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SENATE BILL 5347

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kline, McCaslin, Hargrove, Carrell and Roach

Read first time 01/17/2007. Referred to Committee on Judiciary.

1            AN ACT Relating to exceptional sentences; and amending RCW  
2            9.94A.537, 9.94A.431, and 43.10.030.

3            BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 9.94A.537 and 2005 c 68 s 4 are each amended to read  
5            as follows:

6            (1) At any time prior to trial or entry of the guilty plea if  
7            substantial rights of the defendant are not prejudiced, the state may  
8            give notice that it is seeking a sentence above the standard sentencing  
9            range. The notice shall state aggravating circumstances upon which the  
10           requested sentence will be based.

11           (2) At any time prior to the imposition of sentence, the sentencing  
12           judge may give notice that the circumstances presented may warrant a  
13           sentence above the standard sentencing range. The judge shall specify,  
14           in writing, which of the aggravating circumstances stated in RCW  
15           9.94A.535 (2) or (3) appear to be present.

16           (3) The facts supporting aggravating circumstances shall be proved  
17           to a jury beyond a reasonable doubt. The jury's verdict on the  
18           aggravating factor must be unanimous, and by special interrogatory. If

1 a jury is waived, proof shall be to the court beyond a reasonable  
2 doubt, unless the defendant stipulates to the aggravating facts.

3 ~~((3))~~ (4) Evidence regarding any facts supporting aggravating  
4 circumstances under RCW 9.94A.535(3) (a) through (y), shall be  
5 presented to the jury during the trial of the alleged crime, unless the  
6 state alleges the aggravating circumstances listed in RCW 9.94A.535(3)  
7 (e)(iv), (h)(i), (o), or (t). If one of these aggravating  
8 circumstances is alleged, the trial court may conduct a separate  
9 proceeding if the evidence supporting the aggravating fact is not part  
10 of the res geste of the charged crime, if the evidence is not otherwise  
11 admissible in trial of the charged crime, and if the court finds that  
12 the probative value of the evidence to the aggravated fact is  
13 substantially outweighed by its prejudicial effect on the jury's  
14 ability to determine guilt or innocence for the underlying crime.

15 ~~((4))~~ (5) If the court conducts a separate proceeding to  
16 determine the existence of aggravating circumstances, the proceeding  
17 shall immediately follow the trial on the underlying conviction, if  
18 possible. If any person who served on the jury is unable to continue,  
19 the court shall substitute an alternate juror.

20 ~~((5))~~ (6) If the jury finds, unanimously and beyond a reasonable  
21 doubt, one or more of the facts alleged by the state in support of an  
22 aggravated sentence, the court may sentence the offender pursuant to  
23 RCW 9.94A.535 to a term of confinement up to the maximum allowed under  
24 RCW 9A.20.021 for the underlying conviction if it finds, considering  
25 the purposes of this chapter, that the facts found are substantial and  
26 compelling reasons justifying an exceptional sentence.

27 **Sec. 2.** RCW 9.94A.431 and 1995 c 288 s 2 are each amended to read  
28 as follows:

29 (1) If a plea agreement has been reached by the prosecutor and the  
30 defendant pursuant to RCW 9.94A.421, they shall at the time of the  
31 defendant's plea state to the court, on the record, the nature of the  
32 agreement and the reasons for the agreement. The prosecutor shall  
33 inform the court on the record whether the victim or victims of all  
34 crimes against persons, as defined in RCW 9.94A.411, covered by the  
35 plea agreement have expressed any objections to or comments on the  
36 nature of and reasons for the plea agreement. The court, at the time  
37 of the plea, shall determine if the agreement is consistent with the

1 interests of justice and with the prosecuting standards. If the court  
2 determines it is not consistent with the interests of justice and with  
3 the prosecuting standards, the court shall, on the record, inform the  
4 defendant and the prosecutor that they are not bound by the agreement  
5 and that the defendant may withdraw the defendant's plea of guilty, if  
6 one has been made, and enter a plea of not guilty.

7 (2) The sentencing judge is not bound by any recommendations  
8 contained in an allowed plea agreement and the defendant shall be so  
9 informed at the time of plea.

10 (3) The defendant shall be informed at the time of the plea that:  
11 (a) The sentencing judge may decide to initiate proceedings pursuant to  
12 RCW 9.94A.535 to impose an aggravated exceptional sentence pursuant to  
13 this chapter at any time prior to the imposition of sentence; and (b)  
14 if aggravated exceptional sentence proceedings are initiated the  
15 defendant may withdraw the plea of guilty and enter a plea of not  
16 guilty and the prosecutor shall not be bound by the plea agreement and  
17 is relieved of any obligation to comply with the terms of the plea  
18 agreement.

19 **Sec. 3.** RCW 43.10.030 and 1975 c 40 s 5 are each amended to read  
20 as follows:

21 The attorney general shall:

22 (1) Appear for and represent the state before the supreme court or  
23 the court of appeals in all cases in which the state is interested;

24 (2) Institute and prosecute all actions and proceedings for, or for  
25 the use of the state, which may be necessary in the execution of the  
26 duties of any state officer;

27 (3) Defend all actions and proceedings against any state officer or  
28 employee acting in his or her official capacity, in any of the courts  
29 of this state or the United States;

30 (4) Consult with and advise the several prosecuting attorneys in  
31 matters relating to the duties of their office, and when the interests  
32 of the state require, he or she shall attend the trial of any person  
33 accused of a crime, and assist in the prosecution;

34 (5) Appear for and represent the state whenever a superior court  
35 judge has initiated aggravated exceptional sentence proceedings  
36 pursuant to RCW 9.94A.537(2) and the prosecuting attorney has indicated  
37 that he or she will not act to seek an exceptional sentence;

1        (6) Consult with and advise the governor, members of the  
2 legislature, and other state officers, and when requested, give written  
3 opinions upon all constitutional or legal questions relating to the  
4 duties of such officers;  
5        ~~((+6))~~ (7) Prepare proper drafts of contracts and other  
6 instruments relating to subjects in which the state is interested;  
7        ~~((+7))~~ (8) Give written opinions, when requested by either branch  
8 of the legislature, or any committee thereof, upon constitutional or  
9 legal questions;  
10       ~~((+8))~~ (9) Enforce the proper application of funds appropriated  
11 for the public institutions of the state, and prosecute corporations  
12 for failure or refusal to make the reports required by law;  
13       ~~((+9))~~ (10) Keep in proper books a record of all cases prosecuted  
14 or defended by him or her, on behalf of the state or its officers, and  
15 of all proceedings had in relation thereto, and deliver the same to his  
16 or her successor in office;  
17       ~~((+10))~~ (11) Keep books in which he or she shall record all the  
18 official opinions given by him or her during his or her term of office,  
19 and deliver the same to his or her successor in office;  
20       ~~((+11))~~ (12) Pay into the state treasury all moneys received by  
21 him or her for the use of the state.

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