
HOUSE BILL 2321

State of Washington

62nd Legislature

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By Representatives Kelley, Finn, and Moscoso

Read first time 01/11/12. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to military deployment; and amending RCW 9.94A.535.

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

3 **Sec. 1.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read
4 as follows:

5 The court may impose a sentence outside the standard sentence range
6 for an offense if it finds, considering the purpose of this chapter,
7 that there are substantial and compelling reasons justifying an
8 exceptional sentence. Facts supporting aggravated sentences, other
9 than the fact of a prior conviction, shall be determined pursuant to
10 the provisions of RCW 9.94A.537.

11 Whenever a sentence outside the standard sentence range is imposed,
12 the court shall set forth the reasons for its decision in written
13 findings of fact and conclusions of law. A sentence outside the
14 standard sentence range shall be a determinate sentence.

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

18 A departure from the standards in RCW 9.94A.589 (1) and (2)
19 governing whether sentences are to be served consecutively or

1 concurrently is an exceptional sentence subject to the limitations in
2 this section, and may be appealed by the offender or the state as set
3 forth in RCW 9.94A.585 (2) through (6).

4 (1) Mitigating Circumstances - Court to Consider

5 The court may impose an exceptional sentence below the standard
6 range if it finds that mitigating circumstances are established by a
7 preponderance of the evidence. The following are illustrative only and
8 are not intended to be exclusive reasons for exceptional sentences.

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

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

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

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

19 (e) The defendant's capacity to appreciate the wrongfulness of his
20 or her conduct, or to conform his or her conduct to the requirements of
21 the law, was significantly impaired. Voluntary use of drugs or alcohol
22 is excluded.

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

26 (g) The operation of the multiple offense policy of RCW 9.94A.589
27 results in a presumptive sentence that is clearly excessive in light of
28 the purpose of this chapter, as expressed in RCW 9.94A.010.

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

32 (i) The defendant was making a good faith effort to obtain or
33 provide medical assistance for someone who is experiencing a drug-
34 related overdose.

35 (j) The current offense involved domestic violence, as defined in
36 RCW 10.99.020, and the defendant suffered a continuing pattern of
37 coercion, control, or abuse by the victim of the offense and the
38 offense is a response to that coercion, control, or abuse.

1 (2) Aggravating Circumstances - Considered and Imposed by the Court

2 The trial court may impose an aggravated exceptional sentence
3 without a finding of fact by a jury under the following circumstances:

4 (a) The defendant and the state both stipulate that justice is best
5 served by the imposition of an exceptional sentence outside the
6 standard range, and the court finds the exceptional sentence to be
7 consistent with and in furtherance of the interests of justice and the
8 purposes of the sentencing reform act.

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

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

16 (d) The failure to consider the defendant's prior criminal history
17 which was omitted from the offender score calculation pursuant to RCW
18 9.94A.525 results in a presumptive sentence that is clearly too
19 lenient.

20 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
21 the Court

22 Except for circumstances listed in subsection (2) of this section,
23 the following circumstances are an exclusive list of factors that can
24 support a sentence above the standard range. Such facts should be
25 determined by procedures specified in RCW 9.94A.537.

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

28 (b) The defendant knew or should have known that the victim of the
29 current offense was particularly vulnerable or incapable of resistance.

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

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

35 (i) The current offense involved multiple victims or multiple
36 incidents per victim;

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

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

3 (iv) The defendant used his or her position of trust, confidence,
4 or fiduciary responsibility to facilitate the commission of the current
5 offense.

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

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

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

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

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

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

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

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

30 (g) The offense was part of an ongoing pattern of sexual abuse of
31 the same victim under the age of eighteen years manifested by multiple
32 incidents over a prolonged period of time.

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

35 (i) The offense was part of an ongoing pattern of psychological,
36 physical, or sexual abuse of a victim or multiple victims manifested by
37 multiple incidents over a prolonged period of time;

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

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

5 (i) The offense resulted in the pregnancy of a child victim of
6 rape.

7 (j) The defendant knew that the victim of the current offense was
8 a youth who was not residing with a legal custodian and the defendant
9 established or promoted the relationship for the primary purpose of
10 victimization.

11 (k) The offense was committed with the intent to obstruct or impair
12 human or animal health care or agricultural or forestry research or
13 commercial production.

14 (l) The current offense is trafficking in the first degree or
15 trafficking in the second degree and any victim was a minor at the time
16 of the offense.

17 (m) The offense involved a high degree of sophistication or
18 planning.

19 (n) The defendant used his or her position of trust, confidence, or
20 fiduciary responsibility to facilitate the commission of the current
21 offense.

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

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

25 (q) The defendant demonstrated or displayed an egregious lack of
26 remorse.

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

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

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

34 (u) The current offense is a burglary and the victim of the
35 burglary was present in the building or residence when the crime was
36 committed.

37 (v) The offense was committed against a law enforcement officer who
38 was performing his or her official duties at the time of the offense,

1 the offender knew that the victim was a law enforcement officer, and
2 the victim's status as a law enforcement officer is not an element of
3 the offense.

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

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

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

12 (z)(i)(A) The current offense is theft in the first degree, theft
13 in the second degree, possession of stolen property in the first
14 degree, or possession of stolen property in the second degree; (B) the
15 stolen property involved is metal property; and (C) the property damage
16 to the victim caused in the course of the theft of metal property is
17 more than three times the value of the stolen metal property, or the
18 theft of the metal property creates a public hazard.

19 (ii) For purposes of this subsection, "metal property" means
20 commercial metal property, private metal property, or nonferrous metal
21 property, as defined in RCW 19.290.010.

22 (aa) The defendant committed the offense with the intent to
23 directly or indirectly cause any benefit, aggrandizement, gain, profit,
24 or other advantage to or for a criminal street gang as defined in RCW
25 9.94A.030, its reputation, influence, or membership.

26 (bb) The current offense involved paying to view, over the internet
27 in violation of RCW 9.68A.075, depictions of a minor engaged in an act
28 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
29 (g).

30 (cc) The offense was intentionally committed because the defendant
31 perceived the victim to be homeless, as defined in RCW 9.94A.030.

32 (dd) The current offense involved a member of the military who is
33 an active or reserve member of the United States military or naval
34 forces, or a national guard member or his or her immediate family, and
35 the defendant committed the current offense knowing the military member
36 was on deployment as defined in RCW 26.09.004(1)(a).

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