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**SUBSTITUTE SENATE BILL 6004**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Oemig, Kline and Hargrove)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to exceptional sentences; and amending RCW  
2 9.94A.537.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.94A.537 and 2005 c 68 s 4 are each amended to read  
5 as follows:

6 (1) At any time prior to trial or entry of the guilty plea if  
7 substantial rights of the defendant are not prejudiced, the state may  
8 give notice that it is seeking a sentence above the standard sentencing  
9 range. The notice shall state aggravating circumstances upon which the  
10 requested sentence will be based.

11 (2) In any case where an exceptional sentence above the standard  
12 range was imposed prior to April 15, 2005, and where a new trial or new  
13 sentencing hearing is required, the superior court may impanel a jury  
14 to consider any alleged aggravating circumstances listed in RCW  
15 9.94A.535(3) that were relied upon by the superior court in imposing  
16 the previous sentence at either the new trial or, if no new trial is  
17 necessary, at the new sentencing hearing.

18 (3) The facts supporting aggravating circumstances shall be proved  
19 to a jury beyond a reasonable doubt. The jury's verdict on the

1 aggravating factor must be unanimous, and by special interrogatory. If  
2 a jury is waived, proof shall be to the court beyond a reasonable  
3 doubt, unless the defendant stipulates to the aggravating facts.

4 ~~((+3))~~ (4) Evidence regarding any facts supporting aggravating  
5 circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented  
6 to the jury during the trial of the alleged crime, unless the jury has  
7 been impaneled solely for resentencing, or unless the state alleges the  
8 aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i),  
9 (o), or (t). If one of these aggravating circumstances is alleged, the  
10 trial court may conduct a separate proceeding if the evidence  
11 supporting the aggravating fact is not part of the res geste of the  
12 charged crime, if the evidence is not otherwise admissible in trial of  
13 the charged crime, and if the court finds that the probative value of  
14 the evidence to the aggravated fact is substantially outweighed by its  
15 prejudicial effect on the jury's ability to determine guilt or  
16 innocence for the underlying crime.

17 ~~((+4))~~ (5) If the superior court conducts a separate proceeding to  
18 determine the existence of aggravating circumstances listed in RCW  
19 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall  
20 immediately follow the trial on the underlying conviction, if possible.  
21 If any person who served on the jury is unable to continue, the court  
22 shall substitute an alternate juror.

23 ~~((+5))~~ (6) If the jury finds, unanimously and beyond a reasonable  
24 doubt, one or more of the facts alleged by the state in support of an  
25 aggravated sentence, the court may sentence the offender pursuant to  
26 RCW 9.94A.535 to a term of confinement up to the maximum allowed under  
27 RCW 9A.20.021 for the underlying conviction if it finds, considering  
28 the purposes of this chapter, that the facts found are substantial and  
29 compelling reasons justifying an exceptional sentence.

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