

# FINAL BILL REPORT

## EHB 2070

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C 205 L 07

Synopsis as Enacted

**Brief Description:** Concerning exceptional sentences.

**Sponsors:** By Representatives O'Brien, Goodman and Pearson.

**House Committee on Public Safety & Emergency Preparedness**

**Senate Committee on Judiciary**

### **Background:**

When a person is convicted of a crime, a court must generally sentence the offender within a standard range determined by the person's criminal history and the seriousness level of the crime. Prior to 2004, a court could sentence an offender above the standard range if it found, by a preponderance of the evidence, that aggravating circumstances existed. This type of sentence is known as an "exceptional sentence." In 2004, the United States Supreme Court ruled that sentencing an offender above the standard range in this manner is unconstitutional. *Blakely v. Washington*, 542 U.S. 296 (2004). Under the *Blakely* decision, the prosecution has the burden to prove any factor that increases an offender's sentence above the standard range, other than the fact of a prior conviction, to a jury beyond a reasonable doubt.

In 2005, the Legislature responded to the *Blakely* decision by changing the manner in which exceptional sentences are imposed. Under this new procedure, the prosecutor must provide notice that he or she is seeking an exceptional sentence above the standard range at any time prior to trial or the entry of a guilty plea as long as the substantial rights of the defendant are not prejudiced. The prosecutor must then prove the aggravating circumstances justifying the exceptional sentence to a jury (or to the judge if the jury is waived) beyond a reasonable doubt.

In 2007, the Washington State Supreme Court ruled that changes the Legislature made in 2005 do not apply to cases where trials have already begun or guilty pleas have already been entered prior to the effective date of the legislation (April 15, 2005). *State v. Pillatos*, 159 Wn.2d 459 (2007). The court in *Pillatos* also held that courts do not have the inherent power to empanel sentencing juries; i.e., the courts must have statutory authority to do so.

### **Summary:**

In any case where an exceptional sentence was imposed and a new sentencing hearing is required, the superior court has the authority, at the new sentencing hearing, to empanel a jury to consider aggravating circumstances that were relied upon in the previous sentence and that require a jury verdict under the procedures put in place in 2005 in response to *Blakely*.

### **Votes on Final Passage:**

House	96	0	
Senate	48	0	(Senate amended)
House			(House refused to concur)
Senate	47	0	(Senate amended)
House	97	0	(House concurred)

**Effective:** April 27, 2007