

1 5451-S2.E AMH LUDW H2652.1

2 000697 WITHDRAWN 4-23-93

3 **E2SSB 5451** - H AMD TO H AMD (H-2634.1/93)

4 By Representative Ludwig and others

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6 On page 3, line 6 of the amendment, after "(13)" insert "Criminal
7 street gang" means any ongoing organization, association, or group of
8 three or more persons, whether formal or informal, that has as one of
9 its primary activities the commission of a criminal act or acts.

10 (14)"

11 Renumber the remaining subsections consecutively and correct any
12 internal references accordingly.

13 On page 29, after line 2 of the amendment, insert the following:

14 "**Sec. 7.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
15 as follows:

16 If the sentencing court finds that an exceptional sentence outside
17 the standard range should be imposed in accordance with RCW
18 9.94A.120(2), the sentence is subject to review only as provided for in
19 RCW 9.94A.210(4).

20 The following are illustrative factors which the court may consider
21 in the exercise of its discretion to impose an exceptional sentence.
22 The following are illustrative only and are not intended to be
23 exclusive reasons for exceptional sentences.

24 (1) Mitigating Circumstances

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

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

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

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

1 (e) The defendant's capacity to appreciate the wrongfulness of his
2 conduct or to conform his conduct to the requirements of the law, was
3 significantly impaired (voluntary use of drugs or alcohol is excluded).

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

7 (g) The operation of the multiple offense policy of RCW 9.94A.400
8 results in a presumptive sentence that is clearly excessive in light of
9 the purpose of this chapter, as expressed in RCW 9.94A.010.

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

13 (2) Aggravating Circumstances

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 due to extreme youth, advanced age, disability, or ill health.

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

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

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

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

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

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

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

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

4 (iii) The current offense involved the manufacture of controlled
5 substances for use by other parties; or

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

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

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

15 (e) The current offense included a finding of sexual motivation
16 pursuant to RCW 9.94A.127(~~(i)~~).

17 (f) The offense was part of an ongoing pattern of sexual abuse of
18 the same victim under the age of eighteen years manifested by multiple
19 incidents over a prolonged period of time(~~(i-or)~~).

20 (g) The operation of the multiple offense policy of RCW 9.94A.400
21 results in a presumptive sentence that is clearly too lenient in light
22 of the purpose of this chapter, as expressed in RCW 9.94A.010.

23 (h) The offense was committed for the benefit of, at the direction
24 of, or in association with any criminal street gang as defined in RCW
25 9.94A.030, with the specific intent to promote, further, or assist in
26 any criminal conduct by gang members."

27 Renumber the remaining sections consecutively and correct any
28 internal references accordingly.

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