

SENATE BILL REPORT

SB 5476

As Reported By Senate Committee On:
Judiciary, February 23, 2005

Title: An act relating to advisory sentencing guidelines.

Brief Description: Creating advisory sentence ranges.

Sponsors: Senators Kline, Brandland, Fairley, Esser, Kastama, Shin, Pridemore, Weinstein, Haugen, Berkey, Prentice, Rockefeller and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 2/8/05, 2/23/05 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5476 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: Under current Washington statutes, convicted offenders and those that plead guilty are sentenced by a judge during a sentencing hearing. Most offenders receive sentences within the standard sentence range, but the judge can impose a sentence other than the standard sentence if the judge finds substantial and compelling reasons that justify a mitigated (shorter) or aggravated (longer) sentence. For example, in 2004 out of the 27,930 sentences imposed, there were 500 mitigated sentences and 648 aggravated sentences. Non-exclusive lists of mitigating and aggravating factors are provided by statute.

In relation to aggravated sentences, this procedure was invalidated by the United States Supreme Court in *Blakely v. State of Washington*. The U. S. Supreme Court held that, because the facts of Blakely's exceptional sentence were neither admitted nor found by a jury, the sentence violated his Sixth Amendment right to trial by jury under the Constitution of the United States. Subsequently, in *United States v. Booker*, the United States Supreme Court found no distinction of constitutional significance between Washington procedures and the federal sentencing guidelines in regard to findings of fact required for imposing sentences above the standard sentence range. The court went on to state that if "the guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment."

Summary of Substitute Bill: The upper limits of the standard sentencing ranges included in the sentencing grid are advisory for offenders convicted of violent felony offenses. The maximum length of incarceration these offenders may receive is the statutory maximum

designated for the class of felony for which they are currently convicted or twice the upper limit of the standard sentencing range, whichever is less. The lower limitation in the sentencing range is the mandatory minimum absent a finding of mitigating circumstances. The sentence must be for a determinate period of incarceration and all of these sentences are subject to appeal by either the offender or the state.

Substitute Bill Compared to Original Bill: The language that provided a procedural fix for the *Blakely* issue are removed. Instead, judges are given discretion to sentence violent offenders to twice that indicated by the advisory sentence range or the statutory maximum for the offense, whichever is less. The upper limit of the standard sentencing range is advisory, but the minimum limit indicated by the standard sentencing range is the mandatory minimum absent a finding of mitigating circumstances.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill addresses the *Blakely* decision in a way that would significantly decrease the complexity of the Sentencing Reform Act while allowing courts to dispense justice. Advisory guidelines reduce the costs of trial and appeals. The appropriate balance of authority between the branches of government would be reattained if advisory guidelines were adopted. Judges want to impose consistent sentences throughout the state, but also just sentences. We know advisory sentences are constitutional.

Testimony Against: The *Blakely* decision had a minor impact on Washington, so a targeted statutory fix is all that is required. In the past, uncontrolled judicial discretion resulted in disparate racial treatment and uncontrolled fiscal impacts. The sentencing reform act has served the state well and you should be careful before throwing away its central principles. Judges would be given unlimited discretion in approximately 10,000 cases, creating unpredictable costs. The advisory guidelines in this bill affect more than just the most serious crimes. Judges would have complete discretion over any offender with a criminal history that included a crime ranked at level VII or more.

Who Testified: PRO: Senator Kline, prime sponsor; Judge Leonard Costello, Superior Court Judges Association; Judge Deborah Fleck, Superior Court Judges Association; Judge Catherine Shaffer, Superior Court Judges Association.

CON: Norm Maleng, King County Prosecuting Attorney; Russ Hauge, Kitsap County Prosecuting Attorney; David Boerner, Sentencing Guidelines Commission; Ramona Brandes, Washington Association of Criminal Defense Lawyers (WACDL), Washington Defenders Association (WDA).