

**Pierce County****Office of the Prosecuting Attorney**

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SB 6164 Criteria

Re-Sentencing:

During the 2020 Washington State Legislative Session, the Legislature passed Senate Bill 6164 concerning the expansion of the role of a prosecutor to use their discretion to petition a court to modify a sentence in the interest of justice. If a court finds that the interest of justice is served by a sentence modification, such a finding could result in a reduction in a sentence or the early release of an individual incarcerated due to a felony conviction. On March 12, 2020, the Washington State Legislature signed the bill into law and Governor Jay I. Inslee signed the bill on March 27, 2020. The bill became effective on June 10, 2020.

The Pierce County Prosecuting Attorney's office will review certain cases for determination if resentencing pursuant to RCW 36.27 is appropriate. In contemplation of establishing a review process, the elected prosecutor, Mary Robnett, has convened a Sentence Review Committee (SRC) to establish criteria and implement a process for such review. The committee is committed to fair and comprehensive review of requests for re-sentencing, and if after careful consideration the committee determines that the conditions of the statute and the criteria established by the committee have been met, the SRC will make a recommendation to the Prosecutor who will exercise her discretion as to whether or not she will petition the court for a new sentence.

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Purpose:

The finality of sentences has been a long-standing and fundamental principal in criminal law. The purpose of sentence modification standards is to ensure that the interest of justice is a continuous guiding principle, to ensure that the criminal justice system is accountable to the public by using prosecutorial discretion to prosecute, to recommend a sentence, and to recommend a sentence modification where it serves public safety and advances the legitimacy of the justice system.

The SRC is mindful of the processes established by the Indeterminate Sentence Review Board, the End of Sentence Review Committee, the Parole Board and the Clemency and Pardons Review Board, and the specific relief offered under each of those processes. Consistent with the Sentence Reform Act (SRA) purposes outlined in the Revised Code of Washington (RCW) 9.94A.010 and the duties of a Prosecuting Attorney outlined in RCW 36.27.020, the purpose of sentence modification under RCW 36.27 is to:

- Ensure that prosecutors exercise their discretion in a manner consistent with the interest of justice;
- Ensure that the sentence in question is consistent with current practices and ideals of justice;
- Ensure that the victim and survivors are instrumental voices in any sentence modification process;
- Promote the respect for the law and the legitimacy of the criminal justice system;
- Promote consistency in punishments and sentences imposed on individuals who committed similar offenses;
- Promote a reentry readiness process by conditioning the Prosecutor's filing of a petition on the requestor providing proof of available safe housing, family ties and community support;
- Promote public safety and community wellness;
- Minimize the risk of reoffending and further harm to the community.

Request for Review Process:

To request that the Sentence Review Committee review a case, an individual or their counsel shall complete a letter outlining the basis for the request to start the initial review process. The SRC will perform a preliminary review of the case to determine if it meets any of the requirements outlined in these standards. If after a preliminary review, the SRC determines that the case meets requirements, the SRC will engage in a more in-depth individualized assessment to determine if it would be in the interest of justice to file a sentence modification petition with the Pierce County Superior Court.

The individualized assessment will rely on materials provided by the requestor and should include postconviction factors such as prison disciplinary records, rehabilitation, treatment, and any evidence of risk reducing factors such as age and/or physical condition, and release plan, including housing, family and community support, and potential employment. The requestor may also provide evidence that reflects a change in circumstances such that the current sentence no longer serves the interest of justice. The requestor should also provide a current risk assessment from DOC, as well as contact information for their DOC counselor.

The SRC will meet at least once per quarter to review pending requests and will make a recommendation to the Prosecuting Attorney whether re-sentencing might be warranted.

If after the preliminary assessment, the SRC determines that further review is not in the interest of justice as defined in these standards, the SRC will send a letter to the requestor or their counsel declining further review of the case.

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Criteria for Review:

These factors are the general criteria for consideration, but this is not an exclusive list. These factors will be considered individually and in combination with other factors:

- 1) A change in the law that would result in a different sentence for the same crime today;
- 2) The age of the defendant at the time of the crime, particularly if the case was automatically declined to adult court;
- 3) The current age of and/or medical condition of the defendant (i.e. terminal or chronic illness/mental condition/disability);
- 4) The presence of SRA sentence enhancements;
- 5) Consecutive sentences imposed for multiple counts based on the presence of multiple victims for one event (and no one was injured);
- 6) Convictions that do not meet current filing standards and policies;
- 7) Cases involving domestic violence abuse or other abuse identified as a mitigating factor;
- 8) Non-homicide cases with a sentence of 240 months or more;
- 9) Non-homicide cases involving a requestor who was under the age of 25 at the time the crime was committed;
- 10) If there is any other change in circumstances that warrants re-sentencing.
- 11) The person has demonstrated an acceptance of responsibility, remorse and/or atonement.

Non-Exclusive List of Cases Where Review Will Not Further the Interest of Justice:

These are factors that generally will not further the interests of justice, but this is not an exclusive list. These factors will be considered individually and in combination with other factors:

- 1) Sexual offenses;
- 2) Aggravated murder;
- 3) Murder in the First degree;
- 4) Homicide by abuse;
- 5) Cases involving extensive violent criminal history;
- 6) Cases involving multiple deceased victims;
- 7) Cases where an agreed exceptional sentence downward was imposed;
- 8) Cases where the defendant benefitted from a significant reduction in charges;
- 9) Cases where the defendant has not already served at least 50 % of the sentence.

Other Considerations for Denial of a Request for a Petition:

- 1) The original sentence is appropriate;
- 2) The crime victim strongly opposes a resentencing;
- 3) A request from the same party was declined within the past 24 months;
- 4) The requestor has an open Appeal or Personal Restraint Petition;
- 5) A court would be required to impose the same sentence, such as mandatory sentences (i.e., for 2 and 3 strikes).

Victim Notification and Input:

The law is designed to include victim and survivor involvement and input whenever possible. Victim and survivor input is critical to advancing justice and it is in the interest of justice that the victim/survivor voice be included in any sentence review or sentence modification process.

When the SRC decides to engage in an in-depth individualized assessment of a requesting party, the SRC shall provide notification of the decision to review to all victim(s) including any surviving victims. Notification to victim(s) and survivors is intended to solicit their input. The input of victim(s) and survivors will be encouraged at every stage of the decision process.

If the SRC determines that a sentence modification petition should be filed, the SRC will provide all victim(s) and survivors with notification of their recommendation to the elected prosecutor. The victim and survivors shall be notified 30 days prior to any scheduled sentence modification hearing.

The SRC shall also provide notification to victim(s) and survivors of any decision to decline to review or a decision to decline to file a sentence modification petition.

Any requester that makes unauthorized or unwanted contact with a victim(s) and/or survivor(s) either directly or indirectly through third party contact may be subject to receiving a declination to review or file a sentence modification petition.

This list of factors, the policies and procedures contained herein, or any portion of this document are not intended to, and do not, create a right or benefit, whether substantive or procedural. Similarly, the State's decision to petition or not to petition for resentencing under RCW 36.27.130 is not intended to, and does not, create any rights, benefits, or harms for which a requestor could seek legal redress. Further, they are not intended to be enforceable at law by a party in litigation within the county or the state.