Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Criminal Justice & Corrections Committee

2SSB 6497

Brief Description: Revising felony sentence ranges.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kline, Franklin and Hargrove).

Brief Summary of Second Substitute Bill

- Establishes a new sentencing grid.
- Makes changes to the manner in which exceptional sentences are imposed.

Hearing Date: 2/21/06

Staff: Jim Morishima (786-7191).

Background:

I. Standard Sentence Ranges

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 of offenses committed prior to July 1, 1984.

In 1981, the Legislature enacted the Sentencing Reform Act (SRA), 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. 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, 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 only in the following situations: (a) 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, (b) the defendant's prior un-scored misdemeanor or prior un-scored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of the SRA, (c) the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished, and (d) 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. However, in April of 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).

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 sentencing guidelines. This decision, 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:

I. Standard Sentence Ranges

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 10 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 10 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 10 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.

Three aggravating circumstances that currently can 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 un-scored misdemeanor or prior un-scored 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; and
- 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.

It is clarified that if a defendant pleads guilty to the underlying crime, but not to the aggravating circumstances supporting the imposition of an aggravated exceptional sentence, or if a case is remanded for re-sentencing, the court may empanel a jury may to determine beyond a reasonable doubt whether any aggravating circumstances alleged by the state exist. The trial on the aggravating circumstances must take place within 90 days, unless it is extended for good cause.

Appropriation: None.

Fiscal Note: Available on substitute.

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