
**Public Safety & Emergency Preparedness
Committee**

HB 1501

Brief Description: Addressing mitigating factors in sentencing juveniles sentenced as adults.

Sponsors: Representatives Appleton, Roberts, Moeller, Goodman, Ormsby, Green, Sells, Nelson, Hasegawa and Kagi.

Brief Summary of Bill

- Adds two additional factors related to the age, maturity, and criminal history of the defendant to the non-exclusive list of mitigating circumstances that a court may consider in imposing an exceptional sentence below the standard range.

Hearing Date: 2/4/09

Staff: Lara Zarowsky (786-7123)

Background:

When a person is convicted of a felony, a court must generally sentence the offender within a standard range determined by the person's criminal history and the seriousness level of the crime. Any sentence imposed that falls within that range may not be appealed.

Exceptional Sentences

A court may impose a sentence above or below the standard range if it finds that there are substantial and compelling reasons justifying an exceptional sentence based upon aggravating or mitigating factors. The court must enter written findings of fact and conclusions of law setting forth the reasons for imposing an exceptional sentence. Any reason offered to justify an exceptional sentence may be considered only if it takes into account factors other than those that are used in calculating the standard range sentence for the offense.

Above the Standard Range

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.

An exceptional sentence longer than the standard range may be imposed if the prosecutor provides notice that he or she is seeking an exceptional sentence above the standard range before trial or the entry of a guilty plea in a manner that does not prejudice the substantial rights of the defendant. Other than the fact of a prior conviction, the prosecutor must then prove the aggravating circumstances justifying the exceptional sentence to a jury (or to the judge if the jury is waived) beyond a reasonable doubt. The aggravating factors identified in statute that may be considered to justify an upward departure from the standard sentence range is an *exclusive* list.

Below the Standard Range

An exceptional sentence shorter than the standard range may be imposed if the court finds mitigating circumstances are established by a preponderance of the evidence. The mitigating factors identified in statute to justify a downward departure from the standard sentence range is an illustrative list and is explicitly not intended to be an exclusive list of reasons for an exceptional sentence below the standard range.

The non-exclusive list of mitigating factors provided in statute include:

- the victim's role in the crime;
- the defendant's good faith effort to compensate the victim for any injury sustained;
- whether the defendant's participation was the result of coercion or duress;
- whether the defendant, with no apparent predisposition to do so, was induced to participate in the crime;
- the defendant's capacity to understand the nature of his or her conduct and whether his or her capacity was impaired, except as a result of voluntary alcohol or drug use;
- whether the crime was primarily committed by another person and the defendant manifested extreme caution or sincere concern for the victim;
- whether the presumptive sentence is clearly excessive; and
- whether the defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

Summary of Bill:

The non-exclusive list of factors provided in statute for the court to consider in determining whether to impose an exceptional sentence below the standard range is expanded to include the following considerations:

- whether the defendant was under the age of 18 at the time the crime was committed and the defendant's youth, lack of sophistication, and lack of maturity affected the defendant's conduct; and
- whether the defendant was under the age of 18 at the time the crime was committed and was a first-time offender.

Appropriation: None.

Fiscal Note: Available.

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