
SUBSTITUTE HOUSE BILL 2790

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Rodne, O'Brien, Woods, Ericks, Hinkle, Kessler, Simpson and Darneille)

READ FIRST TIME 01/24/06.

1 AN ACT Relating to advisory sentencing guidelines; amending RCW
2 9.94A.480; adding a new section to chapter 9.94A RCW; creating a new
3 section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 restore the ability to impose an aggravated sentence lost by the
7 superior court as a result of the decision of the United States supreme
8 court in *Blakely v. State of Washington*, 542 U.S. 296 (2004). The
9 legislature finds that as the seriousness level of the crime and the
10 criminal history of the offender increase, the need for an
11 individualized and informed assessment of the circumstances of the
12 crime, the offender, and the victim, by the judiciary, is necessary for
13 justice to be obtained. The legislature further finds that the
14 exercise of the judiciary's sentencing discretion over a broader range
15 based upon the assessment of these circumstances is consistent with the
16 policies supporting Washington's sentencing reform act.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
18 to read as follows:

1 (1) For offenders convicted of a violent offense, the upper limit
2 of the standard sentencing range shall be advisory only. However,
3 without limiting the sentencing discretion of the judge, in cases in
4 which the prosecutor seeks an aggravated sentence, the prosecutor must
5 assert a statutory aggravating factor. Notwithstanding any other law,
6 the maximum sentence that a court may impose for a violent offense
7 where the lower limit of the standard sentencing range is more than
8 twelve months is the maximum sentence for the current offense under
9 chapter 9A.20 RCW, or twice the upper limit of the standard sentencing
10 range, whichever is less; the maximum sentence that a court may impose
11 for all other violent offenses is twice the upper limit of the standard
12 range or twelve months, whichever is less. This provision shall not
13 apply to any offender sentenced under RCW 9.94A.712.

14 (2) In making its determination of the sentence length to be
15 imposed, the court shall consider the risk assessment prepared by the
16 department of corrections, if any, the presentence report, if any, and
17 other materials provided by the offender, and any information provided
18 by the victim or victims of the crime. Nothing in this section
19 requires the department of corrections to prepare a risk assessment or
20 presentence report prior to sentencing.

21 (3) A sentence imposed under this section shall be a determinate
22 sentence unless it is imposed on an offender sentenced under RCW
23 9.94A.712. The sentence may be appealed by the offender or the state
24 as set forth in RCW 9.94A.585 (2) through (6).

25 (4) Nothing in this section prohibits an aggravated exceptional
26 sentence from being imposed on an offender under RCW 9.94A.535 or
27 9.94A.537 up to the statutory maximum sentence as defined in RCW
28 9.94A.030.

29 **Sec. 3.** RCW 9.94A.480 and 2002 c 290 s 16 are each amended to read
30 as follows:

31 (1) A current, newly created or reworked judgment and sentence
32 document for each felony sentencing shall record any and all
33 recommended sentencing agreements or plea agreements and the sentences
34 for any and all felony crimes kept as public records under RCW
35 9.94A.475 shall contain the clearly printed name and legal signature of
36 the sentencing judge. The judgment and sentence document as defined in
37 this section shall also provide additional space for the sentencing

1 judge's reasons, if any, for going either above or below the
2 presumptive or advisory sentence range for any and all felony crimes
3 covered as public records under RCW 9.94A.475. Both the sentencing
4 judge and the prosecuting attorney's office shall each retain or
5 receive a completed copy of each sentencing document as defined in this
6 section for their own records.

7 (2) The sentencing guidelines commission shall be sent a completed
8 copy of the judgment and sentence document upon conviction for each
9 felony sentencing under subsection (1) of this section and shall
10 compile a yearly and cumulative judicial record of each sentencing
11 judge in regards to his or her sentencing practices for any and all
12 felony crimes involving:

13 (a) Any violent offense as defined in this chapter;

14 (b) Any most serious offense as defined in this chapter;

15 (c) Any felony with any deadly weapon special verdict under RCW
16 9.94A.602;

17 (d) Any felony with any deadly weapon enhancements under RCW
18 9.94A.533 (3) or (4), or both; and/or

19 (e) The felony crimes of possession of a machine gun, possessing a
20 stolen firearm, drive-by shooting, theft of a firearm, unlawful
21 possession of a firearm in the first or second degree, and/or use of a
22 machine gun in a felony.

23 (3) The sentencing guidelines commission shall compare each
24 individual judge's sentencing practices to the standard ((~~or~~))
25 presumptive, or advisory sentence range for any and all felony crimes
26 listed in subsection (2) of this section for the appropriate offense
27 level as defined in RCW 9.94A.515 or 9.94A.518, offender score as
28 defined in RCW 9.94A.525, and any applicable deadly weapon enhancements
29 as defined in RCW 9.94A.533 (3) or (4), or both. These comparative
30 records shall be retained and made available to the public for review
31 in a current, newly created or reworked official published document by
32 the sentencing guidelines commission.

33 (4) Any and all felony sentences which are either above or below
34 the standard ((~~or~~))
35 presumptive, or advisory sentence range in
36 subsection (3) of this section shall also mark whether the prosecuting
37 attorney in the case also recommended a similar sentence, if any, which
38 was either above or below the standard, presumptive, or advisory
sentence range and shall also indicate if the sentence was in

1 conjunction with an approved alternative sentencing option including a
2 first-time offender waiver, sex offender sentencing alternative, or
3 other prescribed sentencing option.

4 (5) If any completed judgment and sentence document as defined in
5 subsection (1) of this section is not sent to the sentencing guidelines
6 commission as required in subsection (2) of this section, the
7 sentencing guidelines commission shall have the authority and shall
8 undertake reasonable and necessary steps to assure that all past,
9 current, and future sentencing documents as defined in subsection (1)
10 of this section are received by the sentencing guidelines commission.

11 NEW SECTION. **Sec. 4.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

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

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