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SENATE BILL 5652

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State of Washington

64th Legislature

2015 Regular Session

By Senators Darneille, Kohl-Welles, Frockt, Jayapal, Keiser, and Hasegawa

Read first time 01/28/15. Referred to Committee on Human Services, Mental Health & Housing.

1 AN ACT Relating to recommendations of the joint legislative task  
2 force on juvenile sentencing reform; amending RCW 13.40.110,  
3 9.94A.533, and 9.94A.535; and reenacting and amending RCW 13.04.030.

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

5 **Sec. 1.** RCW 13.04.030 and 2009 c 526 s 1 and 2009 c 454 s 1 are  
6 each reenacted and amended to read as follows:

7 (1) Except as provided in this section, the juvenile courts in  
8 this state shall have exclusive original jurisdiction over all  
9 proceedings:

10 (a) Under the interstate compact on placement of children as  
11 provided in chapter 26.34 RCW;

12 (b) Relating to children alleged or found to be dependent as  
13 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161;

14 (c) Relating to the termination of a parent and child  
15 relationship as provided in RCW 13.34.180 through 13.34.210;

16 (d) To approve or disapprove out-of-home placement as provided in  
17 RCW 13.32A.170;

18 (e) Relating to juveniles alleged or found to have committed  
19 offenses, traffic or civil infractions, or violations as provided in  
20 RCW 13.40.020 through 13.40.230, unless:

1 (i) The juvenile court transfers jurisdiction of a particular  
2 juvenile to adult criminal court pursuant to RCW 13.40.110;

3 (ii) The statute of limitations applicable to adult prosecution  
4 for the offense, traffic or civil infraction, or violation has  
5 expired;

6 (iii) The alleged offense or infraction is a traffic, fish,  
7 boating, or game offense, or traffic or civil infraction committed by  
8 a juvenile sixteen years of age or older and would, if committed by  
9 an adult, be tried or heard in a court of limited jurisdiction, in  
10 which instance the appropriate court of limited jurisdiction shall  
11 have jurisdiction over the alleged offense or infraction, and no  
12 guardian ad litem is required in any such proceeding due to the  
13 juvenile's age. If such an alleged offense or infraction and an  
14 alleged offense or infraction subject to juvenile court jurisdiction  
15 arise out of the same event or incident, the juvenile court may have  
16 jurisdiction of both matters. The jurisdiction under this subsection  
17 does not constitute "transfer" or a "decline" for purposes of RCW  
18 13.40.110 (1) and (2) or (e)(i) of this subsection. Courts of limited  
19 jurisdiction which confine juveniles for an alleged offense or  
20 infraction may place juveniles in juvenile detention facilities under  
21 an agreement with the officials responsible for the administration of  
22 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

23 (iv) The alleged offense is a traffic or civil infraction, a  
24 violation of compulsory school attendance provisions under chapter  
25 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction  
26 has assumed concurrent jurisdiction over those offenses as provided  
27 in RCW 13.04.0301(~~or~~

28 ~~(v) The juvenile is sixteen or seventeen years old on the date  
29 the alleged offense is committed and the alleged offense is:~~

30 ~~(A) A serious violent offense as defined in RCW 9.94A.030;~~

31 ~~(B) A violent offense as defined in RCW 9.94A.030 and the  
32 juvenile has a criminal history consisting of: (I) One or more prior  
33 serious violent offenses; (II) two or more prior violent offenses; or  
34 (III) three or more of any combination of the following offenses: Any  
35 class A felony, any class B felony, vehicular assault, or  
36 manslaughter in the second degree, all of which must have been  
37 committed after the juvenile's thirteenth birthday and prosecuted  
38 separately;~~

39 ~~(C) Robbery in the first degree, rape of a child in the first  
40 degree, or drive by shooting, committed on or after July 1, 1997;~~

1 ~~(D) Burglary in the first degree committed on or after July 1,~~  
2 ~~1997, and the juvenile has a criminal history consisting of one or~~  
3 ~~more prior felony or misdemeanor offenses; or~~

4 ~~(E) Any violent offense as defined in RCW 9.94A.030 committed on~~  
5 ~~or after July 1, 1997, and the juvenile is alleged to have been armed~~  
6 ~~with a firearm.~~

7 ~~(I) In such a case the adult criminal court shall have exclusive~~  
8 ~~original jurisdiction, except as provided in (e)(v)(E)(II) and (III)~~  
9 ~~of this subsection.~~

10 ~~(II) The juvenile court shall have exclusive jurisdiction over~~  
11 ~~the disposition of any remaining charges in any case in which the~~  
12 ~~juvenile is found not guilty in the adult criminal court of the~~  
13 ~~charge or charges for which he or she was transferred, or is~~  
14 ~~convicted in the adult criminal court of a lesser included offense~~  
15 ~~that is not also an offense listed in (e)(v) of this subsection. The~~  
16 ~~juvenile court shall enter an order extending juvenile court~~  
17 ~~jurisdiction if the juvenile has turned eighteen years of age during~~  
18 ~~the adult criminal court proceedings pursuant to RCW 13.40.300.~~  
19 ~~However, once the case is returned to juvenile court, the court may~~  
20 ~~hold a decline hearing pursuant to RCW 13.40.110 to determine whether~~  
21 ~~to retain the case in juvenile court for the purpose of disposition~~  
22 ~~or return the case to adult criminal court for sentencing.~~

23 ~~(III) The prosecutor and respondent may agree to juvenile court~~  
24 ~~jurisdiction and waive application of exclusive adult criminal~~  
25 ~~jurisdiction in (e)(v)(A) through (E) of this subsection and remove~~  
26 ~~the proceeding back to juvenile court with the court's approval.~~

27 ~~If the juvenile challenges the state's determination of the~~  
28 ~~juvenile's criminal history under (e)(v) of this subsection, the~~  
29 ~~state may establish the offender's criminal history by a~~  
30 ~~preponderance of the evidence. If the criminal history consists of~~  
31 ~~adjudications entered upon a plea of guilty, the state shall not bear~~  
32 ~~a burden of establishing the knowing and voluntariness of the plea));~~

33 ~~(f) Under the interstate compact on juveniles as provided in~~  
34 ~~chapter 13.24 RCW;~~

35 ~~(g) Relating to termination of a diversion agreement under RCW~~  
36 ~~13.40.080, including a proceeding in which the divertee has attained~~  
37 ~~eighteen years of age;~~

38 ~~(h) Relating to court validation of a voluntary consent to an~~  
39 ~~out-of-home placement under chapter 13.34 RCW, by the parent or~~  
40 ~~Indian custodian of an Indian child, except if the parent or Indian~~

1 custodian and child are residents of or domiciled within the  
2 boundaries of a federally recognized Indian reservation over which  
3 the tribe exercises exclusive jurisdiction;

4 (i) Relating to petitions to compel disclosure of information  
5 filed by the department of social and health services pursuant to RCW  
6 74.13.042; and

7 (j) Relating to judicial determinations and permanency planning  
8 hearings involving developmentally disabled children who have been  
9 placed in out-of-home care pursuant to a voluntary placement  
10 agreement between the child's parent, guardian, or legal custodian  
11 and the department of social and health services.

12 (2) The family court shall have concurrent original jurisdiction  
13 with the juvenile court over all proceedings under this section if  
14 the superior court judges of a county authorize concurrent  
15 jurisdiction as provided in RCW 26.12.010.

16 (3) The juvenile court shall have concurrent original  
17 jurisdiction with the family court over child custody proceedings  
18 under chapter 26.10 RCW and parenting plans or residential schedules  
19 under chapters 26.09 and 26.26 RCW as provided for in RCW 13.34.155.

20 (4) A juvenile subject to adult superior court jurisdiction under  
21 subsection (1)(e)(i) through ~~((v))~~ (iv) of this section, who is  
22 detained pending trial, may be detained in a detention facility as  
23 defined in RCW 13.40.020 pending sentencing or a dismissal.

24 **Sec. 2.** RCW 13.40.110 and 2009 c 454 s 3 are each amended to  
25 read as follows:

26 (1) Discretionary decline hearing - The prosecutor, respondent,  
27 or the court on its own motion may, before a hearing on the  
28 information on its merits, file a motion requesting the court to  
29 transfer the respondent for adult criminal prosecution and the matter  
30 shall be set for a hearing on the question of declining jurisdiction,  
31 if the respondent is fourteen years of age or older on the date the  
32 alleged offense is committed.

33 (2) Mandatory decline hearing - Unless waived by the court, the  
34 parties, and their counsel, a decline hearing shall be held when:

35 (a) The respondent is sixteen or seventeen years of age ~~((and the~~  
36 ~~information alleges a class A felony or an attempt, solicitation, or~~  
37 ~~conspiracy to commit a class A felony))~~ on the date the alleged  
38 offense is committed and the alleged offense is:

1 (i) A class A felony or an attempt, solicitation, or conspiracy  
2 to commit a class A felony;

3 (ii) A violent offense as defined in RCW 9.94A.030 and the  
4 juvenile has a criminal history consisting of: (A) One or more prior  
5 serious violent offenses; (B) two or more prior violent offenses; or  
6 (C) three or more of any combination of the following offenses: Any  
7 class A felony, any class B felony, vehicular assault, or  
8 manslaughter in the second degree, all of which must have been  
9 committed after the juvenile's thirteenth birthday and prosecuted  
10 separately;

11 (iii) Any violent offense as defined in RCW 9.94A.030 committed  
12 on or after July 1, 1997, and the juvenile is alleged to have been  
13 armed with a firearm;

14 (b) The respondent is seventeen years of age and the information  
15 alleges assault in the second degree, extortion in the first degree,  
16 indecent liberties, child molestation in the second degree,  
17 kidnapping in the second degree, or robbery in the second degree; or

18 (c) The information alleges an escape by the respondent and the  
19 respondent is serving a minimum juvenile sentence to age twenty-one.

20 (3) The court after a decline hearing may order the case  
21 transferred for adult criminal prosecution upon a finding that the  
22 declination would be in the best interest of the juvenile or the  
23 public. The court shall consider the relevant reports, facts,  
24 opinions, and arguments presented by the parties and their counsel.

25 (4) When the respondent is transferred for criminal prosecution  
26 or retained for prosecution in juvenile court, the court shall set  
27 forth in writing its finding which shall be supported by relevant  
28 facts and opinions produced at the hearing.

29 (5) If the respondent challenges the state's determination of the  
30 respondent's criminal history under subsection (2)(a) of this  
31 section, the state may establish the offender's criminal history by a  
32 preponderance of the evidence. If the criminal history consists of  
33 adjudications entered upon a plea of guilty, the state does not bear  
34 a burden of establishing the knowing and voluntariness of the plea.

35 **Sec. 3.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to  
36 read as follows:

37 (1) The provisions of this section apply to the standard sentence  
38 ranges determined by RCW 9.94A.510 or 9.94A.517.

1 (2) For persons convicted of the anticipatory offenses of  
2 criminal attempt, solicitation, or conspiracy under chapter 9A.28  
3 RCW, the standard sentence range is determined by locating the  
4 sentencing grid sentence range defined by the appropriate offender  
5 score and the seriousness level of the completed crime, and  
6 multiplying the range by seventy-five percent.

7 (3) The following additional times shall be added to the standard  
8 sentence range for felony crimes committed after July 23, 1995, if  
9 the offender or an accomplice was armed with a firearm as defined in  
10 RCW 9.41.010 and the offender is being sentenced for one of the  
11 crimes listed in this subsection as eligible for any firearm  
12 enhancements based on the classification of the completed felony  
13 crime. If the offender is being sentenced for more than one offense,  
14 the firearm enhancement or enhancements must be added to the total  
15 period of confinement for all offenses, regardless of which  
16 underlying offense is subject to a firearm enhancement. If the  
17 offender or an accomplice was armed with a firearm as defined in RCW  
18 9.41.010 and the offender is being sentenced for an anticipatory  
19 offense under chapter 9A.28 RCW to commit one of the crimes listed in  
20 this subsection as eligible for any firearm enhancements, the  
21 following additional times shall be added to the standard sentence  
22 range determined under subsection (2) of this section based on the  
23 felony crime of conviction as classified under RCW 9A.28.020:

24 (a) Five years for any felony defined under any law as a class A  
25 felony or with a statutory maximum sentence of at least twenty years,  
26 or both, and not covered under (f) of this subsection;

27 (b) Three years for any felony defined under any law as a class B  
28 felony or with a statutory maximum sentence of ten years, or both,  
29 and not covered under (f) of this subsection;

30 (c) Eighteen months for any felony defined under any law as a  
31 class C felony or with a statutory maximum sentence of five years, or  
32 both, and not covered under (f) of this subsection;

33 (d) If the offender is being sentenced for any firearm  
34 enhancements under (a), (b), and/or (c) of this subsection and the  
35 offender has previously been sentenced for any deadly weapon  
36 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
37 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
38 both, all firearm enhancements under this subsection shall be twice  
39 the amount of the enhancement listed;

1           (e) (~~Notwithstanding any other provision of law,~~) All firearm  
2 enhancements under this section are mandatory, shall be served in  
3 total confinement, and, except as provided in subsection (15) of this  
4 section, shall run consecutively to all other sentencing provisions,  
5 including other firearm or deadly weapon enhancements, for all  
6 offenses sentenced under this chapter. However, whether or not a  
7 mandatory minimum term has expired, an offender serving a sentence  
8 under this subsection may be granted an extraordinary medical  
9 placement when authorized under RCW 9.94A.728(3);

10           (f) The firearm enhancements in this section shall apply to all  
11 felony crimes except the following: Possession of a machine gun,  
12 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
13 unlawful possession of a firearm in the first and second degree, and  
14 use of a machine gun in a felony;

15           (g) If the standard sentence range under this section exceeds the  
16 statutory maximum sentence for the offense, the statutory maximum  
17 sentence shall be the presumptive sentence unless the offender is a  
18 persistent offender. If the addition of a firearm enhancement  
19 increases the sentence so that it would exceed the statutory maximum  
20 for the offense, the portion of the sentence representing the  
21 enhancement may not be reduced.

22           (4) The following additional times shall be added to the standard  
23 sentence range for felony crimes committed after July 23, 1995, if  
24 the offender or an accomplice was armed with a deadly weapon other  
25 than a firearm as defined in RCW 9.41.010 and the offender is being  
26 sentenced for one of the crimes listed in this subsection as eligible  
27 for any deadly weapon enhancements based on the classification of the  
28 completed felony crime. If the offender is being sentenced for more  
29 than one offense, the deadly weapon enhancement or enhancements must  
30 be added to the total period of confinement for all offenses,  
31 regardless of which underlying offense is subject to a deadly weapon  
32 enhancement. If the offender or an accomplice was armed with a deadly  
33 weapon other than a firearm as defined in RCW 9.41.010 and the  
34 offender is being sentenced for an anticipatory offense under chapter  
35 9A.28 RCW to commit one of the crimes listed in this subsection as  
36 eligible for any deadly weapon enhancements, the following additional  
37 times shall be added to the standard sentence range determined under  
38 subsection (2) of this section based on the felony crime of  
39 conviction as classified under RCW 9A.28.020:

1 (a) Two years for any felony defined under any law as a class A  
2 felony or with a statutory maximum sentence of at least twenty years,  
3 or both, and not covered under (f) of this subsection;

4 (b) One year for any felony defined under any law as a class B  
5 felony or with a statutory maximum sentence of ten years, or both,  
6 and not covered under (f) of this subsection;

7 (c) Six months for any felony defined under any law as a class C  
8 felony or with a statutory maximum sentence of five years, or both,  
9 and not covered under (f) of this subsection;

10 (d) If the offender is being sentenced under (a), (b), and/or (c)  
11 of this subsection for any deadly weapon enhancements and the  
12 offender has previously been sentenced for any deadly weapon  
13 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
14 subsection or subsection (3)(a), (b), and/or (c) of this section, or  
15 both, all deadly weapon enhancements under this subsection shall be  
16 twice the amount of the enhancement listed;

17 (e) (~~Notwithstanding any other provision of law,~~) All deadly  
18 weapon enhancements under this section are mandatory, shall be served  
19 in total confinement, and, except as provided in subsection (15) of  
20 this section, shall run consecutively to all other sentencing  
21 provisions, including other firearm or deadly weapon enhancements,  
22 for all offenses sentenced under this chapter. However, whether or  
23 not a mandatory minimum term has expired, an offender serving a  
24 sentence under this subsection may be granted an extraordinary  
25 medical placement when authorized under RCW 9.94A.728(3);

26 (f) The deadly weapon enhancements in this section shall apply to  
27 all felony crimes except the following: Possession of a machine gun,  
28 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
29 unlawful possession of a firearm in the first and second degree, and  
30 use of a machine gun in a felony;

31 (g) If the standard sentence range under this section exceeds the  
32 statutory maximum sentence for the offense, the statutory maximum  
33 sentence shall be the presumptive sentence unless the offender is a  
34 persistent offender. If the addition of a deadly weapon enhancement  
35 increases the sentence so that it would exceed the statutory maximum  
36 for the offense, the portion of the sentence representing the  
37 enhancement may not be reduced.

38 (5) The following additional times shall be added to the standard  
39 sentence range if the offender or an accomplice committed the offense  
40 while in a county jail or state correctional facility and the

1 offender is being sentenced for one of the crimes listed in this  
2 subsection. If the offender or an accomplice committed one of the  
3 crimes listed in this subsection while in a county jail or state  
4 correctional facility, and the offender is being sentenced for an  
5 anticipatory offense under chapter 9A.28 RCW to commit one of the  
6 crimes listed in this subsection, the following additional times  
7 shall be added to the standard sentence range determined under  
8 subsection (2) of this section:

9 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
10 (a) or (b) or 69.50.410;

11 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
12 (c), (d), or (e);

13 (c) Twelve months for offenses committed under RCW 69.50.4013.

14 For the purposes of this subsection, all of the real property of  
15 a state correctional facility or county jail shall be deemed to be  
16 part of that facility or county jail.

17 (6) An additional twenty-four months shall be added to the  
18 standard sentence range for any ranked offense involving a violation  
19 of chapter 69.50 RCW if the offense was also a violation of RCW  
20 69.50.435 or 9.94A.827. All enhancements under this subsection shall  
21 run consecutively to all other sentencing provisions, for all  
22 offenses sentenced under this chapter, except as provided in  
23 subsection (15) of this section.

24 (7) An additional two years shall be added to the standard  
25 sentence range for vehicular homicide committed while under the  
26 influence of intoxicating liquor or any drug as defined by RCW  
27 46.61.502 for each prior offense as defined in RCW 46.61.5055. All  
28 enhancements under this subsection shall be mandatory, shall be  
29 served in total confinement, and, except as provided in subsection  
30 (15) of this section, shall run consecutively to all other sentencing  
31 provisions.

32 (8)(a) The following additional times shall be added to the  
33 standard sentence range for felony crimes committed on or after July  
34 1, 2006, if the offense was committed with sexual motivation, as that  
35 term is defined in RCW 9.94A.030. If the offender is being sentenced  
36 for more than one offense, the sexual motivation enhancement must be  
37 added to the total period of total confinement for all offenses,  
38 regardless of which underlying offense is subject to a sexual  
39 motivation enhancement. If the offender committed the offense with  
40 sexual motivation and the offender is being sentenced for an

1 anticipatory offense under chapter 9A.28 RCW, the following  
2 additional times shall be added to the standard sentence range  
3 determined under subsection (2) of this section based on the felony  
4 crime of conviction as classified under RCW 9A.28.020:

5 (i) Two years for any felony defined under the law as a class A  
6 felony or with a statutory maximum sentence of at least twenty years,  
7 or both;

8 (ii) Eighteen months for any felony defined under any law as a  
9 class B felony or with a statutory maximum sentence of ten years, or  
10 both;

11 (iii) One year for any felony defined under any law as a class C  
12 felony or with a statutory maximum sentence of five years, or both;

13 (iv) If the offender is being sentenced for any sexual motivation  
14 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
15 the offender has previously been sentenced for any sexual motivation  
16 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or  
17 (iii) of this subsection, all sexual motivation enhancements under  
18 this subsection shall be twice the amount of the enhancement listed;

19 (b) (~~Notwithstanding any other provision of law,~~) All sexual  
20 motivation enhancements under this subsection are mandatory, shall be  
21 served in total confinement, and, except as provided in subsection  
22 (15) of this section, shall run consecutively to all other sentencing  
23 provisions, including other sexual motivation enhancements, for all  
24 offenses sentenced under this chapter. However, whether or not a  
25 mandatory minimum term has expired, an offender serving a sentence  
26 under this subsection may be granted an extraordinary medical  
27 placement when authorized under RCW 9.94A.728(3);

28 (c) The sexual motivation enhancements in this subsection apply  
29 to all felony crimes;

30 (d) If the standard sentence range under this subsection exceeds  
31 the statutory maximum sentence for the offense, the statutory maximum  
32 sentence shall be the presumptive sentence unless the offender is a  
33 persistent offender. If the addition of a sexual motivation  
34 enhancement increases the sentence so that it would exceed the  
35 statutory maximum for the offense, the portion of the sentence  
36 representing the enhancement may not be reduced;

37 (e) The portion of the total confinement sentence which the  
38 offender must serve under this subsection shall be calculated before  
39 any earned early release time is credited to the offender;

1 (f) Nothing in this subsection prevents a sentencing court from  
2 imposing a sentence outside the standard sentence range pursuant to  
3 RCW 9.94A.535.

4 (9) An additional one-year enhancement shall be added to the  
5 standard sentence range for the felony crimes of RCW 9A.44.073,  
6 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
7 or after July 22, 2007, if the offender engaged, agreed, or offered  
8 to engage the victim in the sexual conduct in return for a fee. If  
9 the offender is being sentenced for more than one offense, the  
10 one-year enhancement must be added to the total period of total  
11 confinement for all offenses, regardless of which underlying offense  
12 is subject to the enhancement. If the offender is being sentenced for  
13 an anticipatory offense for the felony crimes of RCW 9A.44.073,  
14 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the  
15 offender attempted, solicited another, or conspired to engage, agree,  
16 or offer to engage the victim in the sexual conduct in return for a  
17 fee, an additional one-year enhancement shall be added to the  
18 standard sentence range determined under subsection (2) of this  
19 section. For purposes of this subsection, "sexual conduct" means  
20 sexual intercourse or sexual contact, both as defined in chapter  
21 9A.44 RCW.

22 (10)(a) For a person age eighteen or older convicted of any  
23 criminal street gang-related felony offense for which the person  
24 compensated, threatened, or solicited a minor in order to involve the  
25 minor in the commission of the felony offense, the standard sentence  
26 range is determined by locating the sentencing grid sentence range  
27 defined by the appropriate offender score and the seriousness level  
28 of the completed crime, and multiplying the range by one hundred  
29 twenty-five percent. If the standard sentence range under this  
30 subsection exceeds the statutory maximum sentence for the offense,  
31 the statutory maximum sentence is the presumptive sentence unless the  
32 offender is a persistent offender.

33 (b) This subsection does not apply to any criminal street gang-  
34 related felony offense for which involving a minor in the commission  
35 of the felony offense is an element of the offense.

36 (c) The increased penalty specified in (a) of this subsection is  
37 unavailable in the event that the prosecution gives notice that it  
38 will seek an exceptional sentence based on an aggravating factor  
39 under RCW 9.94A.535.

1 (11) An additional twelve months and one day shall be added to  
2 the standard sentence range for a conviction of attempting to elude a  
3 police vehicle as defined by RCW 46.61.024, if the conviction  
4 included a finding by special allegation of endangering one or more  
5 persons under RCW 9.94A.834.

6 (12) An additional twelve months shall be added to the standard  
7 sentence range for an offense that is also a violation of RCW  
8 9.94A.831.

9 (13) An additional twelve months shall be added to the standard  
10 sentence range for vehicular homicide committed while under the  
11 influence of intoxicating liquor or any drug as defined by RCW  
12 46.61.520 or for vehicular assault committed while under the  
13 influence of intoxicating liquor or any drug as defined by RCW  
14 46.61.522, or for any felony driving under the influence (RCW  
15 46.61.502(6)) or felony physical control under the influence (RCW  
16 46.61.504(6)) for each child passenger under the age of sixteen who  
17 is an occupant in the defendant's vehicle. These enhancements shall  
18 be mandatory, shall be served in total confinement, and, except as  
19 provided in subsection (15) of this section, shall run consecutively  
20 to all other sentencing provisions. If the addition of a minor child  
21 enhancement increases the sentence so that it would exceed the  
22 statutory maximum for the offense, the portion of the sentence  
23 representing the enhancement may not be reduced.

24 (14) An additional twelve months shall be added to the standard  
25 sentence range for an offense that is also a violation of RCW  
26 9.94A.832.

27 (15) If the offender is being sentenced in adult court for a  
28 crime committed as a minor, the court has the discretion whether to  
29 impose consecutive or concurrent enhancements, and to reduce the  
30 sentence when the sentencing enhancements result in a sentence that  
31 is clearly excessive.

32 **Sec. 4.** RCW 9.94A.535 and 2013 2nd sp.s. c 35 s 37 are each  
33 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

1 (h) The defendant or the defendant's children suffered a  
2 continuing pattern of physical or sexual abuse by the victim of the  
3 offense and 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 (j) The current offense involved domestic violence, as defined in  
8 RCW 10.99.020, and the defendant suffered a continuing pattern of  
9 coercion, control, or abuse by the victim of the offense and the  
10 offense is a response to that coercion, control, or abuse.

11 (k) The defendant's age, sophistication, and role in the crime if  
12 the defendant is under adult court jurisdiction for a crime committed  
13 as a minor.

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

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

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

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

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

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

35 (3) Aggravating Circumstances - Considered by a Jury - Imposed by  
36 the Court

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

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

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

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

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

11 (i) The current offense involved multiple victims or multiple  
12 incidents per victim;

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

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

18 (iv) The defendant used his or her position of trust, confidence,  
19 or fiduciary responsibility to facilitate the commission of the  
20 current offense.

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

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

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

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

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

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

39 (vi) The offender used his or her position or status to  
40 facilitate the commission of the current offense, including positions

1 of trust, confidence or fiduciary responsibility (e.g., pharmacist,  
2 physician, or other medical professional).

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

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

8 (h) The current offense involved domestic violence, as defined in  
9 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or  
10 more of the following was present:

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

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

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

18 (i) The offense resulted in the pregnancy of a child victim of  
19 rape.

20 (j) The defendant knew that the victim of the current offense was  
21 a youth who was not residing with a legal custodian and the defendant  
22 established or promoted the relationship for the primary purpose of  
23 victimization.

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

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

30 (m) The offense involved a high degree of sophistication or  
31 planning.

32 (n) The defendant used his or her position of trust, confidence,  
33 or fiduciary responsibility to facilitate the commission of the  
34 current offense.

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

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

38 (q) The defendant demonstrated or displayed an egregious lack of  
39 remorse.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (cc) The offense was intentionally committed because the  
4 defendant perceived the victim to be homeless, as defined in RCW  
5 9.94A.030.

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

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

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