

**SB 5059** - H COMM AMD  
By Committee on Public Safety

**NOT CONSIDERED**

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

3 "Sec. 1. RCW 9A.76.050 and 2011 c 336 s 400 are each amended to  
4 read as follows:

5 As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person  
6 "renders criminal assistance" if, with intent to prevent, hinder, or  
7 delay the apprehension or prosecution of another person who he or she  
8 knows has committed a crime or juvenile offense or is being sought by  
9 law enforcement officials for the commission of a crime or juvenile  
10 offense or has escaped from a detention facility, he or she:

- 11 (1) Harbors or conceals such person; or  
12 (2) Warns such person of impending discovery or apprehension; or  
13 (3) Provides such person with money, transportation, disguise, or  
14 other means of avoiding discovery or apprehension; or  
15 (4) Prevents or obstructs, by use of force, deception, or threat,  
16 anyone from performing an act that might aid in the discovery or  
17 apprehension of such person; or  
18 (5) Conceals, alters, or destroys any physical evidence that might  
19 aid in the discovery or apprehension of such person; or  
20 (6) Provides such person with a weapon.

21 It is not a defense that the person's knowledge of the underlying  
22 crime or juvenile offense committed by the person receiving assistance  
23 was nonspecific or based upon secondhand information.

24 **Sec. 2.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read  
25 as follows:

26 The court may impose a sentence outside the standard sentence range  
27 for an offense if it finds, considering the purpose of this chapter,  
28 that there are substantial and compelling reasons justifying an

1 exceptional sentence. Facts supporting aggravated sentences, other  
2 than the fact of a prior conviction, shall be determined pursuant to  
3 the provisions of RCW 9.94A.537.

4 Whenever a sentence outside the standard sentence range is imposed,  
5 the court shall set forth the reasons for its decision in written  
6 findings of fact and conclusions of law. A sentence outside the  
7 standard sentence range shall be a determinate sentence.

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

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

16 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

17 (a) The defendant and the state both stipulate that justice is best  
18 served by the imposition of an exceptional sentence outside the  
19 standard range, and the court finds the exceptional sentence to be  
20 consistent with and in furtherance of the interests of justice and the  
21 purposes of the sentencing reform act.

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

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

29 (d) The failure to consider the defendant's prior criminal history  
30 which was omitted from the offender score calculation pursuant to RCW  
31 9.94A.525 results in a presumptive sentence that is clearly too  
32 lenient.

33 (3) Aggravating Circumstances - Considered by a Jury -Imposed by  
34 the Court

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

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

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

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

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

10 (i) The current offense involved multiple victims or multiple  
11 incidents per victim;

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

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

16 (iv) The defendant used his or her position of trust, confidence,  
17 or fiduciary responsibility to facilitate the commission of the current  
18 offense.

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

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

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

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

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

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

37 (vi) The offender used his or her position or status to facilitate

1 the commission of the current offense, including positions of trust,  
2 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
3 other medical professional).

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

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

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

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

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

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

18 (i) The offense resulted in the pregnancy of a child victim of  
19 rape.

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

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

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

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

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

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

37 (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 (z)(i)(A) The current offense is theft in the first degree, theft  
27 in the second degree, possession of stolen property in the first  
28 degree, or possession of stolen property in the second degree; (B) the  
29 stolen property involved is metal property; and (C) the property damage  
30 to the victim caused in the course of the theft of metal property is  
31 more than three times the value of the stolen metal property, or the  
32 theft of the metal property creates a public hazard.

33 (ii) For purposes of this subsection, "metal property" means  
34 commercial metal property, private metal property, or nonferrous metal  
35 property, as defined in RCW 19.290.010.

36 (aa) The defendant committed the offense with the intent to  
37 directly or indirectly cause any benefit, aggrandizement, gain, profit,

1 or other advantage to or for a criminal street gang as defined in RCW  
2 9.94A.030, its reputation, influence, or membership.

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

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

9 (4) For the purpose of alleging and sentencing to an aggravating or  
10 mitigating factor of a current offense involving a violation of RCW  
11 9A.76.070, the terms "victim of the offense" or "victims of the  
12 offense" shall include the victim or victims of the underlying crime  
13 committed by the person to whom criminal assistance was rendered only  
14 if the person rendering assistance knew the circumstances of the  
15 underlying crime."

16 Correct the title.

EFFECT: Provides that in a case involving rendering criminal  
assistance in the first degree, for purposes of imposing an exceptional  
sentence, a court or jury may consider the victims of the underlying  
offense but only if the renderer had knowledge of the circumstances of  
the underlying crime.

--- END ---