
SENATE BILL 6524

State of Washington

64th Legislature

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By Senators Darneille, Jayapal, Hasegawa, Chase, and Pedersen

Read first time 01/25/16. Referred to Committee on Human Services,
Mental Health & Housing.

1 AN ACT Relating to factors to be considered when sentencing youth
2 in adult criminal court for crimes committed as minors; amending RCW
3 9.94A.535; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that special
6 consideration should be given when sentencing children for crimes in
7 adult court. The United States supreme court has established that
8 children are constitutionally different from adults for purposes of
9 sentencing. The court has repeatedly considered the issue of
10 diminished culpability of minors, relying on substantial and
11 compelling brain science to conclude that children who commit crimes
12 must be sentenced in a manner that recognizes their youth,
13 culpability, and capacity to change. In the wake of these decisions,
14 the legislature has taken steps to ensure that the mitigating factors
15 associated with juvenile development be considered in sentencing for
16 the most serious of offenses.

17 However, more work remains in this area, particularly with regard
18 to criminal sentencing of defendants in adult court jurisdiction for
19 crimes committed as minors. The United States supreme court in *Kent*
20 *v. United States* identified eight determinative factors to be
21 considered when transferring a child to adult court jurisdiction. The

1 legislature intends to ensure that judges are able to consider
2 similar discretionary factors when sentencing defendants in adult
3 court for crimes committed as minors.

4 **Sec. 2.** RCW 9.94A.535 and 2013 2nd sp.s. c 35 s 37 are each
5 amended to read as follows:

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

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

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

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

24 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

1 (e) The defendant's capacity to appreciate the wrongfulness of
2 his or her conduct, or to conform his or her conduct to the
3 requirements of the law, was significantly impaired. Voluntary use of
4 drugs or alcohol is excluded.

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

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

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

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

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

21 (k) The defendant's age, sophistication, and role in the crime if
22 the defendant is under adult court jurisdiction for a crime committed
23 as a minor.

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

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

29 (a) The defendant and the state both stipulate that justice is
30 best served by the imposition of an exceptional sentence outside the
31 standard range, and the court finds the exceptional sentence to be
32 consistent with and in furtherance of the interests of justice and
33 the purposes of the sentencing reform act.

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

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

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

5 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
6 the Court

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

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

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

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

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

21 (i) The current offense involved multiple victims or multiple
22 incidents per victim;

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

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

28 (iv) The defendant used his or her position of trust, confidence,
29 or fiduciary responsibility to facilitate the commission of the
30 current offense.

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

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

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

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

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

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

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

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

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

20 (h) The current offense involved domestic violence, as defined in
21 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or
22 more of the following was present:

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

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

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

30 (i) The offense resulted in the pregnancy of a child victim of
31 rape.

32 (j) The defendant knew that the victim of the current offense was
33 a youth who was not residing with a legal custodian and the defendant
34 established or promoted the relationship for the primary purpose of
35 victimization.

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

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

4 (m) The offense involved a high degree of sophistication or
5 planning.

6 (n) The defendant used his or her position of trust, confidence,
7 or fiduciary responsibility to facilitate the commission of the
8 current offense.

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

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

12 (q) The defendant demonstrated or displayed an egregious lack of
13 remorse.

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

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

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

21 (u) The current offense is a burglary and the victim of the
22 burglary was present in the building or residence when the crime was
23 committed.

24 (v) The offense was committed against a law enforcement officer
25 who was performing his or her official duties at the time of the
26 offense, the offender knew that the victim was a law enforcement
27 officer, and the victim's status as a law enforcement officer is not
28 an element of the offense.

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

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

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

37 (z)(i)(A) The current offense is theft in the first degree, theft
38 in the second degree, possession of stolen property in the first
39 degree, or possession of stolen property in the second degree; (B)
40 the stolen property involved is metal property; and (C) the property

1 damage to the victim caused in the course of the theft of metal
2 property is more than three times the value of the stolen metal
3 property, or the theft of the metal property creates a public hazard.

4 (ii) For purposes of this subsection, "metal property" means
5 commercial metal property, private metal property, or nonferrous
6 metal property, as defined in RCW 19.290.010.

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

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

15 (cc) The offense was intentionally committed because the
16 defendant perceived the victim to be homeless, as defined in RCW
17 9.94A.030.

18 (dd) The current offense involved a felony crime against persons,
19 except for assault in the third degree pursuant to RCW
20 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's
21 chamber, or any waiting area or corridor immediately adjacent to a
22 courtroom, jury room, or judge's chamber. This subsection shall apply
23 only: (i) During the times when a courtroom, jury room, or judge's
24 chamber is being used for judicial purposes during court proceedings;
25 and (ii) if signage was posted in compliance with RCW 2.28.200 at the
26 time of the offense.

27 (ee) During the commission of the current offense, the defendant
28 was driving in the opposite direction of the normal flow of traffic
29 on a multiple lane highway, as defined by RCW 46.04.350, with a
30 posted speed limit of forty-five miles per hour or greater.

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