
SENATE BILL 5133

State of Washington

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By Senators C. Wilson, Trudeau, Hasegawa, Nobles, and Saldaña; by request of Administrative Office of the Courts

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1 AN ACT Relating to departures from the guidelines for caregiver
2 status; and amending RCW 9.94A.535.

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

4 **Sec. 1.** RCW 9.94A.535 and 2019 c 219 s 1 are each amended to
5 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

1 this section, and may be appealed by the offender or the state as set
2 forth in RCW 9.94A.585 (2) through (6).

3 (1) Mitigating Circumstances - Court to Consider

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

14 (c) The defendant committed the crime under duress, coercion,
15 threat, or compulsion insufficient to constitute a complete defense
16 but 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
20 his or her conduct, or to conform his or her conduct to the
21 requirements of the law, was significantly impaired. Voluntary use of
22 drugs or alcohol is excluded.

23 (f) The offense was principally accomplished by another person
24 and the defendant manifested extreme caution or sincere concern for
25 the 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
28 of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

39 (k) The defendant was convicted of vehicular homicide, by the
40 operation of a vehicle in a reckless manner and has committed no

1 other previous serious traffic offenses as defined in RCW 9.94A.030,
2 and the sentence is clearly excessive in light of the purpose of this
3 chapter, as expressed in RCW 9.94A.010.

4 (1) The defendant's caregiver status as a primary parent, legal
5 guardian, or custodian with physical custody of a minor child, or
6 status as primary caregiver for other family members, including
7 elders and grandchildren.

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

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

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

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

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

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

29 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
30 the Court

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

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

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

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

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

6 (i) The current offense involved multiple victims or multiple
7 incidents per victim;

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

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

13 (iv) The defendant used his or her position of trust, confidence,
14 or fiduciary responsibility to facilitate the commission of the
15 current offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (i) The offense resulted in the pregnancy of a child victim of
15 rape.

16 (j) The defendant knew that the victim of the current offense was
17 a youth who was not residing with a legal custodian and the defendant
18 established or promoted the relationship for the primary purpose of
19 victimization.

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

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

26 (m) The offense involved a high degree of sophistication or
27 planning.

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

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

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

34 (q) The defendant demonstrated or displayed an egregious lack of
35 remorse.

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

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

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

3 (u) The current offense is a burglary and the victim of the
4 burglary was present in the building or residence when the crime was
5 committed.

6 (v) The offense was committed against a law enforcement officer
7 who was performing his or her official duties at the time of the
8 offense, the offender knew that the victim was a law enforcement
9 officer, and the victim's status as a law enforcement officer is not
10 an element of the offense.

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

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

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

19 (z) (i) (A) The current offense is theft in the first degree, theft
20 in the second degree, possession of stolen property in the first
21 degree, or possession of stolen property in the second degree; (B)
22 the stolen property involved is metal property; and (C) the property
23 damage to the victim caused in the course of the theft of metal
24 property is more than three times the value of the stolen metal
25 property, or the theft of the metal property creates a public hazard.

26 (ii) For purposes of this subsection, "metal property" means
27 commercial metal property, private metal property, or nonferrous
28 metal property, as defined in RCW 19.290.010.

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

33 (bb) The current offense involved paying to view, over the
34 internet in violation of RCW 9.68A.075, depictions of a minor engaged
35 in an act of sexually explicit conduct as defined in RCW
36 9.68A.011(~~(+4)~~) (7) (a) through (g).

37 (cc) The offense was intentionally committed because the
38 defendant perceived the victim to be homeless, as defined in RCW
39 9.94A.030.

1 (dd) The current offense involved a felony crime against persons,
2 except for assault in the third degree pursuant to RCW
3 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's
4 chamber, or any waiting area or corridor immediately adjacent to a
5 courtroom, jury room, or judge's chamber. This subsection shall apply
6 only: (i) During the times when a courtroom, jury room, or judge's
7 chamber is being used for judicial purposes during court proceedings;
8 and (ii) if signage was posted in compliance with RCW 2.28.200 at the
9 time of the offense.

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

14 (ff) The current offense involved the assault of a utility
15 employee of any publicly or privately owned utility company or
16 agency, who is at the time of the act engaged in official duties,
17 including: (i) The maintenance or repair of utility poles, lines,
18 conduits, pipes, or other infrastructure; or (ii) connecting,
19 disconnecting, or recording utility meters.

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