

PROSECUTOR-INITIATED RESENTENCING IN WASHINGTON: THE IMPACT OF SB 6164

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PROSECUTOR-INITIATED RESENTENCING IN WASHINGTON STATE

INTRODUCTION

In recent decades, harsh sentencing laws enacted mainly in the 1990s sent more people to prison, often for much longer periods of time. As a result of these new policies, the number and proportion of people serving long and life sentences grew dramatically. In most democratic countries, sentences longer than ten years are rare.¹ In Washington State, they are ubiquitous. Today, nearly half of Washington’s prison population is serving a sentence of ten or more years.²

Long-term incarceration is unwise and ineffectual, for many reasons. Long and life sentences are a costly but ineffective way of protecting public safety.³ Racial inequities are especially pronounced among people serving the longest sentences.⁴ Incarcerating elderly people is inhumane, expensive, and inefficient, as research clearly shows that the vast majority of people “age out” of crime.⁵ Moreover, many people serving long and life sentences committed their offense as an adolescent or emerging adult. The historic failure of the criminal legal system to consider the mitigating qualities of youth is incompatible with scientific understandings of brain development.⁶

Although the frenzy to “get tough” on crime has largely receded, far too many people continue to serve excessive sentences in Washington State prisons. In this context, the Washington State Supreme Court and the Washington State Legislature have created new opportunities for some long-term prisoners to have their sentence and releasability (re)considered. Most of these “second

¹ Michael Tonry, *Sentencing Fragments: Penal Reform in America, 1975-2025* (New York, NY: Oxford University Press, 2016). See also Jorge Renaud, *Eight Keys to Mercy: How to Shorten Excessive Prison Sentences* (London: Prison Policy Initiative, November 2018).

² As of March 2024, 48.6 percent of the state prison population was serving a sentence of ten or more years or a sentence of life with or without the possibility of parole. Washington State Department of Corrections, Agency Fact Card, March 2024, available at <https://www.doc.wa.gov/docs/publications/reports/100-RE005.pdf>

³ See, for example, Marc Mauer and Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* (New York: The New Press, 2018); National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, edited by Jeremy Travis, Bruce Western, and Steve Redburn (Washington, D.C.: The National Academies Press, 2014).

⁴ Katherine Beckett and Heather Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State* (Seattle: ACLU of Washington, 2020).

⁵ John H. Laub and Robert J. Sampson, “Understanding Desistance from Crime.” *Crime and Justice* 28:1–69 (2001); Abdullah Fayyad, “America’s Prison System is Turning into a De Facto Nursing Home,” *Vox*, May 6, 2024.

⁶ M.F. Abramsky, “*Miller v. Alabama*: The Adolescent Brain and Mitigation in Criminal Sentencing,” *American Journal of Forensic Psychology*, 38(3), 3–21 (2020).

look” reforms mainly or entirely affect people serving long or life sentences, the vast majority of whom were convicted of violent offenses.⁷

These reforms – and especially the Washington State Supreme Court’s decisions in *In re Domingo-Cornelio* and *In re: Ali*⁸ – have enabled several hundred people who were serving long or life sentences to be resentenced or undergo parole review, and thus to return home sooner than expected. And yet, the reforms that have been enacted to date are clearly inadequate. As of the end of 2022, these changes to law and policy had rendered an estimated 637 people potentially eligible⁹ for second chance review by the Indeterminate Sentencing Review Board (ISRB) or by criminal courts. An estimated 286 of these people had been released from prison after serving many years behind bars.¹⁰ This is a tiny fraction of nearly 7,000 people currently serving a sentence of ten years or longer in Washington State prisons.¹¹

The impact of these reforms has been modest for several reasons. First, the reforms in question were adopted in a piecemeal rather than comprehensive manner; they are, as a result, confusing and sometimes contradictory. Many people serving long and life sentences who pose no threat to public safety remain ineligible for review for technical or arbitrary reasons. In addition, no resources have been provided to ensure access to legal representation for eligible petitioners. This means that many people who are entitled to a second look under law never actually get one.

These limitations are unfortunate, as many more people who are serving long and life sentences could safely be released. In Washington, the recidivism rate among people who returned home “early” after receiving a very long or life sentence for a crime they committed as a juvenile is remarkably low: just two (2.1 percent) of these 98 people have been convicted of a new felony crime.¹²

⁷ For an overview of these reforms, see Katherine Beckett and Allison Goldberg, *Sentencing Reform in Washington State: Progress and Pitfalls* (2024) (see especially Part II).

⁸ *In re: PRP Domingo-Cornelio* No. 97205-2 (2020) and *In re: PRP Ali* No. 95578-6 (2020).

⁹ We use the term “potentially eligible” because these individuals are eligible for review by courts or the ISRB based on offense and age-related factors. However, in some cases, additional requirements such as an infraction-free history may render people ineligible for review for a period.

¹⁰ These figures do not include people who were resentenced and released due to the Blake decision, which did not primarily impact people serving long and life sentences.

¹¹ As of March 2024, 48.6 percent of the people in state prison for a crime (as opposed to a technical violation) are serving a sentence of ten or more years or a sentence of life with or without the possibility of parole (Washington State Department of Corrections, Agency Fact Card, March 2024). This means that 6,675 people are currently serving a long or life sentence in Washington prisons.

¹² Katherine Beckett and Allison Goldberg, *Sentencing Reform in Washington State: Progress and Pitfalls* (2024). Neither of these two convictions appear to have involved physical harm to another person. However, a third person, Mr. Zion Carter, is in Spokane County Jail facing very serious charges. It is not yet known

Other studies also find extremely low rates of re-offending among people who were sentenced to life and long sentences but returned home sooner than expected.¹³ For example, a California study of released prisoners who had been sentenced to life with the possibility of parole and served decades behind bars found that “... the incidence of commission of serious crimes by recently released lifers has been minuscule.”¹⁴ Two years later, the California Department of Corrections and Rehabilitation (CDCR) confirmed that recidivism rates remained extremely low for this group of people.¹⁵ And a recent study found just a 1.14 percent recidivism rate among people who had been sentenced to life *without* the possibility of parole in Philadelphia for an offense they committed as a juvenile.¹⁶

Moreover, people who were released through second look processes after serving decades behind bars contribute in crucial ways to their families and communities upon their release. They provide financial, emotional, and logistical support to children and other family members. They care for elderly parents. And many work to make their communities safer, sometimes at great cost to themselves. Our collective failure to correct the excesses of the past deprives those families and communities of the support they might well enjoy if sentence review were available to all of those serving excessive sentences.

whether Mr. Zion will be found guilty. According to attorneys who work in the post-conviction realm, however, Mr. Zion’s infraction history is unusually serious and worrisome. While many of the people who enter prison at a young age rack up many infractions in their youth, most of those who spend decades behind bars become more involved in programming and other pro-social activities over time, and their infraction histories reflect this (see Steve Herbert, *To Easy to Keep: Life Sentenced Prisoners and the Future of Mass Incarceration* (University of California Press, 2019)). Enduring and serious infraction histories such as Mr. Zion’s may be a sign of untreated mental illness and unprocessed trauma, and should be treated as such, but often are not. Another five (5.2 percent) of the 98 people who were released through a second look process have been returned to prison for technical violations (as opposed to new criminal violations).

¹³ See, for example, CDCR, *Lifer Parolee Recidivism Report* (Sacramento, CA: California Dept of Corrections and Rehabilitation Corrections Standards Authority, January 2013); Tarika Daftary-Kapur and Tina M. Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience* (Montclair State University, 2020); and Jordan D. Segall, Robert Weisberg, and Debbie A. Mukamal, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California* (Stanford, CA: Stanford Criminal Justice Center, September 15, 2011).

¹⁴ Jordan D. Segall, Robert Weisberg, and Debbie A. Mukamal, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California* (Stanford, CA: Stanford Criminal Justice Center, 2011).

¹⁵ See *Lifer Parolee Recidivism Report* (Sacramento, CA: California Dept of Corrections and Rehabilitation Corrections Standards Authority, January 2013), 9.

¹⁶ These individuals were released via reforms stemming from *Miller v. Alabama*, in which the U.S. Supreme Court ruled that imposing mandatory LWOP sentences on juveniles was unconstitutional. See Daftary-Kapur, Tarika and Tina M. Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience* (Montclair State University, 2020).

Prosecutor-Initiated Resentencing in Washington: SB 6164

The complex, opaque, and piecemeal nature of sentencing reforms – and the lack of funding for legal counsel for people seeking relief – have blunted the impact of recent reforms. Many thousands of people continue to serve sentences that are ten years or longer, and relatively few have had the opportunity to apply for parole or have their sentence reviewed and reduced. Fewer still have been released from prison.

Prosecutor-initiated resentencing might, in theory, provide relief in some of these cases. In 2020, the Washington State legislature passed SB 6164, creating a new procedure for prosecutors to petition a sentencing court to resentence a person who was previously convicted of a felony “if the original sentence no longer serves the interests of justice.”¹⁷ The legislature explained its intent in enacting this legislation as follows:

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.

Under this legislation, prosecutors have discretion to decide whether and when to submit petitions for resentencing to the courts, and trial courts have the discretion to grant or deny these petitions. If a court grants a petition, the petitioner receives a new sentencing hearing. In this scenario, the court is to resentence the individual “as if they have not previously been sentenced.” The new sentence cannot be greater than the original sentence.

SB 6164 is an example of prosecutor-initiated resentencing (PIR), an approach that originated in the work of *For the People*, a nonprofit organization founded by former San Francisco prosecutor Hillary Blout.¹⁸ In 2018, the California legislature was the first to authorize prosecutors to petition courts to resentence individuals. It also funded a three-year pilot project in nine geographically and demographically diverse California counties and an independent evaluation of this initiative.

¹⁷ RCW 36.27.130.

¹⁸ For the People, *Prosecutor-Initiated Resentencing: California's Opportunity to Expand Justice and Repair Harm* (Oakland, CA: For the People, 2021).

Since the passage of California’s statute, four other states, including Washington, have adopted PIR. Unlike California, however, none of the other states have allocated funding to support these initiatives or for independent evaluation thereof.¹⁹ Moreover, in Washington, no government entity is tracking the extent to which defendants are requesting, prosecutors are petitioning for, and courts are granting resentencing hearings as authorized under SB 6164. For this reason, little is known about the impact of this statutory reform in Washington State.

DATA AND ANALYTIC APPROACH

To assess the impact of SB 6164, we submitted Public Disclosure Act (PDA) requests to prosecutor offices in all 39 Washington State counties in November 2022. Specifically, we requested “any and all documents related to all 6164 petitions your office has submitted, or been asked to submit, to the courts. These records may include any letters or memoranda requesting that your office submit or support a 6164 petition; any 6164 petitions and associated materials your office has submitted to the courts requesting a resentencing; and any documents associated with any resentencing hearings (such as sentence recommendations and amended Judgment and Sentence forms) that have taken place in response to those petitions.”

Prosecutors’ offices generally responded to this initial request in multiple installments, sharing via email or a secure portal thousands of pages of relevant documents received by their offices. We organized these documents in separate county files and created a spreadsheet documenting each individual request. When reviewing these documents, we recorded whether each request was made *pro se* or with the assistance of counsel, as indicated by written communication. For each request, we also documented whether prosecutors denied the request or supported it by petitioning the court for resentencing. We also enumerated instances in which prosecutor decisions were pending or unclear.

Of the 39 prosecutor offices in Washington, 23 fulfilled our PDA request within three months. Another eight offices fulfilled it within six months, and another four fulfilled it within a year. Four counties, including the state’s three largest counties (King, Pierce, and Snohomish) were unable to fulfill our original request in over a year. In this context, we subsequently amended our request to include only 6164 resentencing petitions their offices had filed (as opposed to all requests they had received). At the time of this writing, Stevens County has yet to fulfill either the original or the amended PDA request.

¹⁹ Ibid.

As we continued to receive and review records, attorneys at the Washington Defenders' Association (WDA) made a separate PDA request to all 39 prosecutor offices regarding 6164 decisions. WDA submitted their request in August 2023 with a specific aim of understanding gaps in counsel for people seeking resentencing relief. WDA's request offered a chance to compare records. This was particularly beneficial because WDA's request was made nine months after ours, enabling us to see if prosecutors had received any additional defendant requests, filed any new petitions, or altered any pending decisions since we initially contacted their offices.

We compared our records with those obtained by WDA in February and March of 2024. Upon first review, WDA's estimate of the number of resentencing petitions filed appeared to be significantly higher than our own. Through closer examination of WDA records, however, it became clear that the number of resentencings prosecutors reported to WDA included resentencing hearings that occurred as a result of a reform other than SB 6164. Some, for example, were resentenced under SB 5154, which removed Robbery II from a list of strike-able offenses and mandated resentencing in cases where that offense had counted as a strike. Still others were resentenced under *In re Domingo-Cornelio* and *In re: Ali*. These resentencing hearings are enumerated in our previous report on the impact of other reforms.²⁰ Below, we enumerate only petitions submitted by prosecutors to sentencing courts as authorized specifically under SB 6164.

To confirm our findings, we followed up with each prosecutor's office that appeared to have submitted a 6164 resentencing petition to obtain any petitions we did not have from our previous PDA request. Each county responded, clarifying how many petitions their office had submitted and providing relevant documentation. The results presented below reflect the number of 6164 petitions filed by prosecutors through at least the end of August 2023.

To calculate the number years of incarceration avoided due to changes to sentences under SB 6164, we compared the original and amended sentences. Seattle Clemency Project (SCP) staff accessed this sentencing data from Washington's Judicial Access Browser System (JABS).²¹ Because JABS is known to occasionally have data entry errors, we compared the information found in JABS with the information presented in the Judgment and Sentencing (J&S's) forms submitted by judges upon resentencing whenever possible. Because it is not possible to know how long people originally sentenced to life in prison without the possibility of parole (LWOP) would have spent in prison absent their resentencing, we exclude these four individuals from our calculations.

²⁰ Katherine Beckett and Allison Goldberg, *Sentencing Reform in Washington State: Progress and Pitfalls* (2024).

²¹ This online records portal is restricted to attorneys and their staff in Washington. Many thanks to Kaitlyn Laibe for her support of this process.

FINDINGS

Defendant Requests for Resentencing Under 6164

In response to our initial PDA request, we received documentation of 893 requests submitted by imprisoned people to prosecutors. However, several counties never provided us with documentation of all requests they had received. For this reason, 893 is clearly an undercount. In response to WDA's request that prosecutors enumerate how many requests their offices had received, prosecutors reported having received a total of 1,251 such requests. Although it appears that some of these latter may have been requests for resentencing under other policy reforms, most pertained to SB 6164.

In short, while data limitations prevent us from knowing *precisely* how many individuals have submitted requests for petitions, it appears that **more than a thousand incarcerated people have requested that prosecutors submit a petition for a resentencing hearing under 6164.**

It is also clear that most of these requests came from defendants themselves rather than from attorneys. Of the 893 requests for which we received full documentation, just 94 of 893 (10.5 percent) were submitted by attorneys on behalf of imprisoned people. Defendants with attorneys seemed to get more thorough explanations from prosecutors regarding the reasons for the denial of the request. In addition, emails between prosecutors revealed considerable uncertainty about the implications of SB 6164 and how it can and should be operationalized. Unfortunately, the available records do not enable analysis of defendant characteristics such as race, gender, or offense type.

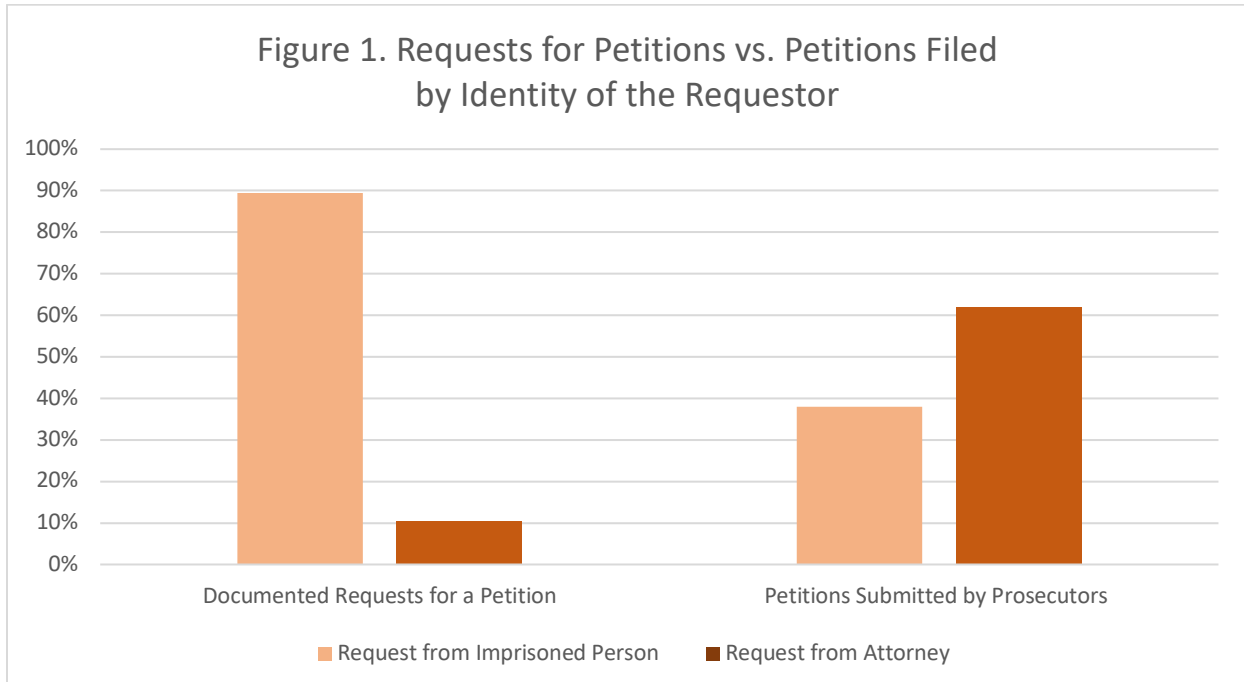
Resentencing Petitions Submitted to Courts by Prosecutors

In response to the more than one thousand requests submitted by imprisoned people to prosecutors, we were able to document **a total of 42 petitions for resentencing submitted by prosecutors to the courts under SB 6164.**²² Most counties have not submitted any petitions for resentencing as authorized by SB 6164. Specifically, prosecutors in twenty-seven counties that have received 6164 resentencing requests have not filed any petitions. Prosecutors in another four counties have filed just one petition. **Overall, 29 of the 42 (69 percent) of the petitions filed by prosecutors were filed in one of three counties (Pierce, King, or Clark).**

Prosecutors were far more likely to support requests for petitions when those requests were submitted by attorneys. As noted previously, attorneys submitted about one in ten requests for a petition. By contrast, 61.9 percent of the people whose requests were supported by prosecutors

²² One prosecuting attorney with whom we spoke indicated that although his office had not submitted any 6164 petitions, reviewing these requests did lead his office to support other kinds of legal relief in a few cases. We are unable to assess the prevalence of this pattern.

had legal representation. It thus appears that access to legal counsel has an important impact on the likelihood that prosecutors will respond favorably to requests to submit petitions under SB 6164.



Source: Records obtained in response to Public Disclosure Act requests. Only requests for which full documentation was provided are included here.

Note: Records were up to date through at least August 2023.

The Courts Response to 6164 Petitions

When prosecutors do petition the courts for resentencing under SB 6164, courts grant them.

As of May 2024, 41 of the 42 resentencing requests have been granted, with one court hearing pending scheduling (see Table 1 below).

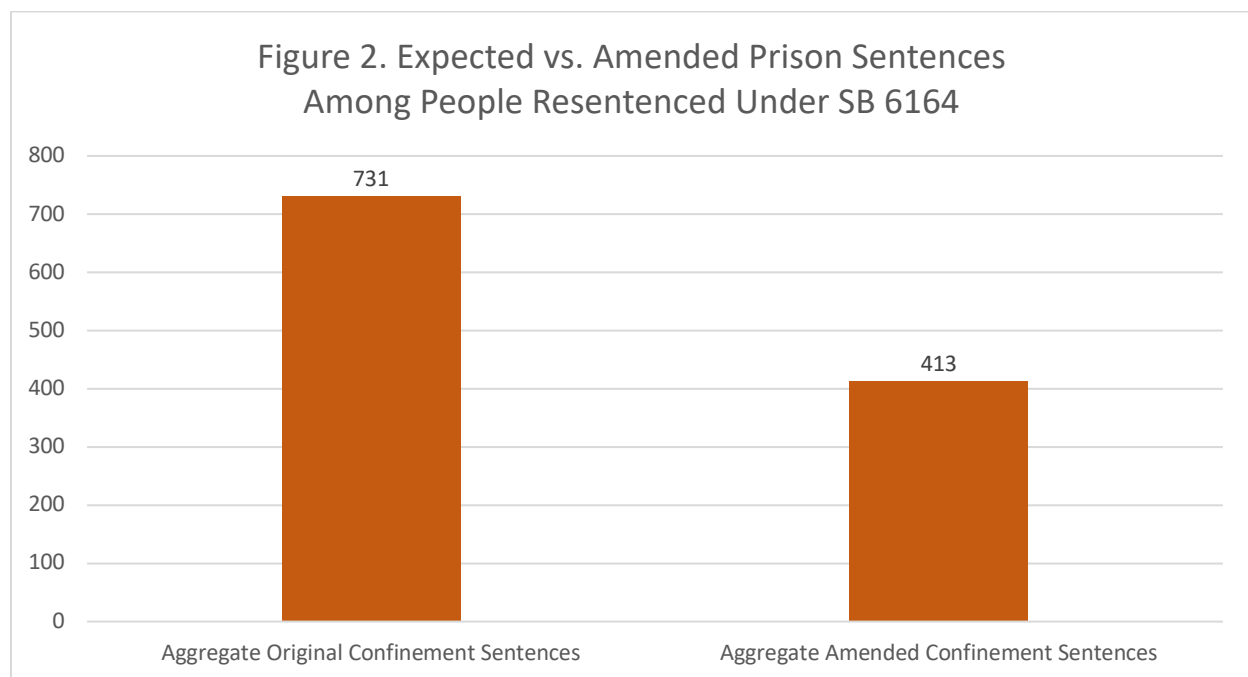
Table 1. Prosecutor-Initiated Resentencing Petitions Submitted and Granted, by County

| | Number of Petitions Submitted by Prosecutors to the Courts | Number of Resentencing Hearings |
|-----------------|--|---------------------------------|
| Adams | 0 | 0 |
| Asotin | 0 | 0 |
| Benton | 1 | 1 |
| Chelan | 0 | 0 |
| Clallam | 0 | 0 |
| Clark | 10 | 10 |
| Columbia | 0 | 0 |
| Cowlitz | 0 | 0 |
| Douglas | 1 | 1 |
| Ferry | 0 | 0 |
| Franklin | 0 | 0 |
| Garfield | 0 | 0 |
| Grant | 0 | 0 |
| Grays Harbor | 0 | 0 |
| Island | 0 | 0 |
| Jefferson | 0 | 0 |
| King | 8 | 8 |
| Kitsap | 2 | 2 |
| Kittitas | 0 | 0 |
| Klickitat | 0 | 0 |
| Lewis | 0 | 0 |
| Lincoln | 1 | 1 |
| Mason | 0 | 0 |
| Okanogan | 0 | 0 |
| Pacific | 0 | 0 |
| Pend Oreille | 0 | 0 |
| Pierce | 11 | 10 |
| San Juan | 0 | 0 |
| Skagit | 1 | 1 |
| Skamania | 0 | 0 |
| Snohomish | 3 | 3 |
| Spokane | 4 | 4 |
| Stevens | 0 | 0 |
| Thurston | 0 | 0 |
| Wahkiakum | 0 | 0 |
| Walla Walla | 0 | 0 |
| Whatcom | 0 | 0 |
| Whitman | 0 | 0 |
| Yakima | 0 | 0 |
| WA STATE | 42 | 41 |

Source: Records obtained through Public Disclosure Act requests.

Note: Records were up to date through at least August 2023.

Many of the individuals who were granted sentence review by the court were originally sentenced at the peak of the tough-on-crime era, and had served decades behind bars at the time of their hearing. As a result, **these resentencing hearings led to real reductions in prison terms.** Collectively, the 37 individuals who have been resentenced under SB 6164 and had a known prison sentence were originally sentenced to over 700 years in prison. Amending these sentences reduced this aggregate figure by 43.5 percent, to just over 400 years (see Figure 2).



Source: Sentencing information based on records obtained through JABS and amended Judgment and Sentence forms.

Notes: These figures do not include the four individuals who were resentenced after originally receiving a sentence of life without the possibility of parole or the one individual who had not yet been resentenced.

On average, the 37 individuals reflected in these aggregate figures were originally sentenced to 19.8 years. After resentencing, their average sentence was 11.2 years.

CONCLUSION AND RECOMMENDATIONS

Summary of Findings

Previous research shows that recent sentencing reforms aimed mainly at people serving long or life sentences have facilitated the release of just under 300 people in Washington State. Far too many people continue to serve excessive prison sentences, including many people who are now in their 50s, 60s, and beyond.

In the absence of comprehensive, retroactive sentencing reform, prosecutor-initiated resentencing could, in theory, play an important role in remedying the harm caused by the extraordinarily harsh sentencing policies and practices of the 1990s and 2000s. Unfortunately, this promise has not yet been realized in Washington State.

Nearly 7,000 people are serving long or life sentences in Washington, and over a thousand of these individuals have requested that prosecutors petition courts for a resentencing hearing. Nonetheless, we were able to document just 42 formal requests (i.e. petitions) for re-sentencing submitted by prosecutors to courts under SB 6164 in the roughly four years since its enactment. Prosecutors in most counties have not submitted any petitions for resentencing under SB 6164. Prosecutors in three counties (Pierce, King, and Clark) have submitted more than two-thirds of all petitions, raising important concerns about “justice by geography.”²³

Differential access to legal counsel also raises important questions about justice and equity in prosecutor-initiated resentencing. Our findings indicate that the likelihood that prosecutors will submit a petition depends, to a significant degree, on the identity of the requestor: one in ten requests for a petition were submitted by attorneys on behalf of potential petitioners, but more than 60 percent of the petitions filed by prosecutors involved defendants with legal representation. Incarcerated people who do not have access to legal counsel are thus decidedly disadvantaged in the process that very occasionally yields a resentencing hearing under SB 6164.

Recommendations

Ultimately, our findings suggest SB 6164 is dramatically underutilized by prosecutors in Washington State. These findings underscore the need for comprehensive, retroactive second look reform that would create an opportunity for parole or sentence review for all of those serving long or life sentences.

In the absence of this kind of comprehensive, retroactive policy change, prosecutor-initiated resentencing could play an important role in securing sentence review for people who are being left behind by existing reforms, especially those who are serving very long or life sentences. For PIR to serve this purpose, however, prosecutors will need to use their discretion to support resentencing far more often than they have over the past four years. In this context, we recommend the following:

²³ For a discussion of this problem, see Barry C. Feld, “Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration,” *Journal of Criminal Law & Criminology* 82, 156 (1991).

1. **Research:** Support research that will illuminate why prosecutors in most counties have been unwilling to file any petitions for resentencing as authorized by SB 6164.
2. **Timeline:** Create a timeline for responding to requests for petitions. The current statute does not provide guidance about the how quickly prosecutors should review or respond to resentencing requests. Many of those who submit requests wait more than a year, or longer, or never hear anything at all about whether prosecutors will support their request.
3. **Standards and Criteria:** Clarify the criteria to be used to identify cases in which long and life sentences “no longer serve the interests of justice.” Justice-related criteria might include:
 - Length of sentence (15 years or more)
 - Racial equity concerns
 - Evidence of rehabilitation
 - Significant gaps between the sentence initially offered and the sentence imposed at trial
 - Significant gaps between the sentence imposed and contemporary sentences for similar offenses
 - The age of the petitioner at the time of the crime
 - The current age of the petitioner
 - Medical conditions that enhance petitioner vulnerability
4. **Enhance transparency:** Our review of the letters sent to prosecutors’ offices, and responses to these letters, revealed a lack of understanding about 6164 processes and the absence of clear criteria and procedures to guide decision-making. We therefore recommend that each county be required to create and publish its criteria and procedures. Additionally, creating a mechanism for, and requiring that, prosecutors submit intake and response data to the Caseload Forecast Council (or another state entity capable of receiving and organizing these records) would enable on-going assessment of the implementation of SB 6164.
5. **Provide training and ensure systematic review:** Resentencing pursuant to RCW 36.27.130 must be sufficiently resourced to be effective and equitable. Few incarcerated people have access to legal counsel to assist them to prepare a request for resentencing, but people with attorneys are more likely to be granted relief. In addition, review of long sentences often involves taking a second look at serious, class A felony crimes. This is complex work for which training is required. Funding for post-conviction sentence review work housed in Conviction Integrity Clinics in the state’s leading law schools might help to achieve these goals.