

SENATE BILL REPORT

SB 5488

As of February 3, 2019

Title: An act relating to the sentencing of persons under the age of twenty-one years at the time of the commission of a crime.

Brief Description: Concerning the sentencing of persons under the age of twenty-one years at the time of the commission of a crime.

Sponsors: Senators Darneille, Saldaña, Wilson, C., Keiser and Nguyen.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/30/19.

Brief Summary of Bill

- Allows a court to order sentencing enhancements to be served concurrently, instead of consecutively, to avoid a sentence that is clearly excessive when the defendant is being sentenced as an adult for an offense committed under the age of eighteen.
- Allows a court to consider the age, sophistication, and role in the crime of a defendant being sentenced as an adult for an offense committed under the age of eighteen as a statutory mitigating circumstance that may justify a sentence below the standard sentencing range.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Kevin Black (786-7747)

Background: Charging Persons in Adult Court for Crimes Allegedly Committed as Minors. A minor is a person under the age of eighteen. A minor must be charged in adult court if they are charged with an offense which, based on the age of the individual at the time it was allegedly committed, is in the exclusive original jurisdiction of adult court. A charge against a person who is sixteen or seventeen years of age at the time of commission must be filed in adult court if it is a serious violent offense or if it is a violent offense and the person has a criminal history including one or more serious violent offenses or the offense of rape of a child in the first degree, two or more violent offenses, or three or more class A or class B felonies. For charges within the exclusive original jurisdiction of juvenile court, a

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discretionary decline hearing may be held to transfer a charge to adult court when the person is charged with a serious violent offense allegedly committed when the person was fifteen years of age, or when the person is charged with murder in the first or second degree allegedly committed when the person was eight to fifteen years of age.

Sentencing in Adult Court. The Sentencing Reform Act of 1981 (SRA) established determinate sentencing in Washington State, which is a method in which courts use a sentencing grid, originally adopted in 1983, to determine a standard sentencing range for an individual within a narrow sentencing band. The standard range is determined by the seriousness level of the offense assigned by the Legislature and an offender score determined by the individual's criminal history and other current offenses. The standard range sentence may be increased by sentencing enhancements that must be plead and proven like elements of a criminal offense. A court must sentence an individual within their standard sentencing range, plus any proven sentencing enhancements, unless the court finds grounds to impose an exceptional sentence outside the standard range.

Sentencing Enhancements. The SRA contains a number of sentencing enhancements, including a firearm enhancement, deadly weapon enhancement, school bus zone enhancement, vehicular homicide impaired driving enhancement, sexual motivation enhancement, commercial sexual exploitation of a minor enhancement, involving minors in criminal street-gang related activity enhancement, endangering other persons while attempting to elude a police officer enhancement, assaulting a law enforcement officer with a firearm enhancement, committing a drug offense while in the custody of a jail or prison facility enhancement, and an enhancement for having a child passenger in a car during a vehicular homicide impaired driving offense. Most sentencing enhancements, with certain exceptions, are specified to be mandatory and must be served consecutively to the standard range sentence with applicable sentencing enhancements, and in total confinement without earned release time.

Exceptional Sentences. While a standard range sentence is presumed to be appropriate, the court may impose an exceptional sentence outside the standard range if it finds substantial and compelling reasons. An exceptional sentence is subject to appeal by the defendant or state. The court must enter written findings based on explicitly stated mitigating or aggravating circumstances. A statutory list of aggravating and mitigating circumstances is supplied in law. The list of mitigating circumstances, which must be found by a preponderance of evidence, is illustrative and not intended to be exclusive.

State Court Decision. In 2017, following a line of federal jurisprudence, the Washington State Supreme Court found in the case of *State v. Houston-Sconiers* is 188 Wn.2d 1, the Eighth Amendment requires sentencing courts to take into account a defendant's youthfulness further and requires the sentencing court to be vested with full discretion to depart below applicable SRA standard ranges and to modify otherwise mandatory sentencing enhancements when sentencing a juvenile in adult court.

Summary of Bill: When sentencing an individual in adult court for a criminal offense committed while the person was under eighteen years of age, the court may order any sentencing enhancements to be served concurrently to reduce a sentence when the sentencing enhancements result in a sentence that is clearly excessive.

A statutory mitigating circumstance is created allowing the court to impose an exceptional sentence below the standard range by considering the individual's age, sophistication, and role in the crime if the individual is being sentenced as an adult for a crime committed while the defendant was under eighteen years of age.

Appropriation: None.

Fiscal Note: Requested on January 28, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill comes from a court decision relating to a Tacoma case where two youth were sentenced as adults to 27 years and 31 years in prison for a series of minor robberies consisting of 96 pieces of Halloween candy and a cell phone.

OTHER: We have concerns that the bill language is narrower than the court findings in *Houston-Sconiers* and *O'Dell* in that it is limited to declined youth for offenses committed under eighteen years of age. The court has full discretion. The burden of proving age and maturity should not be placed on the defense.

Persons Testifying: PRO: Senator Jeannie Darneille, Prime Sponsor.

OTHER: Neil Beaver, Washington Defender Association, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.