

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 2001 S HB	<b>Title:</b> Sentence modification
-------------------------------	-------------------------------------

## 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	.0	653,000	653,000	653,000	.0	0	0	0	.0	0	0	0
Administrative Office of the Courts	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
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.											
<b>Total \$</b>	<b>0.0</b>	<b>2,423,400</b>	<b>2,423,400</b>	<b>2,423,400</b>	<b>3.0</b>	<b>11,325,134</b>	<b>11,325,134</b>	<b>11,325,134</b>	<b>3.0</b>	<b>11,325,134</b>	<b>11,325,134</b>	<b>11,325,134</b>

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts			3,045,000						
Local Gov. Courts	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.								
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
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

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

<b>Prepared by:</b> Danya Clevenger, OFM	<b>Phone:</b> (360) 688-6413	<b>Date Published:</b> Final 2/ 6/2024
--	---------------------------------	---

# Judicial Impact Fiscal Note

Revised

<b>Bill Number:</b> 2001 S HB	<b>Title:</b> Sentence modification	<b>Agency:</b> 055-Administrative Office of the Courts
-------------------------------	-------------------------------------	--

## Part I: Estimates

No Fiscal Impact

### Estimated Cash Receipts to:

NONE

### Estimated Expenditures from:

STATE	FY 2024	FY 2025	2023-25	2025-27	2027-29
State FTE Staff Years					
<b>Account</b>					
General Fund-State 001-1		653,000	653,000		
State Subtotal \$		653,000	653,000		
COUNTY	FY 2024	FY 2025	2023-25	2025-27	2027-29
County FTE Staff Years					
<b>Account</b>					
Local - Counties		3,045,000	3,045,000		
Counties Subtotal \$		3,045,000	3,045,000		
CITY	FY 2024	FY 2025	2023-25	2025-27	2027-29
City FTE Staff Years					
<b>Account</b>					
Local - Cities					
Cities Subtotal \$					

In addition to the estimates above, there are additional indeterminate costs 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: 01/29/2024
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 02/05/2024
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 02/05/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/05/2024

193,543.00

Request # 165-2-4

## Part II: Narrative Explanation

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

The bill would amend and add to Chapter 9.94A RCW (Sentencing Reform Act of 1981) allowing individuals who have a sentence of partial or total confinement at the time they committed a crime were 17 or 18 or have consent of the prosecuting attorney to petition the court for a modification of sentence.

Section 3 outlines the eligibility and contents of the petition to modify a sentence. The court may grant modification if there is a finding that the original sentence no longer advances the interest of justice. A list of factors that the court may consider in determining a modification should be granted is provided.

### II. B - Cash Receipts Impact

None

### II. C - Expenditures

#### IMPACT TO ADMINISTRATIVE OFFICE OF THE COURTS

This bill would have no fiscal impact to the Administrative Office of the Courts.

#### INDETERMINATE IMPACT TO THE COURTS, UPDATED WITH CASE INFORMATION FROM THE SUPERIOR COURT JUDGES' ASSOCIATION AND THE DEPARTMENT OF CORRECTIONS.

The substitute bill would result in an indeterminate, but likely significant, increase in superior court workload. The bill mandates any person, with the exception of those convicted of Aggravated Murder I, under a term of partial or total confinement by the Department of Corrections (DOC) for a felony conviction may petition the sentencing court for a modification of sentence if the original sentence no longer serves the interests of justice and the person meets any of the following criteria:

- Served at least 10 years for an offense committed at age 18 or older;
- Served at least 7 years for an offense committed at age 17 or younger; or
- Has the prosecuting attorney's consent.

The bill also excludes a defendant waiving their right to petition for resentencing (e.g., in exchange for a lesser sentence as part of a plea) and instead directs that the court "shall" grant a hearing to consider the petition and schedule the hearing within 120 days "upon a substantial showing" that the petitioner meets one of the following criteria:

- Indicated rehabilitation or potential for rehabilitation
- Demonstrated a minimal risk of reoffense
- Some significant material fact was no known at the time of conviction.

Courts will be unable to meet the 120-day hearing requirement of this bill. For comparison, in the 34 months since the Blake decision, 2,253 Blake hearings have been heard remotely, from courts statewide, at DOC facilities. Conducting a similar number of hearings within 120 days from filing, as required by the substitute bill, is not feasible, given remote hearing availability at DOC facilities.

DOC provided the number of incarcerated individuals in DOC's jurisdiction who are serving a felony sentence that falls under the criteria in the bill.

- 2,434 incarcerated individuals 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.
- 124 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.

NOTES: Data includes individuals under the department's jurisdiction serving the incarceration portion of their sentence, excluding

193,543.00

Form FN (Rev 1/00)

2

Request # 165-2-4

Bill # 2001 S HB

escapes.

- 1) Individuals who are out to court or out for medical treatment are included in this data.
- 2) Data reflects prison population as of 12/31/2023 in OMNI.
- 3) This refresh excludes Aggravated Murder 1.

As the DOC data shows, the number of individuals, currently incarcerated, who could file these petitions, is estimated to be up to 2,558 (2,434 + 124). (NOTE: In the substitute bill resentencings may not fall below the mandatory minimum terms for the following offenses: Murder 1st degree, Assault 1st degree, Assault of a Child 1st degree, Rape 1st degree, and Sexually Violent Predator Escape. It is unknown how many of these cases would be likely to seek resentencing.) But these numbers show only part of the potential workload on the courts. As the substitute is written, unsuccessful petitioners may file a new petition three years after the date the previous petition was denied, effectively extending indefinitely the number of times a person could refile and demand a hearing while incarcerated

Given that the majority of this workload will involve individuals convicted of a Class A felony with a minimum of ten-year prison terms, many of these cases will be complex. We estimate that up to 80% of these hearings will be contested, taking an average of 120 minutes of hearing time. Our total estimated cost to courts and local government for hearing these cases, not including new subsequent petitions from individuals, is:

State: \$653,000 (superior court judges' 50% salary and 100% benefits)  
 County: \$3,045,000

All costs are shown in FY 2025. However, the timing is indeterminate. Dates of filing are unknown and, as was explained above, meeting a 120-day hearing requirement is not feasible.

### Part III: Expenditure Detail

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

<i>State</i>	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
Salaries and Wages		407,000	407,000		
Employee Benefits		246,000	246,000		
Professional Service Contracts					
Goods and Other Services					
Travel					
Capital Outlays					
Inter Agency/Fund Transfers					
Grants, Benefits & Client Services					
Debt Service					
Interagency Reimbursements					
Intra-Agency Reimbursements					
<b>Total \$</b>		653,000	653,000		

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

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

<i>County</i>	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
Salaries and Benefits					
Capital					
Other		3,045,000	3,045,000		
<b>Total \$</b>		3,045,000	3,045,000		

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

<i>City</i>	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
Salaries and Benefits					
Capital					
Other					
<b>Total \$</b>					

In addition to the estimates above, there are additional indeterminate costs 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

None

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2001 S HB	<b>Title:</b> Sentence modification	<b>Agency:</b> 056-Office of Public Defense
-------------------------------	-------------------------------------	---

## 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
<b>Account</b>					
General Fund-State      001-1	0	1,770,400	1,770,400	11,325,134	11,325,134
<b>Total \$</b>	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: 01/29/2024
Agency Preparation: Katrin Johnson	Phone: 360-586-3164 1	Date: 02/01/2024
Agency Approval: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 02/01/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/02/2024

## 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 SHB 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. Has demonstrated behavior indicative of rehabilitation or the potential for rehabilitation;
  - b. Demonstrates a minimal risk of reoffense; or
  - e. Presents evidence of some significant material fact unrelated to the crime and not in existence at the time of conviction, and is relevant to the necessity of the current term of sentence.
- (4) The Washington Department of Corrections shall assist a petitioner by compiling records relating to discipline and rehabilitation.
- (5) The court shall grant a hearing within 120 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.
- (6)(a) At the hearing the court may modify the sentence to a shorter time period if the sentence no longer advances the interests of justice, provided that a new shorter sentence is subject to the following:
  - (6)(a)(i) If the original sentence is indeterminate imposed under RCW 9.94A.507, the court may modify the minimum term but not the maximum term required by law.
  - (6)(a)(ii) The minimum term may not be modified if the sentence includes a mandatory minimum term imposed under RCW 9.94A.540.
  - (6)(b) The court may consider mitigating factors from RCW 9.94A.535(a) in addition to:
    - (6)(b)(i) The petitioner's records regarding discipline and rehabilitation;
    - (6)(b)(ii) Evidence that reflects whether age, time served and diminished physical condition reduce the risk of recidivism;
    - (6)(b)(iii) Evidence of the petitioners circumstances at the time of the offense, or the petitioner's level of culpability for the offense;
    - (6)(b)(iv) Evidence of the petitioner's circumstances since being sentenced, including whether the sentence continues to serve the interests of justice; and
    - (6)(b)(v) Evidence of some significant material fact unrelated to the crime and not in existence at the time of conviction, and is relevant to the necessity of the current term of sentence.
- (7) When modifying a sentence under this section,
  - (a) The court may impose an exceptional sentence below the standard range based on rehabilitation evidence or other applicable factors; and
  - (b) The court may impose a sentence below the mandatory minimum enhancement term imposed under RCW 9.94A.533.
- (8) If the court denies a petition, declines to set a hearing, or declines to modify a sentence at a hearing, the petitioner may file a new petition after three years pass unless the court authorizes a shorter interim time period. The court must state the basis for their denial on the record. The petitioner may appeal the denial.
- (9) The prosecutor shall engage with victims and survivors.
- (10) The court shall not permit petitioners to waive their right to petition under this section.
- (11) Collateral attack time lines do not apply.
- (12) Incarcerated individuals 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.
- (13) If a person petitions the court pro se and subsequently is appointed counsel, they may amend the petition at least



once.

(14) The Washington Department of Corrections shall provide notice of this section to: incarcerated individuals sentenced to more than 10 years, the sentencing court, prosecution, and public defense.

(15) A person may not petition for resentencing under this section if the original section was imposed under RCW 9.94.570 (Persistent Offender) or RCW 10.95.030 (Aggravated Murder).

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

Section 5 amends RCW 9.94A.535 to reflect that sentences may be modified to shorter durations pursuant to section 3 of this act, and the non-exhaustive list of factors may be considered.

Section 6 (1) provides that at least 25% of cost savings due to Section 3 shall be dedicated to organizations serving and supporting crime survivors; and (2) at least 25% of the cost savings due to Section 3 shall be designated to fund costs associated with petitions and proceedings associated with 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 SHB 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."

Compared to the original bill, the substitute bill reduces the pool of potential petitioners. It is assumed that 2,687 incarcerated individuals could potentially be eligible for resentencing under the substitute bill based on their sentences and time served. Nonetheless, there is still an indeterminate number of individuals from this group who would be eligible for resentencing and assistance of counsel.

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 use a tiered approach for prioritizing assignment to counsel. For example, higher priority may be applied to persons 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 SHB 2001. For purpose of this Fiscal Note, OPD assumes that the FTEs for this post-conviction trial level team will be funded exclusively by existing Blake funds in Fiscal Year 2025. In Fiscal Year 2026 and Fiscal Year 2027 it is anticipated that the post-conviction trial level team will be funded 50 percent by funds allocated under SHB 2001. Utilization of the existing Blake team will be an effective approach for delivering services under this bill, as described in more detail below.

### **A. Salaries and Wages:**

OPD anticipates no new salaries and wages in FY2024 and FY2025, because functions under SHB 2001 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 SHB 2001 resentencing defense 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 SHB 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 SHB 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. Contract attorneys 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 \$100.00 per hour.

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

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 cases litigated under SHB 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 where the service is needed, 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

**Appeals:**

SHB 2001 gives the right to appeal for petitioners for whom the court has declined to set a hearing, or grants a hearing but declines to modify the petitioner's sentence. OPD provides representation to indigent individuals who have the right to appeal in the appellate courts. It is unknown at this time how many appeals will be filed, and therefore this cost is indeterminate. However, it is projected that the average cost per appeal in State Fiscal Year 2026, which is likely the earliest that an appeal would be filed, is \$6,304 per case.

**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 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 SHB 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 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
<b>Total \$</b>			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-					
<b>Total \$</b>	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	79,497				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
<b>Total FTEs</b>					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

<b>Bill Number:</b> 2001 S HB	<b>Title:</b> Sentence modification	<b>Agency:</b> 101-Caseload Forecast Council
-------------------------------	-------------------------------------	--

## 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: 01/29/2024
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 02/01/2024
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 02/01/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 02/01/2024

## 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.*

# **SHB 2001**

## **PROVIDING JUDICIAL DISCRETION TO MODIFY SENTENCES IN THE INTEREST OF JUSTICE**

**101 – Caseload Forecast Council  
January 31, 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. Individuals are not allowed to petition for a modification if the person’s original sentence was imposed under RCW 9.94A.570 or 10.95.030. Additionally, does not allow courts to modify the sentence below the mandatory minimum sentence, if such a term is required by law.

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 Amends RCW 9.94A.535 by adding an mitigated circumstance for the court to consider when imposing a sentence below the standard range.



Section 6 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

<b>Bill Number:</b> 2001 S HB	<b>Title:</b> Sentence modification	<b>Agency:</b> 310-Department of Corrections
-------------------------------	-------------------------------------	--

## 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: 01/29/2024
Agency Preparation: Matthew Friesen	Phone: (360) 725-8428	Date: 02/01/2024
Agency Approval: Michael Steenhout	Phone: (360) 789-0480	Date: 02/01/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 02/01/2024

## 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.*

2001 SHB differs from the original bill in the following ways:

Section 3(15) adds a person may not petition for a modification of sentence pursuant to this section if the person's original sentence was imposed under RCW 9.94A.540 or 10.95.030. Additionally, it does not allow courts to modify the sentence below the mandatory minimum sentence, if such a term is required by law.

Section 5(1)(l) amends RCW 9.94A.535 by adding the court may impose an exceptional sentence below the standard range, to include petitioning the court for modification of sentence pursuant to section 3 of this act to the list of mitigating circumstances.

Original bill language is below:

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).

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.

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 6(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; it is assumed that DOC will “true-up” the needs requested in this fiscal note in a future decision package should this legislation be signed into session law.

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 FY2024.

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 S 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: 02/06/2024
Leg. Committee Contact: Corey Patton	Phone: 360-786-7388	Date: 01/29/2024
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/06/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 02/06/2024

## **Part IV: Analysis**

### **A. SUMMARY OF BILL**

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

This fiscal note analyzes the local government fiscal impact of SHB 2001, comparing it to the impact of HB 2001.

#### **CHANGES BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:**

The proposed substitute bill would change the requirements for a petitioner under section 3 to be granted a hearing to modify their sentence, extend the time limit for a court to offer an eligible petitioner a hearing, create new requirements outlining how courts could modify a person's sentence, change the time limit for a person to file an additional petition under section 3 after being denied a hearing, give the ability to appeal a denial of a hearing or order pursuant to a hearing, and specify that people sentenced as persistent offenders or for aggravated first degree murder would not be eligible to petition under the provisions of section 3.

The requirements for a petitioner to be granted a hearing would be changed such that people who committed their offense between 18 and 24, or who are over 50, would not automatically meet the criteria to be granted a hearing.

#### **SUMMARY OF CURRENT BILL:**

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 120 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, subject to certain conditions, 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 three years after the date the previous petition was denied. If a court denies a petition under this section or does not modify a person's sentence, it must state on the record its basis for doing so. Petitioners would be able to appeal the denial of a petition or the order pursuant to a sentence modification hearing.

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.

People sentenced as persistent offenders or for aggravated first degree murder would not be eligible to petition under the provisions of 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 amend RCW 9.94A.535, adding petitions and hearings under section 3 of the proposed legislation to the illustrative list of mitigating circumstances for courts to consider before imposing an exceptional sentence below the standard range.

Section 6 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.*

### **CHANGES IN EXPENDITURE IMPACT BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:**

Under the provisions of the proposed substitute bill, fewer people would be eligible to petition courts for sentence modification under section 3, since people sentenced as persistent offenders or for aggravated first degree murder would be ineligible to make such petitions. Additionally, extending the minimum time before a person whose petition was denied or whose sentence was not modified may petition the court again under section 3 from two to three years may reduce the number of petitions filed by the same person. Finally, eliminating the specification that people who have served the requisite amount of their sentence and committed their offense between 18 and 24, or are over 50, would be eligible for a sentence modification hearing, would likely decrease the number of such hearings compared to the original bill.

Providing an ability to appeal the denial of a petition or an order entered pursuant to a sentence modification hearing would likely increase the number of proceedings under section 3.

It is unknown, however, how many people with ineligible sentences would have petitioned for and been granted a sentence modification hearing under the provisions of the original bill. It is also unknown what the impact of changing the minimum time to file a second or subsequent petition from two to three years, or eliminating the age criteria for being granted a hearing may have on the total number of petitions and associated hearings that may occur. Finally, it is unknown what impact providing an ability to appeal might have on the number of proceedings pursuant to section 3. Accordingly, the net effect of the above changes on prosecutorial costs compared to the original bill is indeterminate.

The Office of Public Defense (OPD) indicates that approximately 2,687 currently incarcerated people could be eligible for resentencing under the provisions of the substitute bill.

### **EXPENDITURE IMPACT OF CURRENT BILL:**

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. 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.

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, but with the exception of people sentenced as persistent offenders or for aggravated first degree murder, people sentenced to more than seven years for an felony offense committed at 17 or younger, or to more than 10 years for a felony offense committed at 18 or older, could become eligible to petition for resentencing at some point in the future. OPD estimates that approximately 2,687 currently incarcerated people could be immediately eligible for resentencing under the provisions of the proposed legislation, based on the length of their sentences and time served.

According to WAPA, if it is assumed that 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 were either immediately or at some point in the future, eligible to petition 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 could be immediately eligible 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:  $(\$630 + \$1050)/2 = \$840$

**TOTAL COSTS:**

2,687 people X \$510 average cost for a simple hearing = \$1,370,370 total cost assuming all simple hearings

2,687 people X \$840 average cost for a one-day hearing = \$2,257,080 total cost assuming all one-day hearings

Midpoint of total cost range =  $(\$1,370,370 + \$2,257,080)/2 = \$1,813,725$

The above estimate does not include people under supervision, people who are incarcerated who are serving sentences of sufficient length to be eligible to petition in the future, but have not served enough of their sentence to be immediately eligible, or the indeterminate number of people who are incarcerated who may be eligible to be granted a sentence modification hearing under section 3 for reasons unrelated to sentence length and type. It also does not account for one person filing multiple petitions over succeeding years, or appealing the denial of a petition or an order entered pursuant to a sentence modification hearing. Additional hearings, or hearings of increased complexity 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 6 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