SENATE BILL REPORT
SB 6160

As of April 21, 2009

Title: An act relating to criminal justice..

Brief Description: Relating to criminal justice.

Sponsors: Senator Prentice.

Brief History:
Committee Activity: Ways & Means: 4/22/09.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Richard Ramsey (786-7412)

Background: I. Standard Range Sentences. Prior to 1984, courts were required to impose "indeterminate" sentences upon persons convicted of felonies. Under this system, a court would impose a minimum term and a maximum term. The Board of Prison Terms and Paroles (now called the Indeterminate Sentence Review Board) would evaluate the offender and determine whether the offender could be paroled prior to the expiration of the maximum term. Indeterminate sentencing still applies to offenders convicted of offenses committed prior to July 1, 1984.

In 1981 the Legislature enacted the Sentencing Reform Act (SRA), which imposed "determinate" sentences on offenders who committed their offenses on or after July 1, 1984. Under determinate sentencing, a court must sentence an offender to a term within a standard range. The standard range is determined using a grid with the offender's criminal history (called "offender score") on the horizontal axis and the severity of the crime (called "seriousness level") on the vertical axis. The standard ranges in the grid are subject to certain limitations. For example, if the maximum of the range is greater than one year, the minimum term may be no less than 75 percent of the maximum term of the range.

An offender sentenced to a term of more than one year must serve his or her term of confinement in a state facility. An offender sentenced to a term of one year or less must serve his or her term of confinement in county jail.

II. Exceptional Sentences. 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,

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that aggravating or mitigating circumstances existed. This type of sentence is known as an "exceptional sentence." In 2004 the United States 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.

The new procedure put in place by the Legislature preserved the court's ability to impose exceptional sentences above the standard range on the court's own initiative only in the following situations:

- the defendant and the prosecutor both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the SRA;
- the defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of the SRA;
- the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished; or
- the failure to consider the defendant's prior criminal history, which was omitted from the offender's offender score calculation, results in a presumptive sentence that is clearly too lenient.

In 2005 the Washington Supreme Court ruled that the question of whether a standard range sentence is too lenient, or whether allowing a current offense to go unpunished is too lenient, is a factual determination that may not be made by the court under *Blakely*. *State v. Hughes*, 154 Wn.2d 118 (2005).

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): I. Standard Range Sentences. The current sentencing grid for non-drug offenses is replaced. Most of the standard ranges of greater than one year are changed by decreasing the minimum of the range, increasing the maximum of the range, or both. A new column is added to the grid for offender scores of ten or more. The statutory limitations on the ranges in the grid are amended to accommodate the ranges in the new grid: if the maximum of the range is greater than one year, the minimum term may be no less than 60 percent of the maximum of the range; for offenses with an offender score of ten or more, the minimum term of the range may be no less than 25 percent of the maximum term in the range.

If an offender's standard range has a minimum of more than ten months, the offender must serve his or her term if confinement in a state (as opposed to a county) facility.

II. Exceptional Sentences. A new mitigating circumstance is added to the list of circumstances that may lead to an exceptional sentence below the standard range: when the offender score, due to other current offenses (as opposed to prior offenses), results in a presumptive sentence that is clearly excessive.

The following aggravating circumstances that currently may be found by a judge are moved to the list of aggravating circumstances that must be found by a jury beyond a reasonable doubt:

- The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of the SRA.
- The failure to consider the defendant's prior criminal history, which was omitted from the offender's offender score calculation, results in a presumptive sentence that is clearly too lenient.

Appropriation: None.

Fiscal Note: Requested on April 21, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on August 1, 2009.