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# SENTENCING GUIDELINES RESOURCE CENTER

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# What is Blakely and Why is it so Important?

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*Blakely v. Washington*<sup>1</sup> was a case decided by the Supreme Court in 2004. The case addressed the application of the sentencing guidelines in Washington, but the impact of the decision was to call into doubt the validity of *all* guidelines systems.

To understand *Blakely*, one must go back to an earlier decision of the Supreme Court, *Apprendi v. New Jersey*.<sup>2</sup> *Apprendi* was not a guidelines case. Rather, the case involved sentencing under a hate crime statute, which provided for an enhanced sentence if a trial judge found, by a preponderance of the evidence, that the defendant committed the crime with a purpose to intimidate a person or group because of race.<sup>3</sup> The Court discussed the importance of “trying to a jury all facts necessary to constitute a statutory offense, and proving those facts beyond a reasonable doubt.”<sup>4</sup> The constitutional protections inherent in this statement – the right to due process and the right to a speedy and public jury trial – protect the defendant against undue deprivation of liberty in the form of criminal punishment. Taking these factors into consideration, the Supreme Court held that any fact, other than the fact of a prior conviction, that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.<sup>5</sup> Thus, the New Jersey statute was unconstitutional because the statute called for the judge rather than the jury to make finding that the offense was racially motivated, and because that determination resulted in a sentence that was greater than the statutory maximum sentence.

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*Blakely* involved application of the *Apprendi* rule in the sentencing guidelines context. The defendant in *Blakely* was convicted in Washington State for the offense of kidnapping.<sup>6</sup> State law provided for a maximum 10-year sentence.<sup>7</sup> The Washington sentencing guidelines provided for a standard range sentence of 49 to 53 months (just over four years) for a typical offender committing the same crime

and having the same criminal history.<sup>8</sup> The guidelines also provided for a general departure standard allowing the court to impose a more severe sentence (above the standard range) if the court found there were *substantial and compelling reasons justifying an exceptional sentence*.<sup>9</sup> Utilizing this authority, the judge imposed a sentence of 90 months (seven and a half years), stating that the defendant had committed the offense with deliberate cruelty.<sup>10</sup> The Supreme Court, referencing the rule from *Apprendi*, found that the process by which the court could impose a more severe sentence than called for in the guidelines violated the defendant's Sixth Amendment right to a jury trial because the judge rather than a jury made the findings that justified the higher sentence.

Recall that the rule from *Apprendi* was this:

Any fact, other than the fact of a prior conviction, that increases the penalty for a crime *beyond the statutory maximum* must be submitted to a jury and proven beyond a reasonable doubt.

Most who read the rule thought that the term *statutory maximum* simply referred to the maximum sentence established by the legislature in defining the crime. For example, a statute might say kidnapping is punishable by up to 10 years in prison. Sentencing guidelines are designed to take these maximum sentences into account, setting those maximums as the ceiling, and establishing appropriate sentencing ranges below that ceiling, taking into consideration the defendant's prior record, if any.

*Blakely* was significant because the Supreme Court treated the presumptive sentence under the guidelines, rather than the maximum sentence defined in statute by the Washington Legislature, as the statutory maximum sentence and therefore, as the punishment that could not be increased without a jury's input. Thus, under *Blakely*, the defendant's Sixth Amendment right to a jury trial can be violated any time the court imposes a sentence greater than that called for in the guidelines, even when the sentence imposed is *below* the maximum punishment permitted by the legislature. As the Supreme Court explained in *Blakely*, "the relevant 'statutory maximum' is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings."<sup>11</sup>

The impact of *Blakely* was to call into doubt the constitutionality of all guidelines systems. Most guidelines systems at the time established recommended sentences beneath the cap of the legislatively created statutory maximum punishment. And it was also fairly standard for the systems to provide a mechanism for the judge to depart from the recommended guidelines sentence and impose a more severe sentence if the case so warranted, so long as the sentence was below the legislatively defined statutory maximum. After *Blakely*, it was unclear if these departures could continue. The question was, could guidelines systems continue to exist within the constitutional constraints of *Blakely*?

Shortly afterward, in *U.S. v. Booker*,<sup>12</sup> the Supreme Court applied its reasoning in *Blakely* to the Federal

Sentencing Guidelines, and found several aspects of the guidelines violated the constitution. Rather than declaring the guidelines void because of these constitutional infirmities, the Court severed the provision that made the guidelines mandatory and declared them to be advisory.<sup>13</sup> In an advisory system, the Court explained, the constitution is not implicated because the guidelines do not have the force and effect of law.<sup>14</sup> Thus, following *Booker*, sentencing courts in the federal system must consider the guidelines ranges, but are permitted to tailor the sentences as deemed appropriate,<sup>15</sup> subject to appellate review for unreasonableness.<sup>16</sup>

Other guidelines systems faced similar challenges, which resulted in varying responses. For example, in Minnesota, the guidelines process for upward departures (aggravated sentences) was found to be invalid under *Blakely*, and was severed from the guidelines.<sup>17</sup> In addition, the Minnesota Legislature responded by raising the upper end of the guidelines sentencing range from 15% above the midpoint to 20% above the midpoint.<sup>18</sup> And procedures were enacted – first legislatively,<sup>19</sup> and then by court rule<sup>20</sup> – to allow for a jury determination of the facts supporting an upward departure. A few years later, a separate grid for sex offenders was enacted that imposed much tougher sentences for these offenses, and eliminated the need in many cases, to consider upward departures.<sup>21</sup> Minnesota, therefore, responded by enacting changes in the guidelines, law, and procedure that allow its mandatory guidelines to continue to function within constitutional constraints.

In contrast, jurisdictions that had advisory guidelines systems even before *Blakely*, were virtually unaffected. For example, in Utah, the guidelines are self-proclaimed as advisory.<sup>22</sup> Although several statutory sentencing enhancements in Utah came under scrutiny following *Blakely*,<sup>23</sup> the guidelines themselves were never challenged.

More recently, the U.S. Supreme Court has considered whether other sentencing determinations also require a jury determination of facts resulting in an aggravated sentence. In *Oregon v. Ice*,<sup>24</sup> the Court determined the Sixth Amendment right to a jury trial *does not* preclude the legislature from assigning to judges rather than juries the fact finding necessary to impose consecutive rather than concurrent sentences. The Court elaborated that this type of decision has been historically left to the discretion of the court.<sup>25</sup> But in *Alleyne v. United States*,<sup>26</sup> the Supreme Court found that any fact that increases the mandatory minimum is an element of the offense that must be submitted to the jury.<sup>27</sup> The Court reasoned that the facts supporting a mandatory minimum sentence are elements of the offense because they “alter the prescribed range of sentences to which a defendant is exposed and do so in a manner that aggravates the punishment.”<sup>28</sup> *Alleyne* thus raises new questions about the interplay and tensions between sentencing guidelines, legislatively-created sentencing factors, and judicial discretion.

To learn more about the impact of *Blakely* on the jurisdictions highlighted on this site, review the case law summary posted for each jurisdiction on the applicable jurisdiction page.

- [1](#) *Blakely v. Washington*, 542 U.S. 296 (2004).
- [2](#) *Apprendi v. New Jersey*, 530 U.S. 466 (2000).
- [3](#) *Id.* at 469-70.
- [4](#) *Id.* at 484.
- [5](#) *Id.* at 490.
- [6](#) *Blakely*, 542 U.S. at 299.
- [7](#) *Id.*
- [8](#) *Id.*
- [9](#) *Id.*
- [10](#) *Id.* at 300.
- [11](#) *Id.* at 303-04.
- [12](#) 543 U.S. 220 (2005).
- [13](#) *Id.* at 245.
- [14](#) *Contra id.* at 234.
- [15](#) *Id.*
- [16](#) *Id.* at 260-65.
- [17](#) See *State v. Shattuck [Shattuck I]* 689 NW.2d 785 (Minn. 2004) and *State v. Shattuck [Shattuck II]*, 704 NW.2d 131 (Minn. 2005).
- [18](#) 2005 Minn. Laws ch. 136, art. 16, § 1.
- [19](#) 2005 Minn. Laws ch. 136, art. 3, § 18 and art. 16, §§ 3-8, 13.
- [20](#) Minnesota Supreme Court, *Promulgation of Amendments to the Minnesota Rules of Criminal Procedure*, File No. C1-84-2137 (August 17, 2006) available at [http://www.mncourts.gov/Documents/0/Public/administration/AdministrationFiles/Criminal%20Procedure%20Rules%20ADM10-8049%20\(formerly%20C1-84-2137\)/2006-08-17%20Order%20Crim%20Proc%20Amendments.pdf](http://www.mncourts.gov/Documents/0/Public/administration/AdministrationFiles/Criminal%20Procedure%20Rules%20ADM10-8049%20(formerly%20C1-84-2137)/2006-08-17%20Order%20Crim%20Proc%20Amendments.pdf) ([http://www.mncourts.gov/Documents/0/Public/administration/AdministrationFiles/Criminal%20Procedure%20Rules%20ADM10-8049%20\(formerly%20C1-84-2137\)/2006-08-17%20Order%20Crim%20Proc%20Amendments.pdf](http://www.mncourts.gov/Documents/0/Public/administration/AdministrationFiles/Criminal%20Procedure%20Rules%20ADM10-8049%20(formerly%20C1-84-2137)/2006-08-17%20Order%20Crim%20Proc%20Amendments.pdf)) (last visited January 29, 2015).
- [21](#) See 2005 Minn. Laws art. 22, § 22 (directing the Sentencing Guidelines Commission to propose a separate sex offender grid).
- [22](#) Utah Adult Sentencing and Release Guidelines at 1 (2014) (stating that the guidelines are “intended to inform the sentencing authority, but do not dictate their decision”).
- [23](#) See, e.g., *State v. Duran*, 262 P.3d 468 (Utah Ct. App. 2011) (challenging the habitual offender sentencing law); *State v. Garner*, 177 P.3d 637 (Utah Ct. App. 2008) (challenging Utah’s indeterminate sentencing scheme permitting the judge to make factual findings to elevate the minimum term of the applicable sentencing range).
- [24](#) 129 S.Ct. 711 (2009).
- [25](#) *Id.* at 717-20. The Court also expressed concern that the doctrine would expand to such a broad range of sentencing determinations that it would become impossible to administer. *Id.*
- [26](#) 133 S.Ct. 2151 (2013).

[27](#) *Id.* at 2155.

[28](#) *Id.* at 2158.

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