tiered categorization system.

Additionally, it is assumed that OPD will utilize its current staffing infrastructure in place for State v. Blake operations to implement HB 2001. For purpose of this Fiscal Note, OPD assumes that the FTEs for this post-conviction trial level team will be funded exclusively by Blake funds in Fiscal Year 2025. In Fiscal Year 2026 and FY 2027 it is anticipated that the post-conviction trial level team will be funded 50 percent by funds allocated under HB 2001.

A. Salaries and Wages:

OPD anticipates no new salaries and wages in FY2024 and FY2025, because functions under this bill initially will be absorbed by current staff addressing State v. Blake-related resentencing work. OPD's Blake team currently has the infrastructure and experience for handling functions related to identifying individuals who are eligible for resentencing, contracting with public defense counsel to represent eligible individuals, analyzing data provided by multiple sources to track program progress, and communicating with impacted incarcerated communities to ensure awareness of available services and manage expectations. OPD will require new funding for one-half of its current Blake team to continue to carry out the HB 2001 programmatic functions in FY 2026 and subsequent years.

This staffing includes:

- One 0.5 FTE Managing Attorney to oversee case triage efforts. Triage includes analysis of each individual's application and supporting documentation to identify eligibility for resentencing, and assigning priority for representation based on a community-informed tiering system. Cost: \$64,338
- One 0.5 FTE Paralegal to support the work of the Managing (Triage) Attorney. Cost: \$41,087
- One 0.5 FTE Managing Attorney to recruit, contract with, train, and monitor attorney, mitigation expert, and investigator contractors to represent the eligible individuals for resentencing under HB 2001. Cost: \$64,338
- One 0.5 FTE Program Assistant to support the work of the Managing Attorney. Cost: \$28,957
- One 0.5 FTE Data Analyst to collect, track, and analyze data to track work completed. Cost: \$52,170

- One 0.5 FTE Community Outreach Specialist to communicate with incarcerated individuals and their support networks about the availability of resentencing, the eligibility criteria, and the process for requesting information from OPD. Cost: \$39,739

The anticipated total for salaries is \$290,629 per year, and is identified at Expenditure Object A (Salaries and Wages).

B. Employee Benefits

Employee benefits are calculated at 22% of employees' salaries. The anticipated total for benefits is \$63,938 per year, and is identified at Expenditure Object B (Employee Benefits).

N. Client Services

OPD will enter into contracts with attorneys, mitigation experts, and investigators in order to provide effective representation under HB 2001. OPD will also pay for expert witness costs.

Contract Attorneys:

Contracted attorneys may be individual attorneys, multi-attorney firms, non-profit public defense agencies, and/or county public defense agencies. Contractors may be assigned to multi-county regions of the state to ensure effective, trained, representation for individuals regardless of their sentencing county. It is assumed that a contracted attorney will spend, on average, 40 hours per resentencing case. It is further anticipated that OPD will pay an average of \$150/hour for contracted attorneys.

It is expected that OPD will provide representation to the following number of individuals per year:

FY25 (start-up year): 160 individuals x 40 attorney hours x \$150/hr = \$960,000

FY26 and beyond: 480 individuals x 40 attorney hours x \$150/hr = \$2,880,000

Contract Mitigation Experts and Investigators:

Contracted mitigation experts and investigators may be solo practitioners or employees in organizations. Contractors may be assigned to multi-county regions of the state to ensure effective, trained, representation for individuals regardless of their sentencing county. It is assumed that each case will require an average of 40 hours of combined mitigation expert and investigator time. It is anticipated that mitigation experts and investigators will be contracted at \$100 per hour.

It is expected that OPD will cover mitigation and investigation services as follows:

FY25 (start up year): 160 individuals x 40 mitigation expert/investigation hours x \$100/hr = \$640,000

FY26 and beyond: 480 individuals x 40 mitigation expert/investigation hours x \$100/hr = \$1,920,000

Expert Witnesses

It is anticipated that approximately 25% of the resentencing cases litigated under HB 2001 will require the assistance of expert witnesses. Experts will provide, for example, evaluation, consultation, and in-court testimony related to medical conditions, forensic psychology, and other technical areas outside the scope of OPD contractors' expertise. It is anticipated that the average expert cost per case will be \$4,000.

FY25 (start-up year): 160 individuals x 25% x \$4000 = \$160,000

FY26 and beyond: 480 individuals x 25% x \$4000 = \$480,000

Total client service costs:

FY25 (start-up year): \$960,000 (attorneys) + \$640,000 (mitigation experts and investigators) + \$160,000 (expert witnesses) = \$1,760,000, and is identified at Expenditure Object N (Grants, Benefits, & Client Services).

FY26 and beyond: \$2,880,000 (attorneys) + \$1,920,000 (mitigation experts and investigators) + \$480,000 (expert witnesses) = \$5,280,000, and is identified at Expenditure Object N (Grants, Benefits, & Client Services).

G. Travel

It is anticipated that there will be travel costs for both OPD staff and for contractors.

OPD Staff: It is anticipated that OPD staff will travel within Washington for purposes of: (1) visiting DOC facilities to help communicate about the program to incarcerated individuals; and (2) visiting with and observing contract attorneys for purposes of monitoring contract performance. It is anticipated that travel costs for OPD employees in FY25 will average

\$600 per quarter, or \$2,400 over the year. It is anticipated that travel costs for OPD employees in FY25 and beyond will average \$1,000 per quarter, or \$4,000 per year.

OPD Contractors: It is anticipated that OPD will enter into contracts with attorneys, mitigation experts, and investigators who will provide representation under HB 2001 in multi-county regions. By contracting with fewer attorneys, mitigation experts and investigators who represent larger regions, OPD can better streamline and centralize its recruitment, training, and contracting efforts. Contractors will therefore need reimbursement for travel expenses (pursuant to OFM SAAM guidelines) for activities such as witness interviews, court hearings, meeting clients in DOC facilities, and other case-related purposes. It is anticipated that travel costs for OPD contractors in FY25 will average \$2,000 per quarter, or \$8,000 over the full year. It is anticipated that travel costs for OPD contractors in FY26 and beyond will be approximately \$6,000 per quarter, or \$24,000 per year.

It is anticipated that the total combined travel costs for OPD staff and contractors will be \$10,400 in FY25, and \$28,000 per year in FY26 and beyond, and is identified at Expenditure Object G (Travel).

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	0	1,770,400	1,770,400	11,325,134	11,325,134
Total \$			0	1,770,400	1,770,400	11,325,134	11,325,134

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years				3.0	3.0
A-Salaries and Wages				581,258	581,258
B-Employee Benefits				127,876	127,876
C-Professional Service Contracts					
E-Goods and Other Services					
G-Travel		10,400	10,400	56,000	56,000
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services		1,760,000	1,760,000	10,560,000	10,560,000
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	0	1,770,400	1,770,400	11,325,134	11,325,134

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Community Outreach Specialist	79,479				0.5	0.5
Data Analyst	100,377				0.5	0.5
Managing Attorney	128,676				1.0	1.0
Paralegal	82,175				0.5	0.5
Program Assistant	57,914				0.5	0.5
Total FTEs					3.0	3.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 2001 HB	Title: Sentence modification	Agency: 101-Caseload Forecast Council
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Corey Patton	Phone: 360-786-7388	Date: 01/17/2024
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 01/19/2024
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 01/19/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 01/23/2024

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

See attached.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

See attached.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

HB 2001

PROVIDING JUDICIAL DISCRETION TO MODIFY SENTENCES IN THE INTEREST OF JUSTICE

101 – Caseload Forecast Council

January 17, 2024

SUMMARY

A brief description of what the measure does that has fiscal impact.

Section 1 States the act shall be known as the judicial discretion act.

Section 2 States the legislative intent is to authorize sentencing courts to review lengthy sentences upon a showing a person’s original sentence no longer serves the interests of justice.

Section 3 Adds a new section to chapter 9.94A RCW by establishing a process for any person under a term of partial or total confinement or subject to supervision by the Department for a felony conviction to petition the sentencing court if the original sentence no longer serves the interest of justice and the person meets the following criteria:

- If serving a sentence for a felony committed at 18 years of age or older, the person can petition after serving at least 10 years;
- If serving a sentence for a felony committed at 17 years of age or younger, the person can petition after serving at least 7 years; or
- If not meeting the criteria above, the person may petition with the consent of the prosecuting attorney.

Additionally: establishes the criteria for the petition and states the person must meet one or more of the specified requirements for a hearing, sets court requirements for responding to a petition, requires the prosecuting attorney to make reasonable efforts to notify victims and survivor of victims of any petition filed pursuant to this section and the date of the hearing, states any incarcerated individual who is eligible to file a petition and is who is unable to afford counsel shall be entitled to have counsel appointed at no cost to the individual; and, outlines the Department of Corrections’ (DOC) notification requirements to any incarcerated individuals, sentencing courts, prosecuting attorney, and public defense agency for the judicial district in which the individual was sentenced.

Section 4 Amends RCW 10.73.100 to include a petition for a modification of sentence pursuant to Section 3 of this act.

Section 5 Adds a new section that requires no less than 25% of the savings realized as a result of Section 3 to be designated to fund the costs associated with petitions and proceedings under Section 3 of this act.

EXPENDITURES

Assumptions.

None.

Impact on the Caseload Forecast Council.

None.

Impact Summary

This bill allows for individuals to petition the court for a sentencing modification if they meet the specified criteria.

Impact on prison and jail beds.

The bill allows for individuals to petition the sentencing court for a sentence modification after meeting certain criteria. A sentence modification cannot result in a longer sentence, so any modifications made would likely decrease the need for prison beds.

This bill has no impact on jail beds.

Impact on local and Juvenile Rehabilitation (JR) beds.

This bill has no impact on local detention or JR beds.

Impact on Community Corrections Caseload.

The bill does not amend any supervision requirements under existing statutes but does allow a person subject to conditions of supervision by DOC to petition the sentencing court for a sentence modification, with the consent of the prosecuting attorney. The CFC has no way of determining who will petition, if the prosecuting attorney will consent to having a sentence modification, and what term of supervision the court would impose if the sentence were modified. However, a sentence modification cannot result in a longer term, so any modifications made would likely decrease the Community Corrections caseload.

Individual State Agency Fiscal Note

Bill Number: 2001 HB	Title: Sentence modification	Agency: 310-Department of Corrections
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Corey Patton	Phone: 360-786-7388	Date: 01/17/2024
Agency Preparation: Matthew Friesen	Phone: (360) 725-8428	Date: 01/24/2024
Agency Approval: Michael Steenhout	Phone: (360) 789-0480	Date: 01/24/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 01/26/2024

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

An ACT relating to providing judicial discretion to modify sentences in the interests of justice; amending RCW 10.73.100; adding a new section to chapter 9.94A RCW; and creating new sections.

Section 2 states the legislative intent is to authorize sentencing courts to review lengthy sentences upon showing a person's original sentence no longer serves the interests of justice.

Section 3 adds a new section to chapter 9.94A RCW by establishing a process for any person under a term of partial or total confinement or subject to supervision by the Department of Corrections (DOC) for a felony conviction to petition the sentencing court if the original sentence no longer serves the interest of justice and the person meets the following criteria: if serving a sentence for a felony committed at 18 years of age or older, the person can petition after serving at least 10 years; if serving a sentence for a felony committed at 17 years of age or younger, the person can petition after serving at least 7 years; or if not meeting the criteria above, the person may petition with the consent of the prosecuting attorney.

Section 3 additionally establishes the criteria for the petition and states the person must meet one or more of the specified requirements for a hearing, sets court requirements for responding to a petition, requires the prosecuting attorney to make reasonable efforts to notify victims and survivor of victims of any petition filed pursuant to this section and the date of the hearing, states any incarcerated individual who is eligible to file a petition and is who is unable to afford counsel shall be entitled to have counsel appointed at no cost to the individual; and, outlines DOC's notification requirements to any incarcerated individuals, sentencing courts, prosecuting attorney, and public defense agency for the judicial district in which the individual was sentenced.

Section 4 amends RCW 10.73.100 to include a petition for a modification of sentence pursuant to Section 3 of this act.

Section 5 adds a new section that requires no less than 25% of the savings realized as a result of Section 3 to be designated to fund the costs associated with petitions and proceedings under Section 3 of this act.

Effective date is assumed 90 days after adjournment of the session in which this bill is passed.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

None.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

The fiscal impact of this bill is indeterminate, assumed to be greater than \$50,000 per Fiscal Year (FY).

Prospectively, the bill allows for individuals to petition the sentencing court for a sentence modification after meeting certain criteria. A sentence modification cannot result in a longer sentence, so any modifications made would likely decrease the need for prison beds.

Retrospectively, there are 2,552 incarcerated individuals in DOC's jurisdiction who are serving a sentence for a felony

committed at 18 years of age or older and have served at least 10 years of their sentence, and 135 incarcerated individuals who are serving a sentence for a felony committed at 17 years of age or younger and have served at least 7 years of their sentence. Under the proposed legislation these individuals would be eligible to petition for resentencing. The DOC does not have the capability to predict how often or in what circumstances the courts would exercise their sentencing authority; therefore, the fiscal impact for this proposed legislation is indeterminate.

The bill does not amend any supervision requirements under existing statutes but does allow a person subject to conditions of supervision by DOC to petition the sentencing court for a sentence modification, with the consent of the prosecuting attorney. The CFC has no way of determining who will petition, who the prosecuting attorney will consent to having a sentence modification, and what term of supervision the court would impose if the sentence were modified. However, a sentence modification cannot result in a longer sentence, so any modifications made would likely decrease the Community Corrections caseload.

Administrative costs associated with responding to requests, petitions, and proceedings relating to this bill are expected, which include but are not limited to: Providing notice to the incarcerated individuals, sentencing court, prosecutor, and defense agency; Law Library material to petition for consideration of sentence modification; DOC records to support the petition for consideration; and transition support and release funds/resources if an incarcerated individual is resentenced to an immediate release. As outlined in Section 5(2), no less than 25 percent of the cost savings realized as a result of resentencing shall be designated to fund the costs associated with petitions and proceedings. However, due to the indeterminate number and outcomes of petitions for resentencing, the administrative cost to DOC is also indeterminate.

Customization of the Offender Management Network Information (OMNI) system is needed to meet the requirements of this legislation. Due to the complexity of completing the development, testing, and implementation of the statutory changes, contracted services are necessary in FY2025.

To implement this legislation, OMNI data tables need to be updated to RCW 9.94A.525 for technical corrections.

Cost Calculation Estimate:

IT Application Developer| \$185 per hour x 120 hours = \$22,200

IT Business Analyst| \$185 per hour x 8 hours = \$1,480

IT Quality Assurance| \$185 per hour x 60 hours = \$11,100

Total One-Time Costs In FY2025 \$35,000 (Rounded to nearest thousand)

The DOC assumes this bill would likely result in an Average Daily Population (ADP) decrease, although the impact cannot be reliably estimated. Therefore, the fiscal impact is indeterminate, assumed to be a savings of more than \$50,000 per FY.

Assumptions:

1) The estimated ADP impact to DOC prison facilities/institutions and/or community supervision/violator caseloads is based on projections from CFC.

2) We assume a Direct Variable Cost (DVC) of \$7,630 per incarcerated individual per FY to facilitate cost discussions during legislative session for bills. This cost estimate includes prison and health services' direct variable costs. It does not include staffing or dollars necessary for staffing needed at the facility outside of the living/housing units. The DVC is calculated by DOC and reviewed and approved with the Office of Financial Management, Senate, and House staff each legislative session.

3) For illustration purposes only, the average annual Community Supervision caseload model is \$6,101 per ADP (not including startup costs), regardless of the supervised risk level based on the workload model. If ADP impacts are applicable to this fiscal note, the calculated rate per community supervision ADP includes direct supervision and ancillary units, such as Hearings, Records, and Training, that are directly affected by supervision population changes. The estimate will vary based on the risk level of the supervised individuals, which requires different staffing levels. The population trend data used is based on the Risk Level Classification tool and provides a risk level of 42.8% high violent, 27.3% high non-violent, 21%

moderate, 7.9% low, and 1.0% unclassified. (June – November 2017)

4) The DOC assumes that any increase in community supervision caseload will result in an increased need for violator beds. For illustration, the FY2023 average percentage of supervised individuals who served jail time and were billed by the local jurisdictions for violating their conditions of supervision was a rate of 2.0%. The current average daily cost for jail beds is \$114.43 per day, inclusive of all risk levels and healthcare costs. The rate is an average, and actual rates vary by local correctional facilities.

5) We assume additional impacts will result when ADP caseload changes in either prison or community and resources will be necessary. The DOC will “true up” our fiscal impact in subsequent budget submittals should the legislation be enacted into session law.

6) We assume a phase-in will be necessary to successfully achieve the reductions/additions needed based on this legislation.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 2001 HB

Title: Sentence modification

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities:
- Counties: Up to \$5 million in prosecutorial costs for sentence modification hearings for people currently in DOC custody, plus indeterminate ongoing costs for such hearings for people who have not been sentenced; indeterminate revenue from cost savings as a result of section 3, to be used to fund petitions and proceedings under section 3
- Special Districts:
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Number of future petitions that may be filed; number of petitioners who may be granted hearings; distribution of prosecutorial hearing costs for people currently in DOC custody over succeeding fiscal years; number of people not currently sentenced who would receive sentence of a sufficient length to become eligible for sentence modification at some point in future; cost savings from sentence modifications resulting from section 3 and amounts of such savings used to fund petitions and proceedings under section 3

Estimated revenue impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: James Vogl	Phone: 360-480-9429	Date: 01/31/2024
Leg. Committee Contact: Corey Patton	Phone: 360-786-7388	Date: 01/17/2024
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 01/31/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 01/31/2024

Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

Section 3 of the proposed legislation would add a new section to chapter 9.94A RCW. This section would specify that a person under a term of full or partial confinement or subject to conditions of supervision as a result of a felony conviction could petition for a modification of their sentence if it no longer serves the interests of justice and the person meets certain conditions. Such a person would be eligible if they are:

- Serving a felony sentence for an offense committed at 18 years of age or older, and have served at least 10 years of their sentence.
- Serving a felony sentence for an offense committed at 17 years of age or younger, and have served at least seven years of their sentence.

If a person did not meet either of the conditions above, they would be required to have the consent of the prosecuting attorney.

Petitioners would be required to include a statement with their petition that they meet one or more specified requirements, and if there is a substantial showing that a petitioner meets one or more of these requirements, the court would be required to grant a hearing within 60 days. If during a hearing, the court finds that a person's original sentence no longer advances the interests of justice, the court may modify the person's sentence, including an exceptional sentence below the standard range if there is evidence of significant rehabilitation or any other applicable mitigating factor. If the court denies a petition filed pursuant to section 3, the petitioner may file a new petition no earlier than two years after the date the previous petition was denied.

Prosecuting attorneys would be required to make reasonable efforts to notify victims and survivors of victims of any petition for sentence modification and the date of any associated hearing, and would be required to provide victims and survivors of victims access to available victim advocates and other related services.

Any incarcerated individual who is eligible to file a petition pursuant to section 3 and who is unable to afford counsel would be entitled to have counsel appointed at no cost to represent them for the petition and proceedings under section 3.

Section 4 would amend RCW 10.73.100, specifying that the time limit in RCW 10.73.090 does not apply to a petition for sentence modification pursuant to section 3 of the proposed legislation.

Section 5 would create a new section, specifying that no less than 25% of the cost savings from sentence modifications pursuant to section 3 of the proposed legislation shall be designated to fund the costs associated with petitions and proceedings under section 3.

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

The proposed legislation would have an indeterminate impact on local government expenditures.

Section 3 of the proposed legislation would allow people who are incarcerated or under supervision as a result of a felony conviction who meet certain requirements to petition for a modification of their sentence. Courts would be required to schedule a hearing on a petition if a petitioner meets one or more specified requirements, including being 50 years or older and having committed the offense in question between 18 and 24. Considering petitions would require additional court staff and judicial officer time, and hearings would require court time, and prosecuting and defense attorney time.

Please note that judicial and court costs are assessed by the Administrative Office of the Courts.

The Office of Public Defense (OPD) indicates that per the requirements of RCW 2.70.020 (3), the office would provide defense counsel for sentence modification petitions and proceedings under the provisions of the proposed legislation.

The Washington Association of Prosecuting Attorneys (WAPA) indicates that it is difficult to estimate how much time a given resentencing hearing may require, as such hearings can vary greatly in complexity. In a 2021 analysis related to resentencing hearings resulting from the Blake decision, WAPA estimated the range of total prosecutorial costs for resentencing hearings of different complexities. These costs ranged between \$375 and \$645 for simple hearings with victim witness, and between \$630 and \$1,050 for one-day hearings with victim witnesses, with more complex hearings requiring additional costs. The most complex one-week hearings, requiring two attorneys and two victim witnesses were estimated to cost between \$4,950 and \$8,610. The 2021 analysis used the estimated costs for simple hearings and one-day hearings to estimate a range of total prosecutorial costs for Blake-related resentencing hearings.

According to the Department of Corrections (DOC), as of December 31, 2023, out of a total of 13,614 incarcerated people, there were 6,089 incarcerated people serving sentences between 10 years, and life with the possibility of parole, and 12,757 people under supervision. It is unknown how many of those people under supervision are serving sentences of greater than 10 years. The DOC fiscal note for this bill reports 2,552 incarcerated individuals in DOC custody who are serving a sentence for a felony committed as an adult and who have served more than 10 years of their sentence, and 135 incarcerated individuals who are serving a sentence for a felony committed while under 18 years old and who have served more than seven years of their sentence. OPD provided the following figures on incarcerated individuals based on DOC data:

- 4,113 people serving a sentence for a felony they committed as an adult and have served more than 10 years of their sentence, 1,881 of whom are currently 50 or older
- 1,378 people serving a sentence for a felony they committed between the ages of 18 and 24, and have served more than 10 years of their sentence, 209 of whom are currently 50 or older
- 152 people serving a sentence for a felony they committed while under 18 and have served more than seven years of their sentence, 13 of whom are 50 or older

Being 50 years or older, and having committed the offense at issue in a petition between 18 and 24 years old are both criteria that, according to subsection 3 (4) of the proposed legislation, would be grounds for granting a petitioner a hearing to consider a modification of their sentence.

According to WAPA, if the 6,089 incarcerated people who are serving sentences between 10 years, and life without the possibility of parole, and half of the 12,757 people currently under DOC supervision petitioned for and were granted hearings that ranged from simple hearings to one-day hearings, prosecutorial costs could total up to \$5 million. It is assumed that not everyone who would petition for a sentence modification would be granted a hearing, which would decrease total prosecutorial costs, however some hearings could be more complex than a one-day hearing, which would increase costs.

The total prosecutorial costs for sentence modification hearings for everyone currently in DOC custody who could be eligible in the future would be spread over a period of years, as some people have not served enough of their sentences to be eligible to petition for such hearings, but may become eligible to do so at some point in the future. The distribution of prosecutorial costs over succeeding fiscal years is unknown.

The following is an illustrative estimate of the prosecutorial costs for hearings for people who would currently be eligible to petition for a sentencing modification based on the OPD analysis above and the 2021 WAPA resentencing hearing cost analysis:

HEARING COSTS:

Average cost for a simple hearing: $(\$375 + \$645)/2 = \$510$

Average cost for a one-day hearing: $(\$630 + \$1050)/2 = \$840$

ELIGIBLE PEOPLE:

13 people over 50 who have served at least seven years for a felony committed under 18

1,378 people who have served at least 10 years for a felony committed between 18 and 24

$(1,881 \text{ people over } 50 \text{ who have served at least } 10 \text{ years for a felony committed as an adult}) - (209 \text{ people over } 50 \text{ who have served at least } 10 \text{ years for a felony committed between } 18 \text{ and } 24) = 1,672 \text{ people over } 50 \text{ who have served at least } 10 \text{ years for a felony committed over } 24.$

$13 + 1,378 + 1,672 = 3,063$ people who have served requisite amount of their sentence and are over 50 OR committed their offense between 18 and 24

TOTAL COSTS:

$3,063 \text{ people} \times \$510 \text{ average cost for a simple hearing} = \$1,562,130$ total cost assuming all simple hearings

$3,063 \text{ people} \times \$840 \text{ average cost for a one-day hearing} = \$2,572,920$ total cost assuming all one-day hearings

Midpoint of total cost range = $(\$1,562,130 + \$2,572,920)/2 = \$2,067,525$

The above estimate does not include people under supervision, or incarcerated people who would currently be eligible to petition for a sentence modification and would be required to be granted a hearing for a reason other than being older than 50 or having committed the offense in question between 18 and 24. Additional hearings would increase total costs, and it is unknown how these costs would be distributed across succeeding fiscal years.

Finally, in addition to the people under DOC custody who would currently be eligible to petition for a sentence modification, or who may become eligible to petition at some point in the future, there would be people sentenced after the effective date of the bill who would become eligible to petition for a sentence modification at some point in the future. The associated costs for prosecutors are indeterminate, however, since it is unknown how many people may be given sentences of a qualifying length, but the ongoing costs associated with hearings for people not currently in DOC custody would not be incurred for at least seven years following the effective date of the proposed legislation.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

The proposed legislation would have an indeterminate impact on local government revenues.

Section 5 would require that no less than 25% of the cost savings from sentence modifications pursuant to section 3 of the bill be used to fund the costs associated with petitions and proceedings under section 3. Accordingly, it is assumed that some portion of these funds would be available to the offices of prosecuting attorneys and courts hearing resentencing petitions to cover the costs related to petitions and proceedings under section 3.

It is unknown, however, what total cost savings from sentence modifications may be, and what amount may be made available to prosecutors and courts, so the magnitude of any resulting local government revenue increase is indeterminate. The Department of Corrections fiscal note for this bill indicates that expenditure savings due to a decrease in the average daily population of people in its custody as a result of sentence modifications is indeterminate, but greater than \$50,000 per fiscal year.

SOURCES:

Washington Association of Prosecuting Attorneys
Washington State Department of Corrections
Washington State Office of Public Defense