

SENATE BILL REPORT

SB 5477

As Passed Legislature, April 15, 2005

Title: An act relating to sentencing outside the standard sentence range.

Brief Description: Revising sentencing procedures for exceptional sentences.

Sponsors: Senators Kline, Brandland, Hargrove, Esser, Fairley, Kastama, Shin, Pridemore, Weinstein, Haugen, Berkey, Prentice and Rockefeller.

Brief History:

Committee Activity: Judiciary: 2/8/05, 2/23/05 [DP].

Passed Senate: 3/15/05, 48-0.

Passed House: 4/12/05, 96-1 (House Amended).

Passed Senate: 4/14/05, 46-0 (Senate Concurred).

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: Under current Washington statutes, convicted offenders and those that plead guilty are sentenced by a judge during a sentencing hearing. Most offenders receive sentences within the standard sentence range, but the judge can impose a sentence other than the standard sentence if the judge finds substantial and compelling reasons that justify a mitigated (shorter) or aggravated (longer) sentence. Non-exclusive lists of mitigating and aggravating factors are provided by statute.

In relation to aggravated sentences, this procedure was invalidated by the United States Supreme Court in *Blakely v. State of Washington*. The U. S. Supreme Court held that, because the facts of Blakely's exceptional sentence were neither admitted nor found by a jury, the sentence violated his Sixth Amendment right to trial by jury under the Constitution of the United States.

The rule now is that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." The relevant statutory maximum is the top of the standard range for that crime. Since the Washington statute does not provide for a jury to find the facts necessary to justify an exceptional sentence longer than the standard range sentence, sentencing under its provisions violate the Sixth Amendment. The Washington Supreme Court subsequently held that the legislature must provide the appropriate processes for imposing aggravated sentences.

Summary of Bill: The list of mitigating factors justifying a mitigated sentence (downward departure) remains illustrative and the process for determining whether a mitigated sentence is appropriate remains unchanged. Either party or the court may initiate proceedings for a mitigated sentence and the court determines, by a preponderance of the evidence, whether substantial and compelling reasons exist to impose a sentence below the standard sentence range.

The list of aggravating factors used to justify an upward departure from the standard sentence range is made exclusive. The aggravating factors list is expanded to include current judicially recognized factors. Four aggravating factors, all based on questions of law, may be used to impose a sentence above the standard range without findings of fact by a jury. The remaining twenty-five aggravating factors pose questions of fact that must be submitted to a jury.

At any time prior to trial or entry of a guilty plea, the state may give notice that it is seeking a sentence above the standard sentence range. A judge may no longer independently seek a sentence above the standard sentence range. The court then makes an initial determination regarding whether the evidence allegedly supporting a sentence above the standard sentence range can be admitted during the trial for the underlying offense or whether: (1) the evidence is not part of the evidence required to prove the crime; (2) the evidence is not otherwise admissible; and (3) admission of the evidence would be unfairly prejudicial at trial. If the evidence is not admitted at the trial for the underlying offense and the defendant is found guilty, a separate sentencing departure hearing is conducted using the same jury.

The state has the burden of proving, beyond a reasonable doubt, the existence of one or more aggravating factors. The jury verdict must be unanimous. To impose a sentence above the standard sentence range, the court must then find that the factors constitute substantial and compelling reasons justifying the exceptional sentence and must set forth those reasons in written findings and conclusions of law.

The sentencing guidelines commission is directed to study and draft proposed legislation addressing judicial discretion issues under the sentencing reform act. The study and proposed legislation must be submitted to the legislature by December 1, 2005.

Appropriation: None.

Fiscal Note: Requested on February 1, 2005.

Committee/Commission/Task Force Created: No.

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

Testimony For: This limited procedural fix addresses the small number of very serious cases effected by the *Blakely* decision. The *Blakely* decision had a minor impact on Washington, so a targeted statutory fix is all that is required. Judges retain the authority to impose an exceptional sentence subject to the jury's findings of fact. The fiscal impact will be minimal because proof of aggravating factors is straight-forward and most issues will be admissible during the main trial. Judges can reject pleas in appropriate cases

Testimony Against: This bill strips judges of any significant role in imposing an aggravated sentence. Judges are reduced to scriveners, leaving it to prosecutors to determine the sentence

through their charging practices. We cannot be certain that this will completely address all of the court's constitutional objections. Rejecting a guilty plea is a false solution because the judge does not have enough information at that point to make an informed decision.

Who Testified: PRO: Senator Kline, prime sponsor; Norm Maleng, King County Prosecuting Attorney; Russ Hauge, Kitsap County Prosecuting Attorney; David Boerner, Sentencing Guidelines Commission; Ramona Brandes, WACDL, WDA.

CON: Judge Leonard Costello, Superior Court Judges Association; Judge Deborah Fleck, Superior Court Judges Association; Judge Catherine Shaffer, Superior Court Judges Association.