

SENATE BILL REPORT

HB 2595

As of February 26, 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: Passed House: 2/12/10, 97-0.

Committee Activity: Judiciary: 2/26/10.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: Under most circumstances, felonies are sentenced pursuant to the standard sentencing range. However, in exceptional cases a court has discretion to depart from the standard range and 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 consider in deciding whether to impose an exceptional sentence outside of the standard range. A court may on its own initiative sentence an offender below the standard range if it finds, by a preponderance of the evidence, that mitigating circumstances exist. However, in most circumstances a court is no longer authorized to impose an aggravated exceptional sentence on its own initiative. Rather, the prosecutor is required to 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: Intercepting police communication as a means to facilitate a crime is an aggravating circumstance that may lead to an exceptional sentence above the standard range. 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: In our rural counties, it is possible for burglars to track sheriffs by way of a police scanner and burglarize entire neighborhoods knowing that the sheriff is on the other side of the district. Currently, evidence of intercepting police communications to commit the crime is not taken into account during sentencing, and this bill would require it to be taken into consideration.

CON: Using a police scanner to perpetrate criminal offenses is not a common occurrence. It is something that would be difficult to prove as scanners are legal to own. There is nothing special about this technology. You can get a scanner at Radio Shack or even online. An offender could even pay someone else to listen to the scanner and let the offender know where to go to commit the crime. This bill is aimed at one occurrence. A crime should not be created to address one occurrence. It is not necessary to create another aggravating factor with this bill.

Persons Testifying: PRO: Representative Rolfes, prime sponsor.

CON: Leslie Tolzin, Washington Association of Criminal Defense Attorneys, Washington Defenders Association.