
ENGROSSED SENATE BILL 5516

State of Washington

61st Legislature

2010 Regular Session

By Senators Franklin, Kline, Kohl-Welles, Regala, Fraser, Kauffman,
and Shin

Read first time 01/26/09. Referred to Committee on Judiciary.

1 AN ACT Relating to drug overdose prevention; amending RCW
2 18.130.180; reenacting and amending RCW 9.94A.535; adding a new section
3 to chapter 69.50 RCW; adding a new section to chapter 18.130 RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to save lives by
7 increasing timely medical attention to drug overdose victims through
8 the establishment of limited immunity from prosecution for people who
9 seek medical assistance in a drug overdose situation. Drug overdose is
10 the leading cause of unintentional injury death in Washington state,
11 ahead of motor vehicle related deaths. Washington state is one of
12 sixteen states in which drug overdoses cause more deaths than traffic
13 accidents. Drug overdose mortality rates have increased significantly
14 since the 1990s, according to the centers for disease control and
15 prevention, and illegal and prescription drug overdoses killed more
16 than thirty-eight thousand people nationwide in 2006, the last year for
17 which firm data is available. The Washington state department of
18 health reports that in 1999, unintentional drug poisoning was
19 responsible for four hundred three deaths in this state; in 2007, the

1 number had increased to seven hundred sixty-one, compared with six
2 hundred ten motor vehicle related deaths that same year. Many drug
3 overdose fatalities occur because peers delay or forego calling 911 for
4 fear of arrest or police involvement, which researchers continually
5 identify as the most significant barrier to the ideal first response of
6 calling emergency services.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.50 RCW
8 to read as follows:

9 (1)(a) A person acting in good faith who seeks medical assistance
10 for someone experiencing a drug-related overdose shall not be charged
11 or prosecuted for possession of a controlled substance pursuant to RCW
12 69.50.4013, or penalized under RCW 69.50.4014, if the evidence for the
13 charge of possession of a controlled substance was obtained as a result
14 of the person seeking medical assistance.

15 (b) A person acting in good faith may receive a naloxone
16 prescription, possess naloxone, and administer naloxone to an
17 individual suffering from an apparent opiate-related overdose.

18 (2) A person who experiences a drug-related overdose and is in need
19 of medical assistance shall not be charged or prosecuted for possession
20 of a controlled substance pursuant to RCW 69.50.4013, or penalized
21 under RCW 69.50.4014, if the evidence for the charge of possession of
22 a controlled substance was obtained as a result of the overdose and the
23 need for medical assistance.

24 (3) The protection in this section from prosecution for possession
25 crimes under RCW 69.50.4013 shall not be grounds for suppression of
26 evidence in other criminal charges.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 18.130 RCW
28 to read as follows:

29 The administering, dispensing, prescribing, purchasing,
30 acquisition, possession, or use of naloxone shall not constitute
31 unprofessional conduct under chapter 18.130 RCW, or be in violation of
32 any provisions under this chapter, by any practitioner or person, if
33 the unprofessional conduct or violation results from a good faith
34 effort to assist:

35 (1) A person experiencing, or likely to experience, an opiate-
36 related overdose; or

1 (2) A family member, friend, or other person in a position to
2 assist a person experiencing, or likely to experience, an opiate-
3 related overdose.

4 **Sec. 4.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
5 each reenacted and amended to read as follows:

6 The court may impose a sentence outside the standard sentence range
7 for an offense if it finds, considering the purpose of this chapter,
8 that there are substantial and compelling reasons justifying an
9 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 imposed,
13 the court shall set forth the reasons for its decision in written
14 findings of fact and conclusions of law. A sentence outside the
15 standard sentence range shall be a determinate sentence.

16 If the sentencing court finds that an exceptional sentence outside
17 the standard sentence range should be imposed, the sentence is subject
18 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 and
28 are not intended to be exclusive reasons for exceptional sentences.

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

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

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

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

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

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

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

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

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

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

22 (a) The defendant and the state both stipulate that justice is best
23 served by the imposition of an exceptional sentence outside the
24 standard range, and the court finds the exceptional sentence to be
25 consistent with and in furtherance of the interests of justice and the
26 purposes of the sentencing reform act.

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

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

34 (d) The failure to consider the defendant's prior criminal history
35 which was omitted from the offender score calculation pursuant to RCW
36 9.94A.525 results in a presumptive sentence that is clearly too
37 lenient.

1 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
2 the Court

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

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

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

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

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

16 (i) The current offense involved multiple victims or multiple
17 incidents per victim;

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

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

22 (iv) The defendant used his or her position of trust, confidence,
23 or fiduciary responsibility to facilitate the commission of the current
24 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (i) The offense resulted in the pregnancy of a child victim of
25 rape.

26 (j) The defendant knew that the victim of the current offense was
27 a youth who was not residing with a legal custodian and the defendant
28 established or promoted the relationship for the primary purpose of
29 victimization.

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

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

36 (m) The offense involved a high degree of sophistication or
37 planning.

1 (n) The defendant used his or her position of trust, confidence, or
2 fiduciary responsibility to facilitate the commission of the current
3 offense.

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

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

7 (q) The defendant demonstrated or displayed an egregious lack of
8 remorse.

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

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

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

16 (u) The current offense is a burglary and the victim of the
17 burglary was present in the building or residence when the crime was
18 committed.

19 (v) The offense was committed against a law enforcement officer who
20 was performing his or her official duties at the time of the offense,
21 the offender knew that the victim was a law enforcement officer, and
22 the victim's status as a law enforcement officer is not an element of
23 the offense.

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

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

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

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

1 (ii) For purposes of this subsection, "metal property" means
2 commercial metal property, private metal property, or nonferrous metal
3 property, as defined in RCW 19.290.010.

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

8 **Sec. 5.** RCW 18.130.180 and 2008 c 134 s 25 are each amended to
9 read as follows:

10 The following conduct, acts, or conditions constitute
11 unprofessional conduct for any license holder under the jurisdiction of
12 this chapter:

13 (1) The commission of any act involving moral turpitude,
14 dishonesty, or corruption relating to the practice of the person's
15 profession, whether the act constitutes a crime or not. If the act
16 constitutes a crime, conviction in a criminal proceeding is not a
17 condition precedent to disciplinary action. Upon such a conviction,
18 however, the judgment and sentence is conclusive evidence at the
19 ensuing disciplinary hearing of the guilt of the license holder of the
20 crime described in the indictment or information, and of the person's
21 violation of the statute on which it is based. For the purposes of
22 this section, conviction includes all instances in which a plea of
23 guilty or nolo contendere is the basis for the conviction and all
24 proceedings in which the sentence has been deferred or suspended.
25 Nothing in this section abrogates rights guaranteed under chapter 9.96A
26 RCW;

27 (2) Misrepresentation or concealment of a material fact in
28 obtaining a license or in reinstatement thereof;

29 (3) All advertising which is false, fraudulent, or misleading;

30 (4) Incompetence, negligence, or malpractice which results in
31 injury to a patient or which creates an unreasonable risk that a
32 patient may be harmed. The use of a nontraditional treatment by itself
33 shall not constitute unprofessional conduct, provided that it does not
34 result in injury to a patient or create an unreasonable risk that a
35 patient may be harmed;

36 (5) Suspension, revocation, or restriction of the individual's
37 license to practice any health care profession by competent authority

1 in any state, federal, or foreign jurisdiction, a certified copy of the
2 order, stipulation, or agreement being conclusive evidence of the
3 revocation, suspension, or restriction;

4 (6) Except when authorized by section 3 of this act, the
5 possession, use, prescription for use, or distribution of controlled
6 substances or legend drugs in any way other than for legitimate or
7 therapeutic purposes, diversion of controlled substances or legend
8 drugs, the violation of any drug law, or prescribing controlled
9 substances for oneself;

10 (7) Violation of any state or federal statute or administrative
11 rule regulating the profession in question, including any statute or
12 rule defining or establishing standards of patient care or professional
13 conduct or practice;

14 (8) Failure to cooperate with the disciplining authority by:

15 (a) Not furnishing any papers, documents, records, or other items;

16 (b) Not furnishing in writing a full and complete explanation
17 covering the matter contained in the complaint filed with the
18 disciplining authority;

19 (c) Not responding to subpoenas issued by the disciplining
20 authority, whether or not the recipient of the subpoena is the accused
21 in the proceeding; or

22 (d) Not providing reasonable and timely access for authorized
23 representatives of the disciplining authority seeking to perform
24 practice reviews at facilities utilized by the license holder;

25 (9) Failure to comply with an order issued by the disciplining
26 authority or a stipulation for informal disposition entered into with
27 the disciplining authority;

28 (10) Aiding or abetting an unlicensed person to practice when a
29 license is required;

30 (11) Violations of rules established by any health agency;

31 (12) Practice beyond the scope of practice as defined by law or
32 rule;

33 (13) Misrepresentation or fraud in any aspect of the conduct of the
34 business or profession;

35 (14) Failure to adequately supervise auxiliary staff to the extent
36 that the consumer's health or safety is at risk;

37 (15) Engaging in a profession involving contact with the public

1 while suffering from a contagious or infectious disease involving
2 serious risk to public health;

3 (16) Promotion for personal gain of any unnecessary or
4 inefficacious drug, device, treatment, procedure, or service;

5 (17) Conviction of any gross misdemeanor or felony relating to the
6 practice of the person's profession. For the purposes of this
7 subsection, conviction includes all instances in which a plea of guilty
8 or nolo contendere is the basis for conviction and all proceedings in
9 which the sentence has been deferred or suspended. Nothing in this
10 section abrogates rights guaranteed under chapter 9.96A RCW;

11 (18) The procuring, or aiding or abetting in procuring, a criminal
12 abortion;

13 (19) The offering, undertaking, or agreeing to cure or treat
14 disease by a secret method, procedure, treatment, or medicine, or the
15 treating, operating, or prescribing for any health condition by a
16 method, means, or procedure which the licensee refuses to divulge upon
17 demand of the disciplining authority;

18 (20) The willful betrayal of a practitioner-patient privilege as
19 recognized by law;

20 (21) Violation of chapter 19.68 RCW;

21 (22) Interference with an investigation or disciplinary proceeding
22 by willful misrepresentation of facts before the disciplining authority
23 or its authorized representative, or by the use of threats or
24 harassment against any patient or witness to prevent them from
25 providing evidence in a disciplinary proceeding or any other legal
26 action, or by the use of financial inducements to any patient or
27 witness to prevent or attempt to prevent him or her from providing
28 evidence in a disciplinary proceeding;

29 (23) Current misuse of:

30 (a) Alcohol;

31 (b) Controlled substances; or

32 (c) Legend drugs;

33 (24) Abuse of a client or patient or sexual contact with a client
34 or patient;

35 (25) Acceptance of more than a nominal gratuity, hospitality, or
36 subsidy offered by a representative or vendor of medical or health-
37 related products or services intended for patients, in contemplation of
38 a sale or for use in research publishable in professional journals,

1 where a conflict of interest is presented, as defined by rules of the
2 disciplining authority, in consultation with the department, based on
3 recognized professional ethical standards.

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