

SENATE BILL REPORT

SB 6497

As Reported By Senate Committee On:
Judiciary, February 2, 2006
Ways & Means, February 7, 2006

Title: An act relating to felony sentences.

Brief Description: Revising felony sentence ranges.

Sponsors: Senators Kline, Franklin and Hargrove.

Brief History:

Committee Activity: Judiciary: 1/11/2006, 2/2/06 [DPS, w/oRec]
Ways & Means: 2/6/06, 2/7/06 [DP2S, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6497 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; 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)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6497 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Pflug, Pridemore, Rasmussen, Regala, Rockefeller and Thibaudeau.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Parlette, Roach and Schoesler.

Staff: Elaine Deschamps (786-7441)

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). The decision eliminated the ability of sentencing judges to independently impose aggravated sentences. In

response, the 2005 Legislature modified the procedure to provide that aggravating factors posing questions of fact must be submitted to a jury and proved beyond a reasonable doubt.

During the legislative deliberations leading up to the 2005 legislation, the broader issue of judicial discretion during sentencing was discussed by a joint legislative workgroup. The consensus was that the issue deserved further discussion, so the sentencing guidelines commission was directed, by the Legislature, to study and draft appropriate legislation addressing judicial discretion issues under the sentencing reform act.

Summary of Second Substitute Bill: Currently, the standard ranges for ranked felonies have a minimum term of incarceration that must be within 75 percent of the maximum term. This is changed to 60 percent, and the range within each cell of the sentencing grid is expanded both upward and downward. Sentencing judges have a greater range within which to sentence offenders without additional findings of fact. Additionally, a new column is created for offenders with offender scores of ten or more. In these new cells, the minimum terms are the same as the minimum terms for those in the cells for offenders with scores of nine, but the maximum terms are longer, giving judges more discretion when sentencing offenders with significant criminal histories.

A new factor is added to the list of circumstances justifying a sentence shorter than the standard range. A judge may impose a sentence below the standard range if the offender score due to other current offenses, as opposed to prior offenses, results in a standard range sentence that is clearly excessive. Three factors that could be used to justify a sentence longer than the standard sentencing range, that previously could be found by a judge during sentencing, were moved to the list of factors that must be found by a jury beyond a reasonable doubt.

If a defendant pleads guilty to an underlying crime, but not to facts supporting the imposition of an aggravated sentence, or if a case is remanded for resentencing, it is clarified that a jury may be empaneled to determine whether sufficient facts exist to justify the aggravated sentence. In these cases, the trial on the aggravating circumstances occurs within 90 days, unless the time is extended for good cause.

Second Substitute Bill Compared to Substitute Bill: The second substitute bill removes Section 7, which directed savings to be deposited in the Criminal Justice Treatment Account and appropriated to the Division of Alcohol and Substance Abuse to be used for substance abuse treatment.

Substitute Bill Compared to Original Bill: In response to Washington court decisions, three factors that could be used to justify a sentence longer than the standard sentencing range, which previously could be found by a judge during sentencing, were moved to the list of factors that must be found by a jury beyond a reasonable doubt. The factors were not modified.

Appropriation: Savings to the state general fund resulting from the sentencing changes are deposited in the criminal justice treatment account and are appropriated to the division of alcohol and substance abuse.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For (Judiciary): This bill represents a broad expansion of judicial discretion. The bill was specifically drafted to have no impact on jail population and minimal impact on prison population. This is a true grant of judicial discretion without the imposition of appellate review. The new mitigating circumstance allows judges to impose a mitigated sentence on offenders who only participated in one criminal episode with multiple charges. Judges will have much more discretion to impose appropriate sentences on offenders with extensive criminal histories.

Testimony Against (Judiciary): The bill does not restore the discretion to impose aggravated sentences that it had before *Blakely*. The long term solution is advisory guidelines for serious violent offenders. Judges are the ones who have to face victims and explain short sentences in court. This bill provides punishment, but does not enhance rehabilitation or deterrence.

Who Testified (Judiciary): PRO: Senator Kline, prime sponsor; David Boerner, Chair, Sentencing Guidelines Commission; Tom McBride, WAPA.

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

Testimony For (Ways & Means): This bill focuses our attention on violent recidivist offenders; Savings from this bill should go to the Criminal Justice Treatment Account for drug treatment.

Testimony Against (Ways & Means): None.

Who Testified (Ways & Means): PRO: Senator Kline, prime sponsor; Tom McBride, WAPA; Ida Leggett, Sentencing Guidelines Commission.