

HOUSE BILL REPORT

HB 2595

As Passed House:
February 12, 2010

Title: An act relating to imposing a sentence outside the standard sentence range for defendants who intercept police communication as a means to facilitate the crime.

Brief Description: Imposing a sentence outside the standard sentence range for defendants who intercept police communication as a means to facilitate the crime.

Sponsors: Representatives Rolfes, Kelley, Ericks, Kirby and Hurst.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/20/10, 1/22/10 [DP].

Floor Activity:

Passed House: 2/12/10, 97-0.

Brief Summary of Bill

- Makes intercepting police communication as a means to facilitate a crime an aggravating circumstance in the Sentencing Reform Act.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

Staff: Yvonne Walker (786-7841).

Background:

Generally, the standard sentencing range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the standard range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The Sentencing Reform Act (SRA) provides a list of factors that a court may

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consider in deciding whether to impose an exceptional sentence outside of the standard range. Some of the aggravating factors provided by the SRA include: behavior that manifested deliberate cruelty to a victim; vulnerability of a victim; sexual motivation on the part of the defendant; and an ongoing pattern of multiple incidents of abuse to a victim.

Prior to 2004 a court could sentence, on its own initiative, an offender above or below the standard range if it found, by a preponderance of the evidence, that aggravating or mitigating circumstances existed. In 2004 the U.S. Supreme Court ruled that sentencing an offender above the standard range in this manner is unconstitutional. *Blakely v. Washington*, 542 U.S. 296 (2004). According to the court, any factor that increases an offender's sentence above the standard range, other than the fact of a prior conviction, must be proved to a jury beyond a reasonable doubt. *Blakely* did not affect a court's ability to impose an exceptional sentence below the standard range. In 2005 the Legislature amended the procedure for imposing exceptional sentences in light of *Blakely*. Under this new procedure, the court no longer has the authority to impose an aggravated exceptional sentence on its own initiative in most circumstances. Instead, the prosecutor must provide notice that he or she is seeking a sentence above the standard range. The prosecutor must then prove the aggravating circumstances justifying such a sentence to a jury beyond a reasonable doubt.

Summary of Bill:

A new aggravating circumstance is added to the list of circumstances that may lead to an exceptional sentence above the standard range. The offense of intercepting police communication as a means to facilitate a crime is a new aggravating circumstance. This aggravating circumstance, must be found by a jury beyond a reasonable doubt before an exceptional sentence can be imposed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In the rural counties there are a limited number of sheriff deputies out on patrol at any one time. The more clever perpetrators can follow their movements and time their crimes accordingly.

Last year in Kitsap County numerous homes were broken into and many items were stolen. The burglar and his partner used a police scanner to locate at what end of the county the sheriffs deputies were working in at the time. The offenders ended up going to the opposite end of the county and burglarizing over 90 homes. This bill will make it more difficult for people to drive around and break into peoples' homes.

There is a long list of aggravating circumstances in Washington's criminal code and the intercepting of police communication should be one of them.

(Opposed) None.

Persons Testifying: Representative Rolfes, prime sponsor; and Debra Nelson.

Persons Signed In To Testify But Not Testifying: None.