

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3163

BY DELEGATES YOUNG, PUSHKIN, FLUHARTY, WALKER,

AND THOMPSON

[Introduced March 15, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §62-11A-1b, relating to providing a procedure for modification of a prison
 3 sentence when a person has served at least 10 years of a sentence.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1b. Second Look Sentencing Act - Modification of sentencing alternatives.

1 Notwithstanding any other provision of this code to the contrary:

2 (a) Modification.-- Judges may consider and modify a prison sentence that is more than
 3 10 years if: A person has served least 10 years of their sentence; and the court finds that: (1) The
 4 defendant is not a danger to any person or community; or (2) the defendant presents no credible
 5 risk of criminal conduct; or (3) the defendant demonstrates a readiness for reentry; and (4) the
 6 interests of justice warrant a sentence modification. Individuals granted a sentence modification
 7 shall remain under supervised release for no more than five years following their release from
 8 prison. The court shall state on the record the reasons for granting or denying a sentence
 9 modification. There is a presumption of release for a defendant who is 50 years or older on the
 10 date of application for resentencing.

11 (b) Reapplication.-- Any person who is denied a sentence modification may reapply after
 12 the following period: (1) A second application may be made five years after an order was entered
 13 by the court for the first application. If a defendant appeals the decision of the first application,
 14 they may not file a second petition. (2) A third application may be made two years after an order
 15 was entered by the court for the second application. (3) A final application may be made when
 16 the defendant is 50 years or older and has exhausted the sentencing modification process.

17 (c) Factors Considered.-- When determining to modify a sentence, the court may consider
 18 the factors in subsection (a) of this section, including the nature of the offense, the history and
 19 characteristics of the defendant. The court shall consider: (1) The age of the defendant at the time
 20 of the offense; (2) the age of the defendant at the time of the petition, and relevant data on age

21 and declining criminality; (3) a report and recommendation of the Commissioner of Corrections,
22 including information on compliance, and completion of any educational, vocational or other
23 programs; (4) a report and recommendation of the prosecuting attorney of the county in which
24 the defendant was convicted; (5) whether the defendant has demonstrated maturity, rehabilitation
25 and fitness to reenter society sufficient to justify a sentence modification; (6) a statement from the
26 victim or a family member of the victim, if the victim is deceased; (7) a report on the physical,
27 mental or psychiatric examination of the defendant; (8) the family and community circumstances
28 of the defendant at the time of the offense, including history of abuse or involvement in child
29 welfare system, and the potential benefits to children and family members of reunification with the
30 defendant; (9) the extent of the role of the defendant in the offense and whether and to what
31 extent an adult was involved (if the defendant was a juvenile at the time of the offense); (10) the
32 diminished culpability of juveniles compared to adults; if the defendant was a juvenile at the time
33 of the offense; and (11) any other information the court finds relevant.

34 (d) Appeal.-- The state or the defendant may file an appeal for a review of a final order of
35 either the initial application for a sentence modification or the final application when the defendant
36 is over 50 years old.

NOTE: The purpose of this bill is to provide a procedure for modification of a prison sentence when a person has served at least 10 years of a sentence.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.