

HOUSE BILL REPORT

SSB 5488

As Reported by House Committee On: Public Safety

Title: An act relating to the sentencing of persons under the age of twenty-one years at the time of the commission of a crime.

Brief Description: Concerning the sentencing of persons under the age of twenty-one years at the time of the commission of a crime.

Sponsors: Senate Committee on Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Saldaña, Wilson, C., Keiser and Nguyen).

Brief History:

Committee Activity:

Public Safety: 3/19/19, 3/28/19 [DPA].

Brief Summary of Substitute Bill (As Amended by Committee)

- Allows a judge to sentence a criminal defendant below the standard range if the judge finds that the defendant is less culpable because of youthfulness, which includes certain factors not shown in a fully developed adult.
- Allows a judge to depart from mandatory sentencing enhancements when sentencing a criminal defendant in adult court for a crime committed under age 18.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Goodman, Chair; Davis, Vice Chair; Sutherland, Assistant Ranking Minority Member; Lovick, Orwall, Pellicciotti and Pettigrew.

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert, Ranking Minority Member; Griffey.

Staff: Kelly Leonard (786-7147).

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.

Background:

Adult Sentencing Laws.

Felony crimes are generally classified as A, B, or C. The classification generally determines the maximum term of confinement. However, the Sentencing Reform Act (SRA) controls the actual term of confinement in adult court. The SRA is generally a determinate sentencing system in which a judge selects a particular sentence from a standard range. The standard range is determined by reference to a statutory grid, which is based on the defendant's criminal history and the severity of the offense. The grid provides the base sentence, but additional sentencing policies can increase or decrease the base sentence. This includes, for example, exceptional sentences and enhancements.

In a typical felony case, the standard range is presumed to be appropriate. However, the SRA allows the court to impose a sentence outside the standard range for substantial and compelling reasons. An exceptional sentence may either be below the standard range (with a mitigating circumstance) or above the standard range (with an aggravating circumstance). While aggravating circumstances must be proven before a jury, a judge retains the discretion to adjust a sentence downward based on mitigating circumstances. The SRA provides a nonexhaustive list of mitigating circumstances upon which an exceptional sentence may be based.

A sentencing enhancement is a statutory mechanism to increase a term of confinement when an offense involves certain conduct. An enhancement adds a specified number of months to an offender's base sentence. Several types of enhancements are authorized in statute, including, for example, using a firearm and deadly weapon in furtherance of the offense (six months to 10 years), committing an offense with sexual motivation (12 months to four years), and committing a drug offense in a protected zone (24 months). Certain enhancements are mandatory and must be served consecutively.

Youthful Offenders in Adult Court.

There are two primary circumstances where charges for a crime committed under age 18 may be filed in adult court. First, certain charges involving minors can be transferred from juvenile court to adult criminal court. A transfer may occur after a discretionary hearing, or in some cases, state law mandates a transfer based on the nature of the alleged offense. Second, charges are filed in adult court if the defendant is presently over age 18, regardless of his or her age at the time of the offense.

If a crime committed under age 18 is charged in adult court and the person is convicted, the person is not subjected to juvenile sentencing standards. Instead, adult sentencing laws apply to the case. Adult sentencing laws are generally more severe than juvenile sentencing standards. However, in *State v. Houston-Sconiers*, 188 Wn.2d 1 (2017), the Washington Supreme Court (Court) held that, when sentencing persons under age 18 in adult court, the sentencing court has full discretion to consider the defendant's age as a basis for departing downward from the standard range and reducing otherwise mandatory sentencing enhancements under the SRA.

In a different case, *State v. O'Dell*, 183 Wn.2d 680 (2015), the Court addressed circumstances where a defendant was age 18 at the time of the offense but was otherwise youthful. The Court held that a defendant's youthfulness can support an exceptional sentence below the standard range even if the defendant was age 18 or older at the time of the offense. The sentencing court has discretion in determining when doing so is appropriate.

Summary of Amended Bill:

A judge may sentence a defendant below the standard range if the judge finds that the defendant is less culpable because of youthfulness at the time of the offense, which is demonstrated by age, susceptibility to peer pressure, lack of sophistication or maturity, or other factors not shown in a fully developed adult.

If a person is being sentenced in adult court for a crime committed under age 18, the court has full discretion to depart from mandatory sentencing enhancements and take the particular circumstances surrounding the defendant's youth into account.

Amended Bill Compared to Substitute Bill:

The mitigating factor for adjusting a sentence downward is modified. A judge is allowed to impose a sentence below the standard range when he or she finds that the defendant is less culpable because of youthfulness at the time of the offense, which is demonstrated by age, susceptibility to peer pressure, lack of sophistication or maturity, or other factors not shown in a fully developed adult (rather than when the judge finds that the defendant's age, lack of sophistication, susceptibility to peer pressure, or other factors relating to the defendant's youthfulness render the defendant less culpable than if the offense had been committed by a fully developed adult).

The provisions pertaining to sentencing enhancements are modified by:

- removing certain cross-references to clarify that the court discretion to reduce mandatory sentencing enhancements for persons under age 18 applies to all enhancements (rather than only to certain enhancements required to be served consecutively); and
 - replacing a reference to "minor" with a person "under age 18."
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Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is the result of recent decisions from the Washington Supreme Court—*State v. Houston-Sconiers* and *State v. O'Dell*.

In the *Houston-Sconiers* decision, the court addressed circumstances where juveniles committed a series of crimes on Halloween night. In the span of 72 minutes, they stole candy, a cell phone, and a mask. One of the juveniles had a handgun. They were charged in adult court. After the juveniles rejected a plea offer, the prosecutor charged them with multiple firearm sentencing enhancements. At sentencing, the judge had no discretion to reduce those enhancements. One juvenile was sentenced to 27 years and the other to 31 years. This is outrageous. The Washington Supreme Court subsequently found that sentencing courts have full discretion to depart from the standard range and mandatory sentencing enhancements. The juveniles in the *Houston-Sconiers* case were then resentenced and later released from prison.

The goal of this legislation is to bring the statutes in line with recent court decisions. State statute needs to recognize the uniqueness of youthful defendants, whose brains have not yet fully developed. Youth lack the problem-solving skills of adults, and they are more likely to engage in risk-taking behavior. As a result, each case and defendant should be assessed individually.

The bill is an accurate reflection of *State v. Houston-Sconiers* and *State v. O'Dell*. Codifying these policies does not affect prosecutorial decisions. Instead, it provides clarity on the full discretion afforded to the sentencing judge with respect to the standard range and sentencing enhancements.

(Opposed) None.

(Other) The bill mirrors the current case law, and it is simply fixing the underlying statute. It is important to recognize that courts take these cases very seriously. Courts are not likely to adjust sentences or enhancements based on any claim of youthfulness. A defendant typically must present a psychological evaluation conducted by a forensic evaluator.

Youth, especially those between ages 18 and 24, do not necessarily exhibit the same cognitive abilities as adults, especially when it comes to decisionmaking. It is critical for each defendant to be assessed on an individualized basis and to be able to make their case before a judge.

Persons Testifying: (In support) Senator Darneille, prime sponsor; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) Elissa Brine, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.