



Snohomish County

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Discretionary Felony Resentencing Standards and Protocols

I. Summary

The following standards and protocols set forth the roadmap for application of Senate Bill 6164, which was subsequently codified as RCW 36.27.130 (Felony resentencing). The felony resentencing statute allows prosecutors to petition for resentencing of an offender convicted of certain qualifying felony offenses “if the original sentence no longer advances the interests of justice.” RCW 36.27.130 (1). Accordingly, this office looks favorably upon the thoughtful exercise of prosecutorial discretion where it advances the legitimacy of the criminal justice system and public safety while recognizing the law’s bearing on victims and the families of survivors who have been impacted by a defendant’s conduct.

II. Legal Framework

If statutory and prevailing case authority allows, the prosecutor may petition the court to resentence the offender if the original sentence no longer advances the interests of justice. The legislative intent of the statute is instructive to these standards and protocols. It reads:

It is the intent of the legislature to give prosecutors the discretion to petition the court to resentence an individual if the person's sentence no longer advances the interests of justice. The purpose of sentencing is to advance public safety through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense and provide uniformity with the sentences of offenders committing the same offense under similar circumstances. By providing a means to reevaluate a sentence after some time has passed, the legislature intends to provide the prosecutor and the court with another tool to ensure that these purposes are achieved.

The statute sets out a non-exclusive list of factors that the court may consider: “[1] the inmate's disciplinary record and record of rehabilitation while incarcerated; [2] evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence; and [3] evidence that reflects changed circumstances since the inmate's original sentencing such that the inmate's continued incarceration no longer serves the interests of justice.” *Id.* at subsection (3).

If the court grants the petition, it “shall resentence the defendant in the same manner as if the offender had not previously been sentenced.” *Id.* at subsection (2) The new sentence may not exceed the original sentence. Resentencing does “not reopen the defendant's conviction to challenges that would otherwise be barred.” *Id.* at subsection (5).

The new sentence is subject to all requirements of the Sentencing Reform Act (hereinafter SRA) and other applicable sentencing statutes. Also, even if there have been amendments to the SRA since the original sentence was imposed, the new sentence is still governed by the law in effect when the crime was committed.

See RCW 9.94A.345 (“Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.”)

It has been suggested that under this new legislation convictions could be vacated by a motion pursuant to CrR 7.8(b). This office believes that such an interpretation, at present, is contrary to law. While CrR 7.8(b)(5) allows a judgment to be vacated for “[a]ny other reason justifying relief from the operation of the judgment.” The application of this rule is limited to cases where there have been “fundamental, substantial irregularities in the court’s proceedings” or “irregularities extraneous to the court’s action.” *State v. Olivera-Avila*, 89 Wn. App. 313, 319, 949 P.2d 824 (1997). The trial court’s belief that consequences of a conviction are “too harsh” does not justify vacating the conviction under this rule. *State v. Cortez*, 73 Wn. App. 838, 842, 871 P.2d 660 (1994); see *State v. Lamb*, 175 Wn.2d 121, 127-28 ¶ 12, 285 P.3d 27 (2012) (vacation not justified by finding that leaving conviction in effect was “fundamentally unfair”).

These standards and protocols and the decision to grant or deny a request for relief under RCW 36.27.130 are not intended to create a right or benefit, substantive or procedural. Further, they are not intended to be enforceable at law by a party in litigation within the county or state

III. Eligible Sentences

Sentences based on a Snohomish County conviction will be reviewed in a manner specified in Section IV, so long as their consideration is not contrary to law. In a few situations, the SRA precludes the reduction of sentences, regardless of exceptional circumstances. These restrictions continue to apply at any resentencing under RCW 36.27.130. Granted, an exception exists if changes in case law have removed the defendant from the group that is subject to the mandatory sentence. However, this exception does not apply to statutory amendments. The most significant examples of sentences not subject to revision pursuant to RCW 36.27.130 are:

- Life sentences for aggravated first degree murder [RCW 10.95.030(1)]
- Life sentences for persistent offenders [RCW 9.94A.570]
- Enhancements for firearms and deadly weapons [RCW 9.94A.533(3)]
- Mandatory minimum sentences for first degree murder (20-year minimum), first degree rape (5-year minimum), and sexually violent predator escape (5-year minimum) [RCW 9.94A.540]. (There is also a 5-year mandatory minimum for first degree assault or first degree assault of a child, but only in rare cases where the jury made certain factual findings.)

IV. Resentencing Review Committee

Requests for resentencing that meet the requirements set forth in Section V and Section VI below, will be reviewed by a Resentencing Review Committee. The Committee will be comprised of a Deputy Prosecuting Attorney assigned to the Appellate Unit, the Chief of Staff, and the Chief Criminal Deputy Prosecuting Attorney. The Committee’s recommendation will be forwarded to the Prosecuting Attorney who will make the final decision.

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V. Requirements for Consideration by Requestor

- **Submission Letter /** A request for consideration must be submitted in writing either by the defendant seeking relief, or his or her attorney. The writing shall summarize the basis for the request consistent with the letter and intent of resentencing statute. The correspondence should provide at minimum, the following information:
 - Original charge(s) and sentence and any related documentation available to the defendant (i.e. Affidavit of Probable Cause, Information, plea agreement, Judgment and Sentence)
 - Reasons justifying why the original sentence no longer serves the interests of justice
 - Evidence that reflects that age, time served, and/or diminished physical condition, if any, has reduced risk for future violence if the underlying conviction was a violent or sex offense
 - Desired sentence at resentencing
 - Citation to operative decisional or case authority if the original sentence was imposed under a statute or statutes that have been re-interpreted

- **Post-Conviction Documents /** Essential to consideration of the request is the offender's disciplinary record and record of rehabilitation while incarcerated. To that end, the following inmate history documentation is required to the extent it exists:
 - Work history
 - Vocational achievements
 - Education achievements
 - Other programmatic achievements
 - Treatment records
 - Infraction history
 - Psychological evaluation / Risk assessment
 - Security group threat status history
 - Intense management unit status history
 - Medical documentation (if relevant to the request)
 - Release plan demonstrating re-entry readiness

- **Mitigating and Aggravating Factors /** The Committee may consider any mitigating or aggravating circumstances present at the commission of, or related to, the defendant's underlying crime(s) regardless of whether they were alleged or presented at the time the case was adjudicated. In making their recommendation to grant or deny the request, the Committee may use as their guide the non-exhaustive list of mitigating and aggravating factors set forth under RCW 9.94A.535, which allows judges to impose a sentence outside the standard sentence range for an offense if it finds there are substantial and compelling reasons justifying an exceptional sentence. The Committee may consider real facts and other information outside of that charged or plead and proven in deciding the request. For example, the Committee may consider prior criminal history, or lack thereof.

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- **Supporting Materials /** The request must include a letter in the defendant's own words expressing the basis for the resentencing, including how he or she has been rehabilitated, a sincere acknowledgment of the harm done to the victim and/or survivors (if applicable), and discussion of his or her support network upon release. The request must also include no fewer than 2 letters of support.
- **Additional Documentation /** The Committee may request additional documentation as needed.

VI. Victim Notification and Input

Consistent with our constitutional and statutory duties, including those set forth in RCW 36.27.130 (4), victims and/or survivors will be notified by this office when a request for a sentence modification is made that meets the threshold requirements in Section V. Input will be sought whenever possible concerning the request and due consideration will be given to the wishes of the victim and/or survivor. A final decision of the Committee will not be reached until a victim and/or survivor has had notice and an opportunity to be heard or until reasonable efforts have been made by this office to contact the victim and/or survivor, but have failed.

VII. Prioritization of Requests

Limited prosecutorial resources compel prioritization of requests. The following are current priority cases that meet the eligibility requirements for consideration as set forth in Section III and V:

- Sentences imposed for crimes committed under the age of 18 where the offender has served more than 15 years.
- Sentences in non-homicide/non-sexual assault cases of over 20 years involving an offender who was under 21 at the time the crime was committed.
- Sentences in non-homicide/non-sexual assault cases of over 25 years or more.
- Non-homicide/non-sexual assault cases where the offender is over 60 years old and has a life-threatening, pre-existing medical condition or is terminally ill.

VIII. Conditional Approval and Requirement for Agreed Recommendation

If the Prosecuting Attorney conditionally decides to file a Petition for Resentencing, that decision shall be communicated to the requestor. The Prosecuting Attorney or designee shall discuss with the requestor or his or her attorney the desired re-sentencing recommendation. Final agreement to file a Petition for Resentencing requires mutual accord of the parties to all conditions of the re-sentencing recommendation, including but not limited to the term of confinement.

IX. Notification to Requestor

The decision of the Prosecuting Attorney shall be communicated in writing to the requestor and/or his or her attorney and the victim and/or survivor (if applicable) setting forth the reasons for the decision. If the decision is to file a Petition for Resentencing, a Deputy Prosecuting Attorney in the Appellate Division will handle the request and work to expeditiously to file the Petition and see to it the matter is properly brought before the appropriate judicial officer and that timely victim notification is made. If the decision is to decline to bring a Petition, a decline letter will be sent to the requestor and/or his or her attorney.