

HOUSE BILL REPORT

2SSB 5488

As Reported by House Committee On:
Public Safety

Title: An act relating to the sentencing of youth and young adults.

Brief Description: Modifying youth sentencing guidelines.

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], 2/25/20, 2/27/20 [DP].

Brief Summary of Second Substitute Bill

- 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 defendant in adult court for a crime committed under age 18.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 9 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Sutherland, Assistant Ranking Minority Member; Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

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

Staff: Kelly Leonard (786-7147).

Background:

Adult Sentencing Laws.

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.

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

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) None.

(Opposed) This bill does not take into account the Washington Supreme Court's recent opinion in *State v. Delbosque*, where the Court found that juveniles convicted of Aggravated First Degree Murder do not have the burden of proving their youthfulness. This bill places the burden on defendants, and it could put defendants in a worse legal situation than currently exists. The bill should be amended to clarify the burden of proof issues. Further, the bill should apply to persons up to age 25.

Persons Testifying: David Montes, King County Department of Public Defense.

Persons Signed In To Testify But Not Testifying: None.