



CHELAN COUNTY PROSECUTING ATTORNEY
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**STANDARDS AND PROTOCOLS ON
DISCRETIONARY FELONY RESENTENCING**

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). This office looks 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.

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.

If the prosecutor petitions the court to resentence an offender, the court may consider post-conviction factors, including: 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. RCW 36.27.130(3).

The sentence based on a Chelan County conviction of a defendant requesting to be resentenced shall be reviewed by the Chelan County Prosecuting Attorney who will make the final decision. The request for resentencing will not be eligible for review by the Prosecuting Attorney unless the following case factors have been met:

- The original sentence in the case was for sixty (60) months confinement or greater.
- No appeals or personal restraint petitions are currently pending in the case.
- The defendant has admitted to committing the crime(s) in the case for which he or she was convicted.

Resentencing requests submitted to the Prosecuting Attorney for consideration must include a submission letter which must be in writing by the defendant seeking relief or the defendant's attorney. The writing shall summarize the basis for the request consistent with the letter and intent of the resentencing statute. The submission letter shall, at a minimum, include the following:

- The original charge or charges 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 which 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.
- Defendant must admit to having committed the crime(s).
- 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.

The Chelan County Prosecuting Attorney's Office will consider both mitigating and aggravating circumstances of the sentence. There is not an all-inclusive list of these factors. There is no way of putting more weight or less weight on one particular mitigating or aggravating factor over another. Those factors include what has already been mentioned above, as well as the following:

- The victim's input.
- The category of the crime.
- Length of the sentence.
- Number of prior requests made. Requests for resentencing under this statute can only be submitted once every two (2) years.
- Defendant must make apology to victim, if applicable.
- Defendant must be prepared to answer victim questions about the crime, if requested.

The following felony sentences are not eligible for resentencing consideration:

- Life sentences for aggravated first degree murder [RCW 10.95.030(1)].
- Life sentences for persistent offenders [RCW 9.94A.570].

- Sentences with 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.)

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 resentencing recommendation. Final agreement to file a Petition for Resentencing requires mutual accord of the parties to all conditions of the resentencing recommendation, including but not limited to the term of confinement.

It should be noted that this resentencing process should not be used as a substitute for the clemency process. This office presumes the court's original sentencing is legitimate, and will only consider resentencing in the most exceptional circumstances.

The Prosecuting Attorney's Office will notify the requestor and/or his or her attorney if the Petition for Resentencing is denied. A subsequent Petition shall not be refiled within two (2) years of the date of that letter of denial.

Dated: 10-30-20