

SB 5477 - S AMD 91
By Senator Kline

WITHDRAWN 03/15/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to
4 restore the ability to impose an aggravated sentence lost by the
5 superior court as a result of the decision of the United States supreme
6 court in *Blakely v. State of Washington*, 542 U.S. ... (2004). The
7 legislature finds that as the seriousness level of the crime and the
8 criminal history of the offender increase, the need for an
9 individualized and informed assessment of the circumstances of the
10 crime, the offender, and the victim, by the judiciary, is necessary for
11 justice to be obtained. The legislature further finds that the
12 exercise of the judiciary's sentencing discretion over a broader range
13 based upon the assessment of these circumstances is consistent with the
14 policies supporting Washington's sentencing reform act.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
16 to read as follows:

17 (1) For offenders convicted of a violent offense, the upper limit
18 of the standard sentencing range shall be advisory only.
19 Notwithstanding any other provision of law, the maximum sentence that
20 a court may impose for a violent offense is the maximum sentence for
21 the current offense under chapter 9A.20 RCW, or twice the upper limit
22 of the standard sentencing range, whichever is less. This provision
23 shall not apply to any offender sentenced under RCW 9.94A.712 or
24 section 7 of this act.

25 (2) In making its determination of the sentence length to be
26 imposed, the court shall consider the risk assessment prepared by the
27 department of corrections, the presentence report and other materials
28 provided by the offender, and any information provided by the victim or
29 victims of the crime.

1 (3) A sentence imposed under this section shall be a determinate
2 sentence unless it is imposed on an offender sentenced under RCW
3 9.94A.712. The sentence may be appealed by the offender or the state
4 as set forth in RCW 9.94A.585 (2) through (6).

5 **Sec. 3.** RCW 9.94A.480 and 2002 c 290 s 16 are each amended to read
6 as follows:

7 (1) A current, newly created or reworked judgment and sentence
8 document for each felony sentencing shall record any and all
9 recommended sentencing agreements or plea agreements and the sentences
10 for any and all felony crimes kept as public records under RCW
11 9.94A.475 shall contain the clearly printed name and legal signature of
12 the sentencing judge. The judgment and sentence document as defined in
13 this section shall also provide additional space for the sentencing
14 judge's reasons, if any, for going either above or below the
15 presumptive or advisory sentence range for any and all felony crimes
16 covered as public records under RCW 9.94A.475. Both the sentencing
17 judge and the prosecuting attorney's office shall each retain or
18 receive a completed copy of each sentencing document as defined in this
19 section for their own records.

20 (2) The sentencing guidelines commission shall be sent a completed
21 copy of the judgment and sentence document upon conviction for each
22 felony sentencing under subsection (1) of this section and shall
23 compile a yearly and cumulative judicial record of each sentencing
24 judge in regards to his or her sentencing practices for any and all
25 felony crimes involving:

- 26 (a) Any violent offense as defined in this chapter;
- 27 (b) Any most serious offense as defined in this chapter;
- 28 (c) Any felony with any deadly weapon special verdict under RCW
29 9.94A.602;

30 (d) Any felony with any deadly weapon enhancements under RCW
31 9.94A.533 (3) or (4), or both; and/or

32 (e) The felony crimes of possession of a machine gun, possessing a
33 stolen firearm, drive-by shooting, theft of a firearm, unlawful
34 possession of a firearm in the first or second degree, and/or use of a
35 machine gun in a felony.

36 (3) The sentencing guidelines commission shall compare each
37 individual judge's sentencing practices to the standard ~~((σ))~~

1 presumptive, or advisory sentence range for any and all felony crimes
2 listed in subsection (2) of this section for the appropriate offense
3 level as defined in RCW 9.94A.515 or 9.94A.518, offender score as
4 defined in RCW 9.94A.525, and any applicable deadly weapon enhancements
5 as defined in RCW 9.94A.533 (3) or (4), or both. These comparative
6 records shall be retained and made available to the public for review
7 in a current, newly created or reworked official published document by
8 the sentencing guidelines commission.

9 (4) Any and all felony sentences which are either above or below
10 the standard ~~((σ))~~, presumptive, or advisory sentence range in
11 subsection (3) of this section shall also mark whether the prosecuting
12 attorney in the case also recommended a similar sentence, if any, which
13 was either above or below the standard, presumptive, or advisory
14 sentence range and shall also indicate if the sentence was in
15 conjunction with an approved alternative sentencing option including a
16 first-time offender waiver, sex offender sentencing alternative, or
17 other prescribed sentencing option.

18 (5) If any completed judgment and sentence document as defined in
19 subsection (1) of this section is not sent to the sentencing guidelines
20 commission as required in subsection (2) of this section, the
21 sentencing guidelines commission shall have the authority and shall
22 undertake reasonable and necessary steps to assure that all past,
23 current, and future sentencing documents as defined in subsection (1)
24 of this section are received by the sentencing guidelines commission.

25 **Sec. 4.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
26 2002 c 175 s 6 are each reenacted and amended to read as follows:

27 (1) When a person is convicted of a felony, the court shall impose
28 punishment as provided in this chapter.

29 (2)(a) The court shall impose a sentence as provided in the
30 following sections and as applicable in the case:

31 (i) Unless another term of confinement applies, the court shall
32 impose a sentence within the standard sentence range established in RCW
33 9.94A.510 or 9.94A.517;

34 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

35 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

36 (iv) RCW 9.94A.545, relating to community custody for offenders
37 whose term of confinement is one year or less;

- 1 (v) RCW 9.94A.570, relating to persistent offenders;
2 (vi) RCW 9.94A.540, relating to mandatory minimum terms;
3 (vii) RCW 9.94A.650, relating to the first-time offender waiver;
4 (viii) RCW 9.94A.660, relating to the drug offender sentencing
5 alternative;
6 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
7 alternative;
8 (x) RCW 9.94A.712, relating to certain sex offenses;
9 (xi) RCW 9.94A.535, relating to exceptional sentences;
10 (xii) RCW 9.94A.589, relating to consecutive and concurrent
11 sentences;
12 (xiii) Section 2 of this act relating to violent offenses.

13 (b) If a standard sentence range has not been established for the
14 offender's crime, the court shall impose a determinate sentence which
15 may include not more than one year of confinement; community
16 restitution work; until July 1, 2000, a term of community supervision
17 not to exceed one year and on and after July 1, 2000, a term of
18 community custody not to exceed one year, subject to conditions and
19 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
20 legal financial obligations. The court may impose a sentence which
21 provides more than one year of confinement if the court finds reasons
22 justifying an exceptional sentence as provided in RCW 9.94A.535.

23 (3) If the court imposes a sentence requiring confinement of thirty
24 days or less, the court may, in its discretion, specify that the
25 sentence be served on consecutive or intermittent days. A sentence
26 requiring more than thirty days of confinement shall be served on
27 consecutive days. Local jail administrators may schedule court-ordered
28 intermittent sentences as space permits.

29 (4) If a sentence imposed includes payment of a legal financial
30 obligation, it shall be imposed as provided in RCW 9.94A.750,
31 9.94A.753, 9.94A.760, and 43.43.7541.

32 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
33 court may not impose a sentence providing for a term of confinement or
34 community supervision, community placement, or community custody which
35 exceeds the statutory maximum for the crime as provided in chapter
36 9A.20 RCW.

37 (6) The sentencing court shall give the offender credit for all

1 confinement time served before the sentencing if that confinement was
2 solely in regard to the offense for which the offender is being
3 sentenced.

4 (7) The court shall order restitution as provided in RCW 9.94A.750
5 and 9.94A.753.

6 (8) As a part of any sentence, the court may impose and enforce
7 crime-related prohibitions and affirmative conditions as provided in
8 this chapter.

9 (9) The court may order an offender whose sentence includes
10 community placement or community supervision to undergo a mental status
11 evaluation and to participate in available outpatient mental health
12 treatment, if the court finds that reasonable grounds exist to believe
13 that the offender is a mentally ill person as defined in RCW 71.24.025,
14 and that this condition is likely to have influenced the offense. An
15 order requiring mental status evaluation or treatment must be based on
16 a presentence report and, if applicable, mental status evaluations that
17 have been filed with the court to determine the offender's competency
18 or eligibility for a defense of insanity. The court may order
19 additional evaluations at a later date if deemed appropriate.

20 (10) In any sentence of partial confinement, the court may require
21 the offender to serve the partial confinement in work release, in a
22 program of home detention, on work crew, or in a combined program of
23 work crew and home detention.

24 (11) In sentencing an offender convicted of a crime of domestic
25 violence, as defined in RCW 10.99.020, if the offender has a minor
26 child, or if the victim of the offense for which the offender was
27 convicted has a minor child, the court may, as part of any term of
28 community supervision, community placement, or community custody, order
29 the offender to participate in a domestic violence perpetrator program
30 approved under RCW 26.50.150.

31 **Sec. 5.** RCW 9.94A.530 and 2002 c 290 s 18 are each amended to read
32 as follows:

33 (1) The intersection of the column defined by the offender score
34 and the row defined by the offense seriousness score determines the
35 standard sentence range (see RCW 9.94A.510, (Table 1) and RCW
36 9.94A.517, (Table 3)). The additional time for deadly weapon findings
37 or for (~~those offenses enumerated~~) other adjustments as specified in

1 RCW 9.94A.533(~~((4) that were committed in a state correctional facility~~
2 ~~or county jail~~)) shall be added to the entire standard sentence range.
3 The court may impose any sentence within the range that it deems
4 appropriate. All standard sentence ranges are expressed in terms of
5 total confinement.

6 (2) In determining any sentence other than a sentence above the
7 standard range, the trial court may rely on no more information than is
8 admitted by the plea agreement, or admitted, acknowledged, or proved in
9 a trial or at the time of sentencing, or proven pursuant to section 7
10 of this act. Acknowledgement includes not objecting to information
11 stated in the presentence reports. Where the defendant disputes
12 material facts, the court must either not consider the fact or grant an
13 evidentiary hearing on the point. The facts shall be deemed proved at
14 the hearing by a preponderance of the evidence, except as otherwise
15 specified in section 7 of this act.

16 (3) In determining any sentence above the standard sentence range,
17 the court shall follow the procedures set forth in section 7 of this
18 act. Facts that establish the elements of a more serious crime or
19 additional crimes may not be used to go outside the standard sentence
20 range except upon stipulation or when specifically provided for in RCW
21 9.94A.535(2) (d), (e), (g), and (h).

22 **Sec. 6.** RCW 9.94A.535 and 2003 c 267 s 4 are each amended to read
23 as follows:

24 The court may impose a sentence outside the standard sentence range
25 for an offense if it finds, considering the purpose of this chapter,
26 that there are substantial and compelling reasons justifying an
27 exceptional sentence. Facts supporting aggravated sentences, other
28 than the fact of a prior conviction, shall be determined pursuant to
29 the provisions of section 7 of this act.

30 Whenever a sentence outside the standard sentence range is imposed,
31 the court shall set forth the reasons for its decision in written
32 findings of fact and conclusions of law. A sentence outside the
33 standard sentence range shall be a determinate sentence (~~((unless it is~~
34 ~~imposed on an offender sentenced under RCW 9.94A.712. An exceptional~~
35 ~~sentence imposed on an offender sentenced under RCW 9.94A.712 shall be~~
36 ~~to a minimum term set by the court and a maximum term equal to the~~

1 ~~statutory maximum sentence for the offense of conviction under chapter~~
2 ~~9A.20 RCW~~)).

3 If the sentencing court finds that an exceptional sentence outside
4 the standard sentence range should be imposed, the sentence is subject
5 to review only as provided for in RCW 9.94A.585(4).

6 A departure from the standards in RCW 9.94A.589 (1) and (2)
7 governing whether sentences are to be served consecutively or
8 concurrently is an exceptional sentence subject to the limitations in
9 this section, and may be appealed by the offender or the state as set
10 forth in RCW 9.94A.585 (2) through (6).

11 ~~((The following are illustrative factors which the court may~~
12 ~~consider in the exercise of its discretion to impose an exceptional~~
13 ~~sentence. The following are illustrative only and are not intended to~~
14 ~~be exclusive reasons for exceptional sentences.))~~

15 (1) Mitigating Circumstances - Court to Consider
16 The court may impose an exceptional sentence below the standard range
17 if it finds that mitigating circumstances are established by a
18 preponderance of the evidence. The following are illustrative only and
19 are not intended to be exclusive reasons for exceptional sentences.

20 (a) To a significant degree, the victim was an initiator, willing
21 participant, aggressor, or provoker of the incident.

22 (b) Before detection, the defendant compensated, or made a good
23 faith effort to compensate, the victim of the criminal conduct for any
24 damage or injury sustained.

25 (c) The defendant committed the crime under duress, coercion,
26 threat, or compulsion insufficient to constitute a complete defense but
27 which significantly affected his or her conduct.

28 (d) The defendant, with no apparent predisposition to do so, was
29 induced by others to participate in the crime.

30 (e) The defendant's capacity to appreciate the wrongfulness of his
31 or her conduct, or to conform his or her conduct to the requirements of
32 the law, was significantly impaired. Voluntary use of drugs or alcohol
33 is excluded.

34 (f) The offense was principally accomplished by another person and
35 the defendant manifested extreme caution or sincere concern for the
36 safety or well-being of the victim.

37 (g) The operation of the multiple offense policy of RCW 9.94A.589

1 results in a presumptive sentence that is clearly excessive in light of
2 the purpose of this chapter, as expressed in RCW 9.94A.010.

3 (h) The defendant or the defendant's children suffered a continuing
4 pattern of physical or sexual abuse by the victim of the offense and
5 the offense is a response to that abuse.

6 (2) Aggravating Circumstances - Considered and Imposed by the Court
7 The trial court may impose an aggravated exceptional sentence
8 without a finding of fact by a jury under the following circumstances:

9 (a) The defendant and the state both stipulate that justice is best
10 served by the imposition of an exceptional sentence outside the
11 standard range, and the court finds the exceptional sentence to be
12 consistent with and in furtherance of the interests of justice and the
13 purposes of the sentencing reform act.

14 (b) The defendant's prior unscored misdemeanor or prior unscored
15 foreign criminal history results in a presumptive sentence that is
16 clearly too lenient in light of the purpose of this chapter, as
17 expressed in RCW 9.94A.010.

18 (c) The defendant has committed multiple current offenses and the
19 defendant's high offender score results in some of the current offenses
20 going unpunished.

21 (d) The failure to consider the defendant's prior criminal history
22 which was omitted from the offender score calculation pursuant to RCW
23 9.94A.525 results in a presumptive sentence that is clearly too
24 lenient.

25 (3) Aggravating Circumstances - Considered By A Jury - Imposed by
26 the Court

27 Except for circumstances listed in subsection (2) of this section,
28 the following circumstances are an exclusive list of factors that can
29 support a sentence above the standard range. Such facts should be
30 determined by procedures specified in section 7 of this act.

31 (a) The defendant's conduct during the commission of the current
32 offense manifested deliberate cruelty to the victim.

33 (b) The defendant knew or should have known that the victim of the
34 current offense was particularly vulnerable or incapable of resistance
35 (~~due to extreme youth, advanced age, disability, or ill health~~)).

36 (c) The current offense was a violent offense, and the defendant
37 knew that the victim of the current offense was pregnant.

1 (d) The current offense was a major economic offense or series of
2 offenses, so identified by a consideration of any of the following
3 factors:

4 (i) The current offense involved multiple victims or multiple
5 incidents per victim;

6 (ii) The current offense involved attempted or actual monetary loss
7 substantially greater than typical for the offense;

8 (iii) The current offense involved a high degree of sophistication
9 or planning or occurred over a lengthy period of time; or

10 (iv) The defendant used his or her position of trust, confidence,
11 or fiduciary responsibility to facilitate the commission of the current
12 offense.

13 (e) The current offense was a major violation of the Uniform
14 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
15 trafficking in controlled substances, which was more onerous than the
16 typical offense of its statutory definition: The presence of ANY of
17 the following may identify a current offense as a major VUCSA:

18 (i) The current offense involved at least three separate
19 transactions in which controlled substances were sold, transferred, or
20 possessed with intent to do so;

21 (ii) The current offense involved an attempted or actual sale or
22 transfer of controlled substances in quantities substantially larger
23 than for personal use;

24 (iii) The current offense involved the manufacture of controlled
25 substances for use by other parties;

26 (iv) The circumstances of the current offense reveal the offender
27 to have occupied a high position in the drug distribution hierarchy;

28 (v) The current offense involved a high degree of sophistication or
29 planning, occurred over a lengthy period of time, or involved a broad
30 geographic area of disbursement; or

31 (vi) The offender used his or her position or status to facilitate
32 the commission of the current offense, including positions of trust,
33 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
34 other medical professional).

35 (f) The current offense included a finding of sexual motivation
36 pursuant to RCW 9.94A.835.

37 (g) The offense was part of an ongoing pattern of sexual abuse of

1 the same victim under the age of eighteen years manifested by multiple
2 incidents over a prolonged period of time.

3 (h) The current offense involved domestic violence, as defined in
4 RCW 10.99.020, and one or more of the following was present:

5 (i) The offense was part of an ongoing pattern of psychological,
6 physical, or sexual abuse of the victim manifested by multiple
7 incidents over a prolonged period of time;

8 (ii) The offense occurred within sight or sound of the victim's or
9 the offender's minor children under the age of eighteen years; or

10 (iii) The offender's conduct during the commission of the current
11 offense manifested deliberate cruelty or intimidation of the victim.

12 ~~(i) ((The operation of the multiple offense policy of RCW 9.94A.589
13 results in a presumptive sentence that is clearly too lenient in light
14 of the purpose of this chapter, as expressed in RCW 9.94A.010.~~

15 ~~(j) The defendant's prior unscored misdemeanor or prior unscored
16 foreign criminal history results in a presumptive sentence that is
17 clearly too lenient in light of the purpose of this chapter, as
18 expressed in RCW 9.94A.010.~~

19 ~~(k))~~ The offense resulted in the pregnancy of a child victim of
20 rape.

21 ~~((l))~~ (j) The defendant knew that the victim of the current
22 offense was a youth who was not residing with a legal custodian and the
23 defendant established or promoted the relationship for the primary
24 purpose of victimization.

25 ~~((m))~~ (k) The offense was committed with the intent to obstruct
26 or impair human or animal health care or agricultural or forestry
27 research or commercial production.

28 ~~((n))~~ (l) The current offense is trafficking in the first degree
29 or trafficking in the second degree and any victim was a minor at the
30 time of the offense.

31 (m) The offense involved a high degree of sophistication or
32 planning.

33 (n) The defendant used his or her position of trust, confidence, or
34 fiduciary responsibility to facilitate the commission of the current
35 offense.

36 (o) The defendant committed a current sex offense, has a history of
37 sex offenses, and is not amenable to treatment.

38 (p) The offense involved an invasion of the victim's privacy.

1 (q) The defendant demonstrated or displayed an egregious lack of
2 remorse.

3 (r) The offense involved a destructive and foreseeable impact on
4 persons other than the victim.

5 (s) The defendant committed the offense to obtain or maintain his
6 or her membership or to advance his or her position in the hierarchy of
7 an organization, association, or identifiable group.

8 (t) The defendant committed the current offense shortly after being
9 released from incarceration.

10 (u) The current offense is a burglary and the victim of the
11 burglary was present in the building or residence when the crime was
12 committed.

13 (v) The offense was committed against a law enforcement officer who
14 was performing his or her official duties at the time of the offense,
15 the offender knew that the victim was a law enforcement officer, and
16 the victim's status as a law enforcement officer is not an element of
17 the offense.

18 (w) The defendant committed the offense against a victim who was
19 acting as a good samaritan.

20 (x) The defendant committed the offense against a public official
21 or officer of the court in retaliation of the public official's
22 performance of his or her duty to the criminal justice system.

23 (y) The victim's injuries substantially exceed the level of bodily
24 harm necessary to satisfy the elements of the offense. This aggravator
25 is not an exception to RCW 9.94A.530(2).

26 NEW SECTION. Sec. 7. A new section is added to chapter 9.94A RCW
27 to read as follows:

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

33 (2) The facts supporting aggravating circumstances shall be proved
34 to a jury beyond a reasonable doubt. The jury's verdict on the
35 aggravating factor must be unanimous, and by special interrogatory. If
36 a jury is waived, proof shall be to the court beyond a reasonable
37 doubt, unless the defendant stipulates to the aggravating facts.

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

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

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

25 NEW SECTION. **Sec. 8.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately."

WITHDRAWN 03/15/2005

1 On page 1, line 1 of the title, after "range;" strike the remainder
2 of the title and insert "amending RCW 9.94A.480, 9.94A.530, and
3 9.94A.535; reenacting and amending RCW 9.94A.505; adding new sections
4 to chapter 9.94A RCW; creating a new section; and declaring an
5 emergency."

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