

**HB 2070 - H AMD 55**

By Representative O'Brien

ADOPTED 03/08/2007

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** In *State v. Pillatos*, 150 P.3d 1130 (2007),  
4 the Washington supreme court held that the changes made to the  
5 sentencing reform act concerning exceptional sentences in chapter 68,  
6 Laws of 2005 do not apply to cases where the trials had already begun  
7 or guilty pleas had already been entered prior to the effective date of  
8 the act on April 15, 2005. The legislature intends that the superior  
9 courts shall have the authority to impanel juries to find aggravating  
10 circumstances in all cases that come before the courts for trial or  
11 sentencing, regardless of the date of the original trial or sentencing.

12 **Sec. 2.** RCW 9.94A.537 and 2005 c 68 s 4 are each amended to read  
13 as follows:

14 (1) At any time prior to trial or entry of the guilty plea if  
15 substantial rights of the defendant are not prejudiced, the state may  
16 give notice that it is seeking a sentence above the standard sentencing  
17 range. The notice shall state aggravating circumstances upon which the  
18 requested sentence will be based.

19 (2) In any case where a new trial or new sentencing hearing is  
20 required, the superior court shall have the authority to impanel a jury  
21 to consider any aggravating circumstances, as alleged by the state and  
22 listed in RCW 9.94A.535(3) (a) through (y), at either the new trial or,  
23 if no new trial is necessary, at the new sentencing hearing.

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

1       (~~(3)~~) (4) Evidence regarding any facts supporting aggravating  
2 circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented  
3 to the jury during the trial of the alleged crime, unless the jury has  
4 been impaneled solely for resentencing, or unless the state alleges the  
5 aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i),  
6 (o), or (t). If one of these aggravating circumstances is alleged, the  
7 trial court may conduct a separate proceeding if the evidence  
8 supporting the aggravating fact is not part of the res geste of the  
9 charged crime, if the evidence is not otherwise admissible in trial of  
10 the charged crime, and if the court finds that the probative value of  
11 the evidence to the aggravated fact is substantially outweighed by its  
12 prejudicial effect on the jury's ability to determine guilt or  
13 innocence for the underlying crime.

14       (~~(4)~~) (5) If the superior court conducts a separate proceeding to  
15 determine the existence of aggravating circumstances listed in RCW  
16 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall  
17 immediately follow the trial on the underlying conviction, if possible.  
18 If any person who served on the jury is unable to continue, the court  
19 shall substitute an alternate juror.

20       (~~(5)~~) (6) If the jury finds, unanimously and beyond a reasonable  
21 doubt, one or more of the facts alleged by the state in support of an  
22 aggravated sentence, the court may sentence the offender pursuant to  
23 RCW 9.94A.535 to a term of confinement up to the maximum allowed under  
24 RCW 9A.20.021 for the underlying conviction if it finds, considering  
25 the purposes of this chapter, that the facts found are substantial and  
26 compelling reasons justifying an exceptional sentence.

27       NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
28 preservation of the public peace, health, or safety, or support of the  
29 state government and its existing public institutions, and takes effect  
30 immediately."

31       Correct the title.

EFFECT: Adds intent language. Allows the superior court to impanel a jury in any new trial or new sentencing hearing, instead of

only cases where an exceptional sentence above the standard range was imposed prior to April 15, 2005. Allows an impaneled jury to consider any aggravating circumstances alleged by the state and listed in RCW 9.94A.535(3) (a) through (y), instead of only the aggravating circumstances relied upon by the sentencing court in imposing the previous sentence. Adds an emergency clause.

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