
SENATE BILL 6389

State of Washington

63rd Legislature

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By Senators Darneille and Chase

Read first time 01/23/14. Referred to Committee on Law & Justice.

1 AN ACT Relating to mandatory multiple consecutive enhancements; and
2 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 2013 2nd sp.s. c 35 s 37 are each
5 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).

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 (k) The operation of the mandatory multiple consecutive
5 enhancements policy under RCW 9.94A.533 results in a presumptive
6 sentence that is clearly excessive in light of the purpose of this
7 chapter, as expressed in RCW 9.94A.010. A sentence reduced pursuant to
8 this factor may not be reduced below the time required by a single
9 enhancement.

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

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

13 (a) The defendant and the state both stipulate that justice is best
14 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 the
17 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 offenses
24 going unpunished.

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

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

31 Except for circumstances listed in subsection (2) of this section,
32 the following circumstances are an exclusive list of factors that can
33 support a sentence above the standard range. Such facts should be
34 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 the
38 current offense was particularly vulnerable or incapable of 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 loss
9 substantially greater than typical for the offense;

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

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

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

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

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

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

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

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

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

37 (f) The current offense included a finding of sexual motivation
38 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 multiple
3 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 by
9 multiple incidents over a prolonged period of time;

10 (ii) The offense occurred within sight or sound of the victim's or
11 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 impair
21 human or animal health care or agricultural or forestry research or
22 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 time
25 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, or
29 fiduciary responsibility to facilitate the commission of the current
30 offense.

31 (o) The defendant committed a current sex offense, has a history of
32 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.

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

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

6 (u) The current offense is a burglary and the victim of the
7 burglary was present in the building or residence when the crime was
8 committed.

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

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

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

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

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

29 (ii) For purposes of this subsection, "metal property" means
30 commercial metal property, private metal property, or nonferrous metal
31 property, as defined in RCW 19.290.010.

32 (aa) The defendant committed the offense with the intent to
33 directly or indirectly cause any benefit, aggrandizement, gain, profit,
34 or other advantage to or for a criminal street gang as defined in RCW
35 9.94A.030, its reputation, influence, or membership.

36 (bb) The current offense involved paying to view, over the internet
37 in violation of RCW 9.68A.075, depictions of a minor engaged in an act

1 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
2 (g).

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

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

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

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