

SB 5516 - S AMD 6  
By Senator Franklin

ADOPTED 02/05/2010

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

3 NEW SECTION. **Sec. 1.** The legislature intends to save lives by  
4 increasing timely medical attention to drug overdose victims through  
5 the establishment of limited immunity from prosecution for people who  
6 seek medical assistance in a drug overdose situation. Drug overdose is  
7 the leading cause of unintentional injury death in Washington state,  
8 ahead of motor vehicle related deaths. Washington state is one of  
9 sixteen states in which drug overdoses cause more deaths than traffic  
10 accidents. Drug overdose mortality rates have increased significantly  
11 since the 1990s, according to the centers for disease control and  
12 prevention, and illegal and prescription drug overdoses killed more  
13 than thirty-eight thousand people nationwide in 2006, the last year for  
14 which firm data is available. The Washington state department of  
15 health reports that in 1999, unintentional drug poisoning was  
16 responsible for four hundred three deaths in this state; in 2007, the  
17 number had increased to seven hundred sixty-one, compared with six  
18 hundred ten motor vehicle related deaths that same year. Many drug  
19 overdose fatalities occur because peers delay or forego calling 911 for  
20 fear of arrest or police involvement, which researchers continually  
21 identify as the most significant barrier to the ideal first response of  
22 calling emergency services.

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

25 (1)(a) A person acting in good faith who seeks medical assistance  
26 for someone experiencing a drug-related overdose shall not be charged  
27 or prosecuted for possession of a controlled substance pursuant to RCW  
28 69.50.4013, or penalized under RCW 69.50.4014, if the evidence for the

1 charge of possession of a controlled substance was obtained as a result  
2 of the person seeking medical assistance.

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

6 (2) A person who experiences a drug-related overdose and is in need  
7 of medical assistance shall not be charged or prosecuted for possession  
8 of a controlled substance pursuant to RCW 69.50.4013, or penalized  
9 under RCW 69.50.4014, if the evidence for the charge of possession of  
10 a controlled substance was obtained as a result of the overdose and the  
11 need for medical assistance.

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

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

17 The administering, dispensing, prescribing, purchasing,  
18 acquisition, possession, or use of naloxone shall not constitute  
19 unprofessional conduct under chapter 18.130 RCW, or be in violation of  
20 any provisions under this chapter, by any practitioner or person, if  
21 the unprofessional conduct or violation results from a good faith  
22 effort to assist:

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

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

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

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

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

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

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

13           (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (d) The failure to consider the defendant's prior criminal history  
23 which was omitted from the offender score calculation pursuant to RCW  
24 9.94A.525 results in a presumptive sentence that is clearly too  
25 lenient.

26 (3) Aggravating Circumstances - Considered by a Jury -Imposed by  
27 the Court

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

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

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

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

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

4 (i) The current offense involved multiple victims or multiple  
5 incidents per victim;

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

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

10 (iv) The defendant used his or her position of trust, confidence,  
11 or fiduciary responsibility to facilitate the commission of the current  
12 offense.

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

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

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

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

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

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

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

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

37 (g) The offense was part of an ongoing pattern of sexual abuse of

1 the same victim under the age of eighteen years manifested by multiple  
2 incidents over a prolonged period of time.

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

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

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

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

12 (i) The offense resulted in the pregnancy of a child victim of  
13 rape.

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

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

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

24 (m) The offense involved a high degree of sophistication or  
25 planning.

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

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

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

32 (q) The defendant demonstrated or displayed an egregious lack of  
33 remorse.

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

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

1 (t) The defendant committed the current offense shortly after being  
2 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 who  
7 was performing his or her official duties at the time of the offense,  
8 the offender knew that the victim was a law enforcement officer, and  
9 the victim's status as a law enforcement officer is not an element of  
10 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 bodily  
17 harm necessary to satisfy the elements of the offense. This aggravator  
18 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) the  
22 stolen property involved is metal property; and (C) the property damage  
23 to the victim caused in the course of the theft of metal property is  
24 more than three times the value of the stolen metal property, or the  
25 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 metal  
28 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, profit,  
31 or other advantage to or for a criminal street gang as defined in RCW  
32 9.94A.030, its reputation, influence, or membership.

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

35 The following conduct, acts, or conditions constitute  
36 unprofessional conduct for any license holder under the jurisdiction of  
37 this chapter:

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

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

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

18           (4) Incompetence, negligence, or malpractice which results in  
19 injury to a patient or which creates an unreasonable risk that a  
20 patient may be harmed. The use of a nontraditional treatment by itself  
21 shall not constitute unprofessional conduct, provided that it does not  
22 result in injury to a patient or create an unreasonable risk that a  
23 patient may be harmed;

24           (5) Suspension, revocation, or restriction of the individual's  
25 license to practice any health care profession by competent authority  
26 in any state, federal, or foreign jurisdiction, a certified copy of the  
27 order, stipulation, or agreement being conclusive evidence of the  
28 revocation, suspension, or restriction;

29           (6) Except when authorized by section 3 of this act, the  
30 possession, use, prescription for use, or distribution of controlled  
31 substances or legend drugs in any way other than for legitimate or  
32 therapeutic purposes, diversion of controlled substances or legend  
33 drugs, the violation of any drug law, or prescribing controlled  
34 substances for oneself;

35           (7) Violation of any state or federal statute or administrative  
36 rule regulating the profession in question, including any statute or  
37 rule defining or establishing standards of patient care or professional  
38 conduct or practice;



- 1 (8) Failure to cooperate with the disciplining authority by:
- 2 (a) Not furnishing any papers, documents, records, or other items;
- 3 (b) Not furnishing in writing a full and complete explanation
- 4 covering the matter contained in the complaint filed with the
- 5 disciplining authority;
- 6 (c) Not responding to subpoenas issued by the disciplining
- 7 authority, whether or not the recipient of the subpoena is the accused
- 8 in the proceeding; or
- 9 (d) Not providing reasonable and timely access for authorized
- 10 representatives of the disciplining authority seeking to perform
- 11 practice reviews at facilities utilized by the license holder;
- 12 (9) Failure to comply with an order issued by the disciplining
- 13 authority or a stipulation for informal disposition entered into with
- 14 the disciplining authority;
- 15 (10) Aiding or abetting an unlicensed person to practice when a
- 16 license is required;
- 17 (11) Violations of rules established by any health agency;
- 18 (12) Practice beyond the scope of practice as defined by law or
- 19 rule;
- 20 (13) Misrepresentation or fraud in any aspect of the conduct of the
- 21 business or profession;
- 22 (14) Failure to adequately supervise auxiliary staff to the extent
- 23 that the consumer's health or safety is at risk;
- 24 (15) Engaging in a profession involving contact with the public
- 25 while suffering from a contagious or infectious disease involving
- 26 serious risk to public health;
- 27 (16) Promotion for personal gain of any unnecessary or
- 28 inefficacious drug, device, treatment, procedure, or service;
- 29 (17) Conviction of any gross misdemeanor or felony relating to the
- 30 practice of the person's profession. For the purposes of this
- 31 subsection, conviction includes all instances in which a plea of guilty
- 32 or nolo contendere is the basis for conviction and all proceedings in
- 33 which the sentence has been deferred or suspended. Nothing in this
- 34 section abrogates rights guaranteed under chapter 9.96A RCW;
- 35 (18) The procuring, or aiding or abetting in procuring, a criminal
- 36 abortion;
- 37 (19) The offering, undertaking, or agreeing to cure or treat
- 38 disease by a secret method, procedure, treatment, or medicine, or the

1 treating, operating, or prescribing for any health condition by a  
2 method, means, or procedure which the licensee refuses to divulge upon  
3 demand of the disciplining authority;

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

6 (21) Violation of chapter 19.68 RCW;

7 (22) Interference with an investigation or disciplinary proceeding  
8 by willful misrepresentation of facts before the disciplining authority  
9 or its authorized representative, or by the use of threats or  
10 harassment against any patient or witness to prevent them from  
11 providing evidence in a disciplinary proceeding or any other legal  
12 action, or by the use of financial inducements to any patient or  
13 witness to prevent or attempt to prevent him or her from providing  
14 evidence in a disciplinary proceeding;

15 (23) Current misuse of:

16 (a) Alcohol;

17 (b) Controlled substances; or

18 (c) Legend drugs;

19 (24) Abuse of a client or patient or sexual contact with a client  
20 or patient;

21 (25) Acceptance of more than a nominal gratuity, hospitality, or  
22 subsidy offered by a representative or vendor of medical or health-  
23 related products or services intended for patients, in contemplation of  
24 a sale or for use in research publishable in professional journals,  
25 where a conflict of interest is presented, as defined by rules of the  
26 disciplining authority, in consultation with the department, based on  
27 recognized professional ethical standards."

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**ADOPTED 02/05/2010**

28 On page 1, line 1 of the title, after "prevention;" strike the  
29 remainder of the title and insert "amending RCW 18.130.180; reenacting  
30 and amending RCW 9.94A.535; adding a new section to chapter 69.50 RCW;

1 adding a new section to chapter 18.130 RCW; and creating a new  
2 section."

EFFECT: A person will not be charged or prosecuted for possession of a controlled substance under the Uniform Controlled Substances Act if: (1) That person believes he or she is witnessing a drug-related overdose and seeks medical assistance for that person in good faith; or (2) that person experiences a drug-related overdose and is in need of medical assistance. A person will also not be charged if the evidence for the charge of possession of a controlled substance under RCW 69.50.4013, or penalty under RCW 69.50.4014, was obtained as a result of that person seeking or receiving medical assistance. However, that person remains liable for charges of manufacturing or sale of a controlled substance. This protection does not apply to suppression of evidence in other criminal charges.

A person acting in good faith may receive, possess, and administer naloxone to an individual suffering from an apparent opiate-related overdose. Health practitioners or persons who administer, dispense, prescribe, purchase, acquire, possess, or use naloxone in a good faith effort to assist a person experiencing or likely to experience an opiate-related overdose will not be in violation of professional conduct standards or provisions.

A court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence including, but not limited to, a defendant's good faith effort to obtain or provide medical assistance for someone experiencing a drug-related overdose.

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