
**Criminal Justice & Corrections
Committee**

HB 2458

Brief Description: Providing advisory sentencing guidelines.

Sponsors: Representatives Rodne, Sump, O'Brien, Ericks, Walsh, Haler, Ericksen, Dunn and Woods.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Makes the upper limit of the standard range advisory only for violent offenses.

Hearing Date: 1/17/06

Staff: Jim Morishima (786-7191).

Background:

Prior to 1984, courts were required to impose "indeterminate" sentences upon persons convicted of crimes. 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 he or she could be paroled prior to the expiration of the maximum term. Indeterminate sentencing still applies to offenders convicted for offenses committed prior to July 1, 1984.

In 1981, the Legislature enacted the Sentencing Reform Act, which imposed "determinate" sentences on offender convicted 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.

Prior to 2004, a court could, on its own initiative, sentence an offender outside the standard range if it found, by a preponderance of the evidence, 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 supreme 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.

In 2005, the Legislature amended the procedure for imposing exceptional sentences in light of *Blakely*. Under this new procedure, 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 court no longer has the authority to impose an aggravated exceptional sentence on its own initiative.

Other methods to address *Blakely* have been considered by other jurisdictions, including the federal government. For example, in *United States v. Booker*, 543 U. S. 220 (2005), the United States Supreme Court invalidated a portion of the federal law, which, in effect, made the federal sentencing guidelines advisory only. This enabled a court to sentence an offender on its own initiative, and for reasons that do not have to be proved to a jury beyond a reasonable doubt, without violating *Blakely*.

Summary of Bill:

The upper limit of the standard range is advisory only for offenders convicted of a violent offense. The court may, on its own initiative, sentence such an offender above the standard range. However, if the prosecutor seeks a sentence above the standard range, he or she must assert a statutory aggravating factor for doing so. The upper limit of a sentence for a violent offense is as follows:

- If the lower limit of the standard range is more than 12 months, the upper limit is the lesser of the statutory maximum sentence or twice the upper limit of the standard range.
- If the lower limit of the standard range is 12 months or less, the upper limit is the lesser of 12 months or twice the upper limit of the standard range.

In making its determination of the sentence length, the court must consider the risk assessment prepared by the Department of Corrections, the pre-sentence report, any materials provided by the offender, and any materials provided by the victim.

Appropriation: None.

Fiscal Note: Requested on January 11, 2006.

Effective Date: The bill contains an emergency clause and takes effect immediately.