

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2070

Chapter 205, Laws of 2007

60th Legislature
2007 Regular Session

EXCEPTIONAL SENTENCES

EFFECTIVE DATE: 04/27/07

Passed by the House April 18, 2007
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2007
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved April 27, 2007, 2:09 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2070** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 30, 2007

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2070

AS AMENDED BY THE SENATE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Representatives O'Brien, Goodman and Pearson

Read first time 02/07/2007. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to exceptional sentences; amending RCW 9.94A.537;
2 creating a new section; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

15 (1) At any time prior to trial or entry of the guilty plea if
16 substantial rights of the defendant are not prejudiced, the state may
17 give notice that it is seeking a sentence above the standard sentencing

1 range. The notice shall state aggravating circumstances upon which the
2 requested sentence will be based.

3 (2) In any case where an exceptional sentence above the standard
4 range was imposed and where a new sentencing hearing is required, the
5 superior court may impanel a jury to consider any alleged aggravating
6 circumstances listed in RCW 9.94A.535(3), that were relied upon by the
7 superior court in imposing the previous sentence, at the new sentencing
8 hearing.

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

14 (~~(3)~~) (4) Evidence regarding any facts supporting aggravating
15 circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented
16 to the jury during the trial of the alleged crime, unless the jury has
17 been impaneled solely for resentencing, or unless the state alleges the
18 aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i),
19 (o), or (t). If one of these aggravating circumstances is alleged, the
20 trial court may conduct a separate proceeding if the evidence
21 supporting the aggravating fact is not part of the res geste of the
22 charged crime, if the evidence is not otherwise admissible in trial of
23 the charged crime, and if the court finds that the probative value of
24 the evidence to the aggravated fact is substantially outweighed by its
25 prejudicial effect on the jury's ability to determine guilt or
26 innocence for the underlying crime.

27 (~~(4)~~) (5) If the superior court conducts a separate proceeding to
28 determine the existence of aggravating circumstances listed in RCW
29 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall
30 immediately follow the trial on the underlying conviction, if possible.
31 If any person who served on the jury is unable to continue, the court
32 shall substitute an alternate juror.

33 (~~(5)~~) (6) If the jury finds, unanimously and beyond a reasonable
34 doubt, one or more of the facts alleged by the state in support of an
35 aggravated sentence, the court may sentence the offender pursuant to
36 RCW 9.94A.535 to a term of confinement up to the maximum allowed under
37 RCW 9A.20.021 for the underlying conviction if it finds, considering

1 the purposes of this chapter, that the facts found are substantial and
2 compelling reasons justifying an exceptional sentence.

3 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

Passed by the House April 18, 2007.

Passed by the Senate April 17, 2007.

Approved by the Governor April 27, 2007.

Filed in Office of Secretary of State April 30, 2007.