

SENATE BILL REPORT

SSB 5488

As of Third Reading

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: Senate Committee on Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Saldaña, Wilson, C., Keiser and Nguyen).

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/30/19, 2/05/19 [DPS]; 1/15/20, 1/21/20 [DP2S, w/oRec].

Brief Summary of Second Substitute Bill

- Allows adult court to depart from mandatory sentencing enhancements when sentencing a person for a crime committed under the age of eighteen in order to take into account the particular circumstances surrounding a defendant's youth.
- Creates a statutory mitigating circumstance allowing an adult court to sentence a defendant below the standard range if the defendant's age, lack of sophistication, or youthfulness at the time of the offense support a lower sentence.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Second Substitute Senate Bill No. 5488 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, Wilson, C. and Zeiger.

Minority Report: That it be referred without recommendation.

Signed by Senator O'Ban.

Staff: Kevin Black (786-7747)

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.

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 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: The bill as referred to committee not considered.

Summary of Bill (Second Substitute): When sentencing a person for a felony in adult court for a crime committed under age eighteen, the court has full discretion to depart from mandatory sentencing enhancements and to take the particular circumstances surrounding the defendant's youth into account.

A felony sentencing court may consider a defendant's age, lack of sophistication, susceptibility to peer pressure, or other factors relating to the defendant's youthfulness at the time of the offense that render the defendant less culpable than if the offense had been committed by a fully developed adult as a statutory mitigating circumstance supporting a sentence below the standard range.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (Second Substitute): Non-substantive changes are made to the phrasing of the new exception to mandatory sentencing enhancements and the new statutory mitigating circumstance.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* 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.

Staff Summary of Public Testimony on Proposed Second Substitute (Regular Session 2020): PRO: We are working to codify the language from recent court cases involving juvenile sentencing. The confusion stemmed from a lack of understanding about the court's ability to take the youth of the defendant under consideration and depart from the recommended sentence. It makes good sense to give discretion to a judge in a case like this, consistent with the court precedent. Neuroscience research shows that the brain does not fully develop until age 25. My son was an impulsive risk taker who was bored and disruptive in school. He did not have the capacity to think about the consequences of his actions, but he has now matured and developed into a fine man. Sadly, he is serving a 27-year prison sentence that began in his teens.

Persons Testifying: PRO: Senator Jeannie Darneille, Prime Sponsor; Russell Brown, Washington Association of Prosecuting Attorneys; Noreen Light, citizen.

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