
SUBSTITUTE SENATE BILL 5476

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, Brandland, Fairley, Esser, Kastama, Shin, Pridemore, Weinstein, Haugen, Berkey, Prentice, Rockefeller and Kohl-Welles)

READ FIRST TIME 02/25/05.

1 AN ACT Relating to advisory sentencing guidelines; amending RCW
2 9.94A.480; reenacting and amending RCW 9.94A.505; adding a new section
3 to chapter 9.94A RCW; and creating a new section.

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. ... (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.
3 Notwithstanding any other provision of law, the maximum sentence that
4 a court may impose for a violent offense is the maximum sentence for
5 the current offense under chapter 9A.20 RCW, or twice the upper limit
6 of the standard sentencing range, whichever is less. This provision
7 shall not apply to any offender sentenced under RCW 9.94A.712.

8 (2) In making its determination of the sentence length to be
9 imposed, the court shall consider the risk assessment prepared by the
10 department of corrections, the presentence report and other materials
11 provided by the offender, and any information provided by the victim or
12 victims of the crime.

13 (3) A sentence imposed under this section shall be a determinate
14 sentence unless it is imposed on an offender sentenced under RCW
15 9.94A.712. The sentence may be appealed by the offender or the state
16 as set forth in RCW 9.94A.585 (2) through (6).

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

19 (1) A current, newly created or reworked judgment and sentence
20 document for each felony sentencing shall record any and all
21 recommended sentencing agreements or plea agreements and the sentences
22 for any and all felony crimes kept as public records under RCW
23 9.94A.475 shall contain the clearly printed name and legal signature of
24 the sentencing judge. The judgment and sentence document as defined in
25 this section shall also provide additional space for the sentencing
26 judge's reasons, if any, for going either above or below the
27 presumptive or advisory sentence range for any and all felony crimes
28 covered as public records under RCW 9.94A.475. Both the sentencing
29 judge and the prosecuting attorney's office shall each retain or
30 receive a completed copy of each sentencing document as defined in this
31 section for their own records.

32 (2) The sentencing guidelines commission shall be sent a completed
33 copy of the judgment and sentence document upon conviction for each
34 felony sentencing under subsection (1) of this section and shall
35 compile a yearly and cumulative judicial record of each sentencing
36 judge in regards to his or her sentencing practices for any and all
37 felony crimes involving:

1 (a) Any violent offense as defined in this chapter;
2 (b) Any most serious offense as defined in this chapter;
3 (c) Any felony with any deadly weapon special verdict under RCW
4 9.94A.602;

5 (d) Any felony with any deadly weapon enhancements under RCW
6 9.94A.533 (3) or (4), or both; and/or

7 (e) The felony crimes of possession of a machine gun, possessing a
8 stolen firearm, drive-by shooting, theft of a firearm, unlawful
9 possession of a firearm in the first or second degree, and/or use of a
10 machine gun in a felony.

11 (3) The sentencing guidelines commission shall compare each
12 individual judge's sentencing practices to the standard ~~((θ))~~,
13 presumptive, or advisory sentence range for any and all felony crimes
14 listed in subsection (2) of this section for the appropriate offense
15 level as defined in RCW 9.94A.515 or 9.94A.518, offender score as
16 defined in RCW 9.94A.525, and any applicable deadly weapon enhancements
17 as defined in RCW 9.94A.533 (3) or (4), or both. These comparative
18 records shall be retained and made available to the public for review
19 in a current, newly created or reworked official published document by
20 the sentencing guidelines commission.

21 (4) Any and all felony sentences which are either above or below
22 the standard ~~((θ))~~, presumptive, or advisory sentence range in
23 subsection (3) of this section shall also mark whether the prosecuting
24 attorney in the case also recommended a similar sentence, if any, which
25 was either above or below the standard, presumptive, or advisory
26 sentence range and shall also indicate if the sentence was in
27 conjunction with an approved alternative sentencing option including a
28 first-time offender waiver, sex offender sentencing alternative, or
29 other prescribed sentencing option.

30 (5) If any completed judgment and sentence document as defined in
31 subsection (1) of this section is not sent to the sentencing guidelines
32 commission as required in subsection (2) of this section, the
33 sentencing guidelines commission shall have the authority and shall
34 undertake reasonable and necessary steps to assure that all past,
35 current, and future sentencing documents as defined in subsection (1)
36 of this section are received by the sentencing guidelines commission.

1 **Sec. 4.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
2 2002 c 175 s 6 are each reenacted and amended to read as follows:

3 (1) When a person is convicted of a felony, the court shall impose
4 punishment as provided in this chapter.

5 (2)(a) The court shall impose a sentence as provided in the
6 following sections and as applicable in the case:

7 (i) Unless another term of confinement applies, the court shall
8 impose a sentence within the standard sentence range established in RCW
9 9.94A.510 or 9.94A.517;

10 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

11 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

12 (iv) RCW 9.94A.545, relating to community custody for offenders
13 whose term of confinement is one year or less;

14 (v) RCW 9.94A.570, relating to persistent offenders;

15 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

16 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

17 (viii) RCW 9.94A.660, relating to the drug offender sentencing
18 alternative;

19 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
20 alternative;

21 (x) RCW 9.94A.712, relating to certain sex offenses;

22 (xi) RCW 9.94A.535, relating to exceptional sentences;

23 (xii) RCW 9.94A.589, relating to consecutive and concurrent
24 sentences;

25 (xiii) Section 2 of this act relating to violent offenses.

26 (b) If a standard sentence range has not been established for the
27 offender's crime, the court shall impose a determinate sentence which
28 may include not more than one year of confinement; community
29 restitution work; until July 1, 2000, a term of community supervision
30 not to exceed one year and on and after July 1, 2000, a term of
31 community custody not to exceed one year, subject to conditions and
32 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
33 legal financial obligations. The court may impose a sentence which
34 provides more than one year of confinement if the court finds reasons
35 justifying an exceptional sentence as provided in RCW 9.94A.535.

36 (3) If the court imposes a sentence requiring confinement of thirty
37 days or less, the court may, in its discretion, specify that the
38 sentence be served on consecutive or intermittent days. A sentence

1 requiring more than thirty days of confinement shall be served on
2 consecutive days. Local jail administrators may schedule court-ordered
3 intermittent sentences as space permits.

4 (4) If a sentence imposed includes payment of a legal financial
5 obligation, it shall be imposed as provided in RCW 9.94A.750,
6 9.94A.753, 9.94A.760, and 43.43.7541.

7 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
8 court may not impose a sentence providing for a term of confinement or
9 community supervision, community placement, or community custody which
10 exceeds the statutory maximum for the crime as provided in chapter
11 9A.20 RCW.

12 (6) The sentencing court shall give the offender credit for all
13 confinement time served before the sentencing if that confinement was
14 solely in regard to the offense for which the offender is being
15 sentenced.

16 (7) The court shall order restitution as provided in RCW 9.94A.750
17 and 9.94A.753.

18 (8) As a part of any sentence, the court may impose and enforce
19 crime-related prohibitions and affirmative conditions as provided in
20 this chapter.

21 (9) The court may order an offender whose sentence includes
22 community placement or community supervision to undergo a mental status
23 evaluation and to participate in available outpatient mental health
24 treatment, if the court finds that reasonable grounds exist to believe
25 that the offender is a mentally ill person as defined in RCW 71.24.025,
26 and that this condition is likely to have influenced the offense. An
27 order requiring mental status evaluation or treatment must be based on
28 a presentence report and, if applicable, mental status evaluations that
29 have been filed with the court to determine the offender's competency
30 or eligibility for a defense of insanity. The court may order
31 additional evaluations at a later date if deemed appropriate.

32 (10) In any sentence of partial confinement, the court may require
33 the offender to serve the partial confinement in work release, in a
34 program of home detention, on work crew, or in a combined program of
35 work crew and home detention.

36 (11) In sentencing an offender convicted of a crime of domestic
37 violence, as defined in RCW 10.99.020, if the offender has a minor
38 child, or if the victim of the offense for which the offender was

1 convicted has a minor child, the court may, as part of any term of
2 community supervision, community placement, or community custody, order
3 the offender to participate in a domestic violence perpetrator program
4 approved under RCW 26.50.150.

5 NEW SECTION. **Sec. 5.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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