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HOUSE BILL 2548

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State of Washington

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By Representative Kelley

Read first time 01/17/12. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to offenses against members of the military and  
2 their families; 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 2011 c 87 s 1 are each amended to read  
5 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).

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

6 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

37 (j) The current offense involved domestic violence, as defined in

1 RCW 10.99.020, and the defendant suffered a continuing pattern of  
2 coercion, control, or abuse by the victim of the offense and the  
3 offense is a response to that coercion, control, or abuse.

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

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

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

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

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

19 (d) The failure to consider the defendant's prior criminal history  
20 which was omitted from the offender score calculation pursuant to RCW  
21 9.94A.525 results in a presumptive sentence that is clearly too  
22 lenient.

23 (3) Aggravating Circumstances - Considered by a Jury -Imposed by  
24 the Court

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

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

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

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

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

1 (i) The current offense involved multiple victims or multiple  
2 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (i) The offense resulted in the pregnancy of a child victim of  
9 rape.

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

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

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

20 (m) The offense involved a high degree of sophistication or  
21 planning.

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

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

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

28 (q) The defendant demonstrated or displayed an egregious lack of  
29 remorse.

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

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

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

37 (u) The current offense is a burglary and the victim of the

1 burglary was present in the building or residence when the crime was  
2 committed.

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

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

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

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

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

23 (ii) For purposes of this subsection, "metal property" means  
24 commercial metal property, private metal property, or nonferrous metal  
25 property, as defined in RCW 19.290.010.

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

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

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

36 (dd) The defendant committed the offense against an active or  
37 reserve member of the United States military or naval forces or his or  
38 her immediate family, or a national guard member or his or her

1 immediate family, and the defendant committed the current offense  
2 knowing the military member was on deployment, as defined in RCW  
3 26.09.004(1)(a).

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