

SENATE BILL REPORT

SB 5347

As of February 19, 2007

Title: An act relating to exceptional sentences.

Brief Description: Requiring that defendants be given notice of the possibility that an exceptional sentence may be imposed.

Sponsors: Senators Kline, McCaslin, Hargrove, Carrell and Roach.

Brief History:

Committee Activity: Judiciary: 1/09/07.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7405)

Background: The presumptive standard sentencing range for ranked felonies is determined by the seriousness of the current offense and the offender's specific criminal history (offender score). A court may impose a sentence above or below the standard range based upon aggravating or mitigating factors. A sentence longer than the standard range is called an "aggravated sentence." In relation to aggravated sentences, the Washington procedure was invalidated by the U.S. Supreme Court in *Blakely v. State of Washington* (2004). Among other things, the decision eliminated the ability of sentencing judges to independently impose aggravated sentences. The 2005 Legislature modified the procedure to comply with the United States Constitution by providing that aggravating factors posing questions of fact must be submitted to a jury and proved beyond a reasonable doubt. The modified procedure does not allow judges to impose an aggravated sentence unless one is sought by the state.

Summary of Bill: At any time prior to when the court imposes a sentence, the judge may give notice to the state and the defendant that the facts of the case may warrant an aggravated sentence. The notice must specify which aggravating circumstances the judge believes to exist. Defendants who plead guilty must be informed that the sentencing judge may decide to initiate proceedings to impose an aggravated sentence and that, if the judge does so, the defendant may choose to withdraw the guilty plea and enter a plea of not guilty. In these cases, the prosecuting attorney is no longer bound by the plea agreement or its terms. If the prosecuting attorney has indicated that an exceptional sentence will not be sought and the judge initiates an aggravated sentence proceeding, the Attorney General must appear and represent the state.

Appropriation: None.

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.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: CON: Once a plea is taken, the judge has the least amount of facts about the case, whereas the prosecutor, who has worked the case over some period of time, knows whether there are, for example, proof problems as to why an aggravated sentence might not be pursued. This bill would cause a confusion of roles between the judge and the prosecutor; charging is not a judge's function. It is a creative attempt to circumvent the fact that *Blakely* was found unconstitutional. If a judge does not believe that a particular plea agreement is unfair or too "soft," then the judge should not accept that agreement.

Persons Testifying: CON: Tom McBride, Washington Association of Prosecuting Attorneys.