

SENATE BILL REPORT

SB 6496

As Reported By Senate Committee On:
Judiciary, February 2, 2006

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, Johnson, Hargrove and Thibaudeau.

Brief History:

Committee Activity: Judiciary: 1/11/2006, 2/2/06 [DP, w/oRec]

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Carrell, Hargrove, Rasmussen and Thibaudeau.

Minority Report: That it be referred without recommendation.

Signed by Senators Johnson, Ranking Minority Member; Esser and McCaslin.

Staff: Aldo Melchiori (786-7439)

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 chose 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.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: In a small number of cases, a judge may want to independently initiate an aggravated sentence. Judges had this power before the *Blakely* decision. This is a practical solution to the problem.

Testimony Against: It is very difficult to separate the facts of the underlying case from the facts used to prove the aggravating circumstance. Judges are often not fully aware of the entire picture and the proof problems the prosecutor may be facing. Defendants need more timely notice than that provided by this bill. The proceeding calls into question the judge's impartiality. This could result in "judge shopping". The Attorney General is still a representative of the state, so having him or her take the place of the prosecutor is a false difference.

Who Testified: PRO: Senator Kline, prime sponsor; David Boerner.

CON: Judge Michael Trickey, Superior Court Judge's Association; Judge Steve Warning, Superior Court Judge's Association; Michael Hanbey, WDA and WACDL; Tom McBride, WAPA.