

SB 5477 - DIGEST

(DIGEST AS ENACTED)

Declares an intent to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions.

Declares an intent that aggravating facts, other than the fact of a prior conviction, will be placed before the jury.

Declares an intent that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment.

Declares an intent to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances.

Does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances.

Does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

Declares that, while the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision.

Provides that the trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances: (1) The defendant and the state 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 sentencing reform act.

(2) 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 this chapter, as expressed in RCW 9.94A.010.

(3) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(4) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

Provides that, at any time prior to trial or entry of the

guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

Requires the facts supporting aggravating circumstances to be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

Requires the sentencing guidelines commission to review the sentencing reform act as it relates to the sentencing grid, all provisions providing for exceptional sentences both above and below the standard sentencing ranges, and judicial discretion in sentencing. As part of its review, the commission shall: (1) Study the relevant provisions of the sentencing reform act, including the provisions in this act;

(2) Consider how to restore the judicial discretion which has been limited as a result of the *Blakely* decision;

(3) Consider the use of advisory sentencing guidelines for all or any group of crimes;

(4) Draft proposed legislation that seeks to address the limitations placed on judicial discretion in sentencing as a result of the *Blakely* decision; and

(5) Determine the fiscal impact of any proposed legislation.

Requires the commission to submit its findings and proposed legislation to the legislature no later than December 1, 2005.