
SENATE BILL 5059

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By Senators Carrell, Hewitt, Pearson, Roach, Delvin, Benton, Hargrove, Harper, Shin, and Kohl-Welles

Read first time 01/16/13. Referred to Committee on Law & Justice .

1 AN ACT Relating to rendering criminal assistance; and amending RCW
2 9A.76.050 and 9.94A.535.

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

4 **Sec. 1.** RCW 9A.76.050 and 2011 c 336 s 400 are each amended to
5 read as follows:

6 As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person
7 "renders criminal assistance" if, with intent to prevent, hinder, or
8 delay the apprehension or prosecution of another person who he or she
9 knows has committed a crime or juvenile offense or is being sought by
10 law enforcement officials for the commission of a crime or juvenile
11 offense or has escaped from a detention facility, he or she:

- 12 (1) Harbors or conceals such person; or
13 (2) Warns such person of impending discovery or apprehension; or
14 (3) Provides such person with money, transportation, disguise, or
15 other means of avoiding discovery or apprehension; or
16 (4) Prevents or obstructs, by use of force, deception, or threat,
17 anyone from performing an act that might aid in the discovery or
18 apprehension of such person; or

1 (5) Conceals, alters, or destroys any physical evidence that might
2 aid in the discovery or apprehension of such person; or

3 (6) Provides such person with a weapon.

4 It is not a defense that the person's knowledge of the underlying
5 crime or juvenile offense committed by the person receiving assistance
6 was nonspecific or based upon secondhand information.

7 **Sec. 2.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read
8 as follows:

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

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

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

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

27 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) The defendant and the state both stipulate that justice is best
30 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 the
33 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.

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

4 (d) The failure to consider the defendant's prior criminal history
5 which was omitted from the offender score calculation pursuant to RCW
6 9.94A.525 results in a presumptive sentence that is clearly too
7 lenient.

8 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
9 the Court

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

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

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

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

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

23 (i) The current offense involved multiple victims or multiple
24 incidents per victim;

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

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

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

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

37 (i) The current offense involved at least three separate

1 transactions in which controlled substances were sold, transferred, or
2 possessed with intent to do so;

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (k) The offense was committed with the intent to obstruct or impair

1 human or animal health care or agricultural or forestry research or
2 commercial production.

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

6 (m) The offense involved a high degree of sophistication or
7 planning.

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

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

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

14 (q) The defendant demonstrated or displayed an egregious lack of
15 remorse.

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

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

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

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

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

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

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

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

1 (z)(i)(A) The current offense is theft in the first degree, theft
2 in the second degree, possession of stolen property in the first
3 degree, or possession of stolen property in the second degree; (B) the
4 stolen property involved is metal property; and (C) the property damage
5 to the victim caused in the course of the theft of metal property is
6 more than three times the value of the stolen metal property, or the
7 theft of the metal property creates a public hazard.

8 (ii) For purposes of this subsection, "metal property" means
9 commercial metal property, private metal property, or nonferrous metal
10 property, as defined in RCW 19.290.010.

11 (aa) The defendant committed the offense with the intent to
12 directly or indirectly cause any benefit, aggrandizement, gain, profit,
13 or other advantage to or for a criminal street gang as defined in RCW
14 9.94A.030, its reputation, influence, or membership.

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

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

21 (4) For the purpose of alleging and sentencing to an aggravating or
22 mitigating factor of a current offense involving a violation of RCW
23 9A.76.070, the terms "victim of the offense" or "victims of the
24 offense" shall include the victim or victims of the underlying crime
25 committed by the person to whom criminal assistance was rendered.

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