

HOUSE BILL REPORT

EHB 2070

As Passed Legislature

Title: An act relating to exceptional sentences.

Brief Description: Concerning exceptional sentences.

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

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/21/07 [DP].

Floor Activity:

Passed House: 3/8/07, 96-0.

Senate Amended.

Passed Senate: 4/10/07, 48-0.

House Refuses to Concur.

Senate Amended.

Passed Senate: 4/17/07, 47-0.

House Concurred.

Passed House: 4/18/07, 97-0.

Passed Legislature.

Brief Summary of Engrossed Bill

- Grants the superior court the authority to empanel a jury in certain new sentencing hearings for purposes of imposing exceptional sentences above the standard range.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Lovick.

Staff: Jim Morishima (786-7191).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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, any factor that increases an offender's sentence above the standard range, other than the fact of a prior conviction, must be proved 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*, 2007 Wash. LEXIS 62 (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 of Engrossed Bill:

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 relied upon in the previous sentence and that require a jury verdict under the procedures put in place in 2005 in response to *Blakely*.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill has the potential to affect a significant number of cases; the *Blakely* decision applies to both sentences imposed after the decision and to convictions that were still being appealed on or after the date of the decision. The number of cases affected could increase if the United States Supreme Court rules that *Blakely* is retroactive. Under the

current law, the state does not have the ability to impose an aggravated exceptional sentence upon re-sentencing, but could if a new trial was ordered. Cases where aggravated exceptional sentences have been imposed are the worst of the worst. This bill would give the court the ability to impose an exceptional sentence upon re-sentencing, but only in cases where an aggravated exceptional sentence was imposed at the original sentencing. The bill does not open the door to the imposition of a new exceptional sentence.

(Opposed) This bill is unnecessary. The bill only affects cases during the period of time between the day on which *Blakely* was decided and the day on which the "*Blakely* fix" went into effect. During this window of time, courts adapted to the *Blakely* decision by staying proceedings, pleading cases, and imposing standard range sentences. Therefore, the number of cases affected by this bill is very small. If this bill were to go forward, it should be amended so that only legal aggravating factors can be charged in the new sentencing proceeding.

Persons Testifying: (In support) Tom McBride, Washington Association of Prosecuting Attorneys; and Brian McDonald, King County Prosecuting Attorneys Office and Washington Association of Prosecuting Attorneys.

(Opposed) Sheryl Gordon McCloud, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

Persons Signed In To Testify But Not Testifying: None.