
Public Safety Committee

HB 1061

Brief Description: Changing provisions regarding the finding of aggravating circumstances.

Sponsors: Representative Goodman.

Brief Summary of Bill

- Allows a jury to determine whether an exceptional sentence is justified on the grounds that the presumptive sentence is "clearly too lenient" based on the omission of prior criminal history from the offender score.
- Allows the court to determine that aggravating circumstances support an exceptional sentence if the defendant has three or more prior unscored convictions.

Hearing Date: 1/24/13

Staff: Sarah Koster (786-7303).

Background:

Under the Sentencing Reform Act, sentences for typical felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history.

There are some circumstances in which prior criminal offenses would not be included in an offender score. Most misdemeanors are not included in an offender score and foreign offenses which are not clearly comparable to an offense under Washington law are not counted. Additionally, all convictions except class A felonies and felony sex offenses "wash out" after a period of time in the community without conviction.

If there are substantial and compelling reasons justifying an exceptional sentence, the court can impose a sentence outside the standard sentence range. Exceptional sentences must be for a

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determinate term and cannot exceed the statutory maximum or a mandatory minimum for the offense.

The RCW provides an illustrative, but nonexclusive, list of mitigating circumstances which the court may consider with regard to imposing an exceptional sentence below the standard range, as well as exclusive lists of aggravating circumstances which the court may consider an aggravating circumstances which a jury may consider in imposing an exceptional sentence above the standard range.

The United States Supreme Court has determined, in reviewing Washington state's sentencing scheme, that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Blakely v. Washington, 542 U.S. 296, 301 (2004).

In light of that decision, the Washington State Supreme Court has ruled that the determination that a standard sentence range resulted in "too lenient a sentence" is a factual determination that can only be made by a jury. State v. Hughes, 154 Wn.2d 118, 140 (2005); State v. Alvarado, 164 Wn.2d 556, 567 (2008). In contrast, aggravating factors supporting an exceptional sentence which follow automatically from the offender's criminal history do not require a jury finding. State v. Mulch, 171 Wn.2d 646, 658 (2011).

Summary of Bill:

The court may impose an exceptional sentence above the standard range without a finding of fact by a jury if the defendant has three or more prior unscored misdemeanor or prior unscored foreign criminal convictions.

Appropriation: None.

Fiscal Note: Available.

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