

# SENATE BILL REPORT

## SB 5120

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As Reported by Senate Committee On:  
Human Services, Reentry & Rehabilitation, January 22, 2021

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

**Brief Description:** Concerning the criminal sentencing of youth and young adults.

**Sponsors:** Senators Darneille, Das, Hasegawa, Liias, Lovelett, Mullet, Nguyen, Robinson, Saldaña and Wilson, C..

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 1/19/21, 1/22/21 [DPS, DNP].

**Brief Summary of First Substitute Bill**

- Allows individuals sentenced on or before March 2, 2017, in adult court, for a crime committed under the age of 18, to have a resentencing hearing.
- Requires the court to consider mitigating factors related to the individual's youthfulness and depart from mandatory minimums, standard sentence range, and mandatory sentence enhancements to impose any lesser sentence.

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### SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Majority Report:** That Substitute Senate Bill No. 5120 be substituted therefor, and the substitute bill do pass.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Saldaña and Wilson, C.

**Minority Report:** Do not pass.

Signed by Senators Gildon, Ranking Member; Dozier and McCune.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Julie Tran (786-7283)

**Background:** Adult Court Sentencing. The Sentencing Reform Act of 1981 (SRA) established determinate sentencing in Washington State, and originally adopted in 1983, the courts use a sentencing grid to determine a standard sentencing range for an individual. The standard range is determined by the seriousness level of the offense assigned by the Legislature and an offender's score is determined by the individual's criminal history and other current offenses.

A court must sentence an individual within their standard sentencing range, plus any proven sentencing enhancements, unless the court finds grounds to impose an exceptional sentence outside the standard range.

Sentencing Enhancements. The standard range may be increased by sentencing enhancements, which must be pleaded and proven like elements of a criminal offense. Most sentencing enhancements, with certain exceptions, are specified as mandatory and must be served consecutively to the standard range sentence with applicable sentencing enhancements, and in total confinement without earned release time.

Exceptional Sentences. The court may impose an exceptional sentence outside the standard range if it finds substantial and compelling reasons. An exceptional sentence is subject to appeal by the defendant or the state. The court must enter written findings based on explicitly stated mitigating or aggravating circumstances

Current Washington Law. In 2020, the Legislature passed 2SSB 5488 allowing the adult court to depart from mandatory sentencing enhancements when sentencing a person for a crime committed under the age of 18. The court must consider the particular circumstances surrounding a defendant's youth.

This legislation codifies into statute a line of federal jurisprudence and Washington State Supreme Court's 2015 *State v. O'Dell* (183 Wn.2d 680) and 2017 *State v. Houston-Sconiers* (188 Wn.2d 1) decisions, where the court found the eighth amendment requires sentencing courts to take into account a defendant's youthfulness. Sentencing courts have full discretion to depart below applicable SRA standard ranges and modify otherwise mandatory sentencing enhancements when sentencing a juvenile in adult court.

Recent Washington State Supreme Court Decisions. In September 2020, the court held that new rules of juvenile sentencing are retroactive and must be applied to previous cases. Individuals sentenced before the *Houston-Sconiers* decision on March 2, 2017, are entitled to a resentencing hearing. The court must depart from standard sentencing and consider the mitigating qualities of youth when imposing a sentence.

**Summary of Bill (First Substitute):** The standard sentences reflect that the court must consider the mitigating factors relating to their youthfulness if a person is being sentenced

in adult court for a crime committed under the age of 18. The court has full discretion to impose any lesser sentence and depart from mandatory minimums, standard sentence range, and mandatory sentence enhancements to impose any lesser sentence.

Upon an individual's motion, the court will grant a resentencing hearing if the individual was sentenced on or before March 2, 2017, in adult court, for a crime that occurred under the age of 18.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute):**

- Adds an intent section.
- Clarifies court discretion to depart from mandatory minimums, standard sentence range, and mandatory sentence enhancements to impose any lesser sentence.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This bill codifies legal jurisprudence that courts must consider mitigating factors related to youth and the courts have the ability to depart from standard sentencing. With judges considering mitigating factors, it will be done in open court with a review process and give the court options and pathways.

This bill ensures judges consider brain science and mitigate the deep inequities of our system as black kids are represented in greater numbers in prison compared to the number in Washington State. We need to build community. It will also avoid the arbitrariness and guessing game of what would happen if there are questions about constitutionality. We are talking about human beings and people need pathways.

CON: King and Pierce County Prosecutor's offices have filed cert petitions with the United States Supreme Court to appeal the decisions in the Washington State Supreme Court in *State v. Ali*, and *State v. Domingo-Cornelio*. This legislation should wait to see the United States Supreme Court's response as it could ultimately impact what this legislation will do. The court usurped the Legislature's authority to create a juvenile sentencing scheme and this bill gives judges ultimate discretion.

OTHER: Conducting resentencing will have cost increases to the counties as the counties

will be paying for the services to hold the resentencing hearings such as the trial court defense.

**Persons Testifying:** PRO: Senator Jeannie Darneille, Prime Sponsor; Jeffrey Ellis, criminal defense attorney; Stephan Thomas, citizen; David Heppard, Freedom Project; Dominique Davis, Community Passageways; Anita Khandelwal, King County Department of Public Defense; Emily Gause, Washington Association of Criminal Defense Attorneys and Washington Defender Association; Melvin Stohs, citizen; Oliver Miska, DSA.

CON: Russell Brown, Washington Association of Prosecuting Attorneys.

OTHER: Juliana Roe, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying:** No one.