
HOUSE BILL 2710

State of Washington 60th Legislature 2008 Regular Session

By Representatives Hurst, Roach, Morrell, Williams, Loomis, and Kelley

Read first time 01/16/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to allowing the imposition of exceptional sentences
2 for offenders who wore body armor at the time of their offenses;
3 amending RCW 9.94A.535; and reenacting and amending RCW 9.94A.030.

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

5 **Sec. 1.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c
6 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
7 amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Board" means the indeterminate sentence review board created
11 under chapter 9.95 RCW.

12 (2) "Body armor" means any clothing or equipment designed, in whole
13 or in part, to minimize the risk of injury or death from a deadly
14 weapon.

15 (3) "Collect," or any derivative thereof, "collect and remit," or
16 "collect and deliver," when used with reference to the department,
17 means that the department, either directly or through a collection
18 agreement authorized by RCW 9.94A.760, is responsible for monitoring
19 and enforcing the offender's sentence with regard to the legal

1 financial obligation, receiving payment thereof from the offender, and,
2 consistent with current law, delivering daily the entire payment to the
3 superior court clerk without depositing it in a departmental account.

4 ~~((3))~~ (4) "Commission" means the sentencing guidelines
5 commission.

6 ~~((4))~~ (5) "Community corrections officer" means an employee of
7 the department who is responsible for carrying out specific duties in
8 supervision of sentenced offenders and monitoring of sentence
9 conditions.

10 ~~((5))~~ (6) "Community custody" means that portion of an offender's
11 sentence of confinement in lieu of earned release time or imposed
12 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
13 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
14 community subject to controls placed on the offender's movement and
15 activities by the department. For offenders placed on community
16 custody for crimes committed on or after July 1, 2000, the department
17 shall assess the offender's risk of reoffense and may establish and
18 modify conditions of community custody, in addition to those imposed by
19 the court, based upon the risk to community safety.

20 ~~((6))~~ (7) "Community custody range" means the minimum and maximum
21 period of community custody included as part of a sentence under RCW
22 9.94A.715, as established by the commission or the legislature under
23 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

24 ~~((7))~~ (8) "Community placement" means that period during which
25 the offender is subject to the conditions of community custody and/or
26 postrelease supervision, which begins either upon completion of the
27 term of confinement (postrelease supervision) or at such time as the
28 offender is transferred to community custody in lieu of earned release.
29 Community placement may consist of entirely community custody, entirely
30 postrelease supervision, or a combination of the two.

31 ~~((8))~~ (9) "Community protection zone" means the area within eight
32 hundred eighty feet of the facilities and grounds of a public or
33 private school.

34 ~~((9))~~ (10) "Community restitution" means compulsory service,
35 without compensation, performed for the benefit of the community by the
36 offender.

37 ~~((10))~~ (11) "Community supervision" means a period of time during
38 which a convicted offender is subject to crime-related prohibitions and

1 other sentence conditions imposed by a court pursuant to this chapter
2 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any
3 offender has a chemical dependency that has contributed to his or her
4 offense, the conditions of supervision may, subject to available
5 resources, include treatment. For purposes of the interstate compact
6 for out-of-state supervision of parolees and probationers, RCW
7 9.95.270, community supervision is the functional equivalent of
8 probation and should be considered the same as probation by other
9 states.

10 ~~((+11+))~~ (12) "Confinement" means total or partial confinement.

11 ~~((+12+))~~ (13) "Conviction" means an adjudication of guilt pursuant
12 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
13 guilty, and acceptance of a plea of guilty.

14 ~~((+13+))~~ (14) "Crime-related prohibition" means an order of a court
15 prohibiting conduct that directly relates to the circumstances of the
16 crime for which the offender has been convicted, and shall not be
17 construed to mean orders directing an offender affirmatively to
18 participate in rehabilitative programs or to otherwise perform
19 affirmative conduct. However, affirmative acts necessary to monitor
20 compliance with the order of a court may be required by the department.

21 ~~((+14+))~~ (15) "Criminal history" means the list of a defendant's
22 prior convictions and juvenile adjudications, whether in this state, in
23 federal court, or elsewhere.

24 (a) The history shall include, where known, for each conviction (i)
25 whether the defendant has been placed on probation and the length and
26 terms thereof; and (ii) whether the defendant has been incarcerated and
27 the length of incarceration.

28 (b) A conviction may be removed from a defendant's criminal history
29 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
30 a similar out-of-state statute, or if the conviction has been vacated
31 pursuant to a governor's pardon.

32 (c) The determination of a defendant's criminal history is distinct
33 from the determination of an offender score. A prior conviction that
34 was not included in an offender score calculated pursuant to a former
35 version of the sentencing reform act remains part of the defendant's
36 criminal history.

37 ~~((+15+))~~ (16) "Day fine" means a fine imposed by the sentencing

1 court that equals the difference between the offender's net daily
2 income and the reasonable obligations that the offender has for the
3 support of the offender and any dependents.

4 ~~((16))~~ (17) "Day reporting" means a program of enhanced
5 supervision designed to monitor the offender's daily activities and
6 compliance with sentence conditions, and in which the offender is
7 required to report daily to a specific location designated by the
8 department or the sentencing court.

9 ~~((17))~~ (18) "Department" means the department of corrections.

10 ~~((18))~~ (19) "Determinate sentence" means a sentence that states
11 with exactitude the number of actual years, months, or days of total
12 confinement, of partial confinement, of community supervision, the
13 number of actual hours or days of community restitution work, or
14 dollars or terms of a legal financial obligation. The fact that an
15 offender through earned release can reduce the actual period of
16 confinement shall not affect the classification of the sentence as a
17 determinate sentence.

18 ~~((19))~~ (20) "Disposable earnings" means that part of the earnings
19 of an offender remaining after the deduction from those earnings of any
20 amount required by law to be withheld. For the purposes of this
21 definition, "earnings" means compensation paid or payable for personal
22 services, whether denominated as wages, salary, commission, bonuses, or
23 otherwise, and, notwithstanding any other provision of law making the
24 payments exempt from garnishment, attachment, or other process to
25 satisfy a court-ordered legal financial obligation, specifically
26 includes periodic payments pursuant to pension or retirement programs,
27 or insurance policies of any type, but does not include payments made
28 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
29 or Title 74 RCW.

30 ~~((20))~~ (21) "Drug offender sentencing alternative" is a
31 sentencing option available to persons convicted of a felony offense
32 other than a violent offense or a sex offense and who are eligible for
33 the option under RCW 9.94A.660.

34 ~~((21))~~ (22) "Drug offense" means:

- 35 (a) Any felony violation of chapter 69.50 RCW except possession of
36 a controlled substance (RCW 69.50.4013) or forged prescription for a
37 controlled substance (RCW 69.50.403);

1 (b) Any offense defined as a felony under federal law that relates
2 to the possession, manufacture, distribution, or transportation of a
3 controlled substance; or

4 (c) Any out-of-state conviction for an offense that under the laws
5 of this state would be a felony classified as a drug offense under (a)
6 of this subsection.

7 ~~((+22+))~~ (23) "Earned release" means earned release from
8 confinement as provided in RCW 9.94A.728.

9 ~~((+23+))~~ (24) "Escape" means:

10 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
11 first degree (RCW 9A.76.110), escape in the second degree (RCW
12 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
13 willful failure to return from work release (RCW 72.65.070), or willful
14 failure to be available for supervision by the department while in
15 community custody (RCW 72.09.310); or

16 (b) Any federal or out-of-state conviction for an offense that
17 under the laws of this state would be a felony classified as an escape
18 under (a) of this subsection.

19 ~~((+24+))~~ (25) "Felony traffic offense" means:

20 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
21 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
22 run injury-accident (RCW 46.52.020(4)), felony driving while under the
23 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
24 felony physical control of a vehicle while under the influence of
25 intoxicating liquor or any drug (RCW 46.61.504(6)); or

26 (b) Any federal or out-of-state conviction for an offense that
27 under the laws of this state would be a felony classified as a felony
28 traffic offense under (a) of this subsection.

29 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the
30 sentencing court to be paid by the offender to the court over a
31 specific period of time.

32 ~~((+26+))~~ (27) "First-time offender" means any person who has no
33 prior convictions for a felony and is eligible for the first-time
34 offender waiver under RCW 9.94A.650.

35 ~~((+27+))~~ (28) "Home detention" means a program of partial
36 confinement available to offenders wherein the offender is confined in
37 a private residence subject to electronic surveillance.

1 (~~(28)~~) (29) "Legal financial obligation" means a sum of money
2 that is ordered by a superior court of the state of Washington for
3 legal financial obligations which may include restitution to the
4 victim, statutorily imposed crime victims' compensation fees as
5 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
6 drug funds, court-appointed attorneys' fees, and costs of defense,
7 fines, and any other financial obligation that is assessed to the
8 offender as a result of a felony conviction. Upon conviction for
9 vehicular assault while under the influence of intoxicating liquor or
10 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
11 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
12 legal financial obligations may also include payment to a public agency
13 of the expense of an emergency response to the incident resulting in
14 the conviction, subject to RCW 38.52.430.

15 (~~(29)~~) (30) "Most serious offense" means any of the following
16 felonies or a felony attempt to commit any of the following felonies:

17 (a) Any felony defined under any law as a class A felony or
18 criminal solicitation of or criminal conspiracy to commit a class A
19 felony;

20 (b) Assault in the second degree;

21 (c) Assault of a child in the second degree;

22 (d) Child molestation in the second degree;

23 (e) Controlled substance homicide;

24 (f) Extortion in the first degree;

25 (g) Incest when committed against a child under age fourteen;

26 (h) Indecent liberties;

27 (i) Kidnapping in the second degree;

28 (j) Leading organized crime;

29 (k) Manslaughter in the first degree;

30 (l) Manslaughter in the second degree;

31 (m) Promoting prostitution in the first degree;

32 (n) Rape in the third degree;

33 (o) Robbery in the second degree;

34 (p) Sexual exploitation;

35 (q) Vehicular assault, when caused by the operation or driving of
36 a vehicle by a person while under the influence of intoxicating liquor
37 or any drug or by the operation or driving of a vehicle in a reckless
38 manner;

1 (r) Vehicular homicide, when proximately caused by the driving of
2 any vehicle by any person while under the influence of intoxicating
3 liquor or any drug as defined by RCW 46.61.502, or by the operation of
4 any vehicle in a reckless manner;

5 (s) Any other class B felony offense with a finding of sexual
6 motivation;

7 (t) Any other felony with a deadly weapon verdict under RCW
8 9.94A.602;

9 (u) Any felony offense in effect at any time prior to December 2,
10 1993, that is comparable to a most serious offense under this
11 subsection, or any federal or out-of-state conviction for an offense
12 that under the laws of this state would be a felony classified as a
13 most serious offense under this subsection;

14 (v)(i) A prior conviction for indecent liberties under RCW
15 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
16 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
17 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
18 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

19 (ii) A prior conviction for indecent liberties under RCW
20 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
21 if: (A) The crime was committed against a child under the age of
22 fourteen; or (B) the relationship between the victim and perpetrator is
23 included in the definition of indecent liberties under RCW
24 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
25 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
26 through July 27, 1997.

27 (~~(+30+)~~) (31) "Nonviolent offense" means an offense which is not a
28 violent offense.

29 (~~(+31+)~~) (32) "Offender" means a person who has committed a felony
30 established by state law and is eighteen years of age or older or is
31 less than eighteen years of age but whose case is under superior court
32 jurisdiction under RCW 13.04.030 or has been transferred by the
33 appropriate juvenile court to a criminal court pursuant to RCW
34 13.40.110. Throughout this chapter, the terms "offender" and
35 "defendant" are used interchangeably.

36 (~~(+32+)~~) (33) "Partial confinement" means confinement for no more
37 than one year in a facility or institution operated or utilized under
38 contract by the state or any other unit of government, or, if home

1 detention or work crew has been ordered by the court, in an approved
2 residence, for a substantial portion of each day with the balance of
3 the day spent in the community. Partial confinement includes work
4 release, home detention, work crew, and a combination of work crew and
5 home detention.

6 ~~((+33+))~~ (34) "Persistent offender" is an offender who:

7 (a)(i) Has been convicted in this state of any felony considered a
8 most serious offense; and

9 (ii) Has, before the commission of the offense under (a) of this
10 subsection, been convicted as an offender on at least two separate
11 occasions, whether in this state or elsewhere, of felonies that under
12 the laws of this state would be considered most serious offenses and
13 would be included in the offender score under RCW 9.94A.525; provided
14 that of the two or more previous convictions, at least one conviction
15 must have occurred before the commission of any of the other most
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
18 of a child in the first degree, child molestation in the first degree,
19 rape in the second degree, rape of a child in the second degree, or
20 indecent liberties by forcible compulsion; (B) any of the following
21 offenses with a finding of sexual motivation: Murder in the first
22 degree, murder in the second degree, homicide by abuse, kidnapping in
23 the first degree, kidnapping in the second degree, assault in the first
24 degree, assault in the second degree, assault of a child in the first
25 degree, assault of a child in the second degree, or burglary in the
26 first degree; or (C) an attempt to commit any crime listed in this
27 subsection ~~((+33+))~~ (34)(b)(i); and

28 (ii) Has, before the commission of the offense under (b)(i) of this
29 subsection, been convicted as an offender on at least one occasion,
30 whether in this state or elsewhere, of an offense listed in (b)(i) of
31 this subsection or any federal or out-of-state offense or offense under
32 prior Washington law that is comparable to the offenses listed in
33 (b)(i) of this subsection. A conviction for rape of a child in the
34 first degree constitutes a conviction under (b)(i) of this subsection
35 only when the offender was sixteen years of age or older when the
36 offender committed the offense. A conviction for rape of a child in
37 the second degree constitutes a conviction under (b)(i) of this

1 subsection only when the offender was eighteen years of age or older
2 when the offender committed the offense.

3 ~~((+34+))~~ (35) "Postrelease supervision" is that portion of an
4 offender's community placement that is not community custody.

5 ~~((+35+))~~ (36) "Predatory" means: (a) The perpetrator of the crime
6 was a stranger to the victim, as defined in this section; (b) the
7 perpetrator established or promoted a relationship with the victim
8 prior to the offense and the victimization of the victim was a
9 significant reason the perpetrator established or promoted the
10 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
11 volunteer, or other person in authority in any public or private school
12 and the victim was a student of the school under his or her authority
13 or supervision. For purposes of this subsection, "school" does not
14 include home-based instruction as defined in RCW 28A.225.010; (ii) a
15 coach, trainer, volunteer, or other person in authority in any
16 recreational activity and the victim was a participant in the activity
17 under his or her authority or supervision; or (iii) a pastor, elder,
18 volunteer, or other person in authority in any church or religious
19 organization, and the victim was a member or participant of the
20 organization under his or her authority.

21 ~~((+36+))~~ (37) "Private school" means a school regulated under
22 chapter 28A.195 or 28A.205 RCW.

23 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW
24 28A.150.010.

25 ~~((+38+))~~ (39) "Restitution" means a specific sum of money ordered
26 by the sentencing court to be paid by the offender to the court over a
27 specified period of time as payment of damages. The sum may include
28 both public and private costs.

29 ~~((+39+))~~ (40) "Risk assessment" means the application of an
30 objective instrument supported by research and adopted by the
31 department for the purpose of assessing an offender's risk of
32 reoffense, taking into consideration the nature of the harm done by the
33 offender, place and circumstances of the offender related to risk, the
34 offender's relationship to any victim, and any information provided to
35 the department by victims. The results of a risk assessment shall not
36 be based on unconfirmed or unconfirmable allegations.

37 ~~((+40+))~~ (41) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
3 while under the influence of intoxicating liquor or any drug (RCW
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
5 attended vehicle (RCW 46.52.020(5)); or

6 (b) Any federal, out-of-state, county, or municipal conviction for
7 an offense that under the laws of this state would be classified as a
8 serious traffic offense under (a) of this subsection.

9 ~~((41))~~ (42) "Serious violent offense" is a subcategory of violent
10 offense and means:

11 (a)(i) Murder in the first degree;

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

18 (viii) Assault of a child in the first degree; or

19 (ix) An attempt, criminal solicitation, or criminal conspiracy to
20 commit one of these felonies; or

21 (b) Any federal or out-of-state conviction for an offense that
22 under the laws of this state would be a felony classified as a serious
23 violent offense under (a) of this subsection.

24 ~~((42))~~ (43) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
26 RCW 9A.44.130~~((11))~~ (12);

27 (ii) A violation of RCW 9A.64.020;

28 (iii) A felony that is a violation of chapter 9.68A RCW other than
29 RCW 9.68A.080; or

30 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
31 criminal solicitation, or criminal conspiracy to commit such crimes;

32 (b) Any conviction for a felony offense in effect at any time prior
33 to July 1, 1976, that is comparable to a felony classified as a sex
34 offense in (a) of this subsection;

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex
2 offense under (a) of this subsection.

3 ~~((43))~~ (44) "Sexual motivation" means that one of the purposes
4 for which the defendant committed the crime was for the purpose of his
5 or her sexual gratification.

6 ~~((44))~~ (45) "Standard sentence range" means the sentencing
7 court's discretionary range in imposing a nonappealable sentence.

8 ~~((45))~~ (46) "Statutory maximum sentence" means the maximum length
9 of time for which an offender may be confined as punishment for a crime
10 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
11 the crime, or other statute defining the maximum penalty for a crime.

12 ~~((46))~~ (47) "Stranger" means that the victim did not know the
13 offender twenty-four hours before the offense.

14 ~~((47))~~ (48) "Total confinement" means confinement inside the
15 physical boundaries of a facility or institution operated or utilized
16 under contract by the state or any other unit of government for twenty-
17 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

18 ~~((48))~~ (49) "Transition training" means written and verbal
19 instructions and assistance provided by the department to the offender
20 during the two weeks prior to the offender's successful completion of
21 the work ethic camp program. The transition training shall include
22 instructions in the offender's requirements and obligations during the
23 offender's period of community custody.

24 ~~((49))~~ (50) "Victim" means any person who has sustained
25 emotional, psychological, physical, or financial injury to person or
26 property as a direct result of the crime charged.

27 ~~((50))~~ (51) "Violent offense" means:

28 (a) Any of the following felonies:

29 (i) Any felony defined under any law as a class A felony or an
30 attempt to commit a class A felony;

31 (ii) Criminal solicitation of or criminal conspiracy to commit a
32 class A felony;

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

35 (v) Indecent liberties if committed by forcible compulsion;

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;
2 (x) Extortion in the first degree;
3 (xi) Robbery in the second degree;
4 (xii) Drive-by shooting;
5 (xiii) Vehicular assault, when caused by the operation or driving
6 of a vehicle by a person while under the influence of intoxicating
7 liquor or any drug or by the operation or driving of a vehicle in a
8 reckless manner; and

9 (xiv) Vehicular homicide, when proximately caused by the driving of
10 any vehicle by any person while under the influence of intoxicating
11 liquor or any drug as defined by RCW 46.61.502, or by the operation of
12 any vehicle in a reckless manner;

13 (b) Any conviction for a felony offense in effect at any time prior
14 to July 1, 1976, that is comparable to a felony classified as a violent
15 offense in (a) of this subsection; and

16 (c) Any federal or out-of-state conviction for an offense that
17 under the laws of this state would be a felony classified as a violent
18 offense under (a) or (b) of this subsection.

19 ~~((+51+))~~ (52) "Work crew" means a program of partial confinement
20 consisting of civic improvement tasks for the benefit of the community
21 that complies with RCW 9.94A.725.

22 ~~((+52+))~~ (53) "Work ethic camp" means an alternative incarceration
23 program as provided in RCW 9.94A.690 designed to reduce recidivism and
24 lower the cost of corrections by requiring offenders to complete a
25 comprehensive array of real-world job and vocational experiences,
26 character-building work ethics training, life management skills
27 development, substance abuse rehabilitation, counseling, literacy
28 training, and basic adult education.

29 ~~((+53+))~~ (54) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school.

32 **Sec. 2.** RCW 9.94A.535 and 2007 c 377 s 10 are each amended to read
33 as follows:

34 The court may impose a sentence outside the standard sentence range
35 for an offense if it finds, considering the purpose of this chapter,
36 that there are substantial and compelling reasons justifying an

1 exceptional sentence. Facts supporting aggravated sentences, other
2 than the fact of a prior conviction, shall be determined pursuant to
3 the provisions of RCW 9.94A.537.

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

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

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

16 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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 or nonferrous metal property, as defined in
28 RCW 19.290.010.

29 (aa) The current offense is a violent offense and the defendant was
30 wearing body armor at the time of the offense.

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