

ESHB 2424 - S AMD TO JUD COMM AMD (S5106.3) **236**

By Senators Gordon, Kline, Hargrove, Carrell

ADOPTED 03/04/2010

1 On page 19, after line 27 of the amendment, insert the following:

2 "Sec. 10. RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9
3 are each reenacted and amended to read as follows:

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

10 Whenever a sentence outside the standard sentence range is imposed,
11 the court shall set forth the reasons for its decision in written
12 findings of fact and conclusions of law. A sentence outside the
13 standard sentence range shall be a determinate sentence.

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

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

22 (1) Mitigating Circumstances - Court to Consider

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

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

29 (b) Before detection, the defendant compensated, or made a good

1 faith effort to compensate, the victim of the criminal conduct for any
2 damage or injury sustained.

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

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

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

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

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

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

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

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

24 (a) The defendant and the state both stipulate that justice is best
25 served by the imposition of an exceptional sentence outside the
26 standard range, and the court finds the exceptional sentence to be
27 consistent with and in furtherance of the interests of justice and the
28 purposes of the sentencing reform act.

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

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

36 (d) The failure to consider the defendant's prior criminal history
37 which was omitted from the offender score calculation pursuant to RCW

1 9.94A.525 results in a presumptive sentence that is clearly too
2 lenient.

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

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

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

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

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

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

18 (i) The current offense involved multiple victims or multiple
19 incidents per victim;

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

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

24 (iv) The defendant used his or her position of trust, confidence,
25 or fiduciary responsibility to facilitate the commission of the current
26 offense.

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

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

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

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

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

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

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

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

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

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

19 (i) The offense was part of an ongoing pattern of psychological,
20 physical, or sexual abuse of the victim manifested by multiple
21 incidents over a prolonged period of time;

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

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

26 (i) The offense resulted in the pregnancy of a child victim of
27 rape.

28 (j) The defendant knew that the victim of the current offense was
29 a youth who was not residing with a legal custodian and the defendant
30 established or promoted the relationship for the primary purpose of
31 victimization.

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

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

- 1 (m) The offense involved a high degree of sophistication or
2 planning.
- 3 (n) The defendant used his or her position of trust, confidence, or
4 fiduciary responsibility to facilitate the commission of the current
5 offense.
- 6 (o) The defendant committed a current sex offense, has a history of
7 sex offenses, and is not amenable to treatment.
- 8 (p) The offense involved an invasion of the victim's privacy.
- 9 (q) The defendant demonstrated or displayed an egregious lack of
10 remorse.
- 11 (r) The offense involved a destructive and foreseeable impact on
12 persons other than the victim.
- 13 (s) The defendant committed the offense to obtain or maintain his
14 or her membership or to advance his or her position in the hierarchy of
15 an organization, association, or identifiable group.
- 16 (t) The defendant committed the current offense shortly after being
17 released from incarceration.
- 18 (u) The current offense is a burglary and the victim of the
19 burglary was present in the building or residence when the crime was
20 committed.
- 21 (v) The offense was committed against a law enforcement officer who
22 was performing his or her official duties at the time of the offense,
23 the offender knew that the victim was a law enforcement officer, and
24 the victim's status as a law enforcement officer is not an element of
25 the offense.
- 26 (w) The defendant committed the offense against a victim who was
27 acting as a good samaritan.
- 28 (x) The defendant committed the offense against a public official
29 or officer of the court in retaliation of the public official's
30 performance of his or her duty to the criminal justice system.
- 31 (y) The victim's injuries substantially exceed the level of bodily
32 harm necessary to satisfy the elements of the offense. This aggravator
33 is not an exception to RCW 9.94A.530(2).
- 34 (z)(i)(A) The current offense is theft in the first degree, theft
35 in the second degree, possession of stolen property in the first
36 degree, or possession of stolen property in the second degree; (B) the
37 stolen property involved is metal property; and (C) the property damage

1 to the victim caused in the course of the theft of metal property is
2 more than three times the value of the stolen metal property, or the
3 theft of the metal property creates a public hazard.

4 (ii) For purposes of this subsection, "metal property" means
5 commercial metal property, private metal property, or nonferrous metal
6 property, as defined in RCW 19.290.010.

7 (aa) The defendant committed the offense with the intent to
8 directly or indirectly cause any benefit, aggrandizement, gain, profit,
9 or other advantage to or for a criminal street gang as defined in RCW
10 9.94A.030, its reputation, influence, or membership.

11 (bb) The current offense involved paying to view, over the internet
12 in violation of section 7 of this act, depictions of a minor engaged in
13 an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a)
14 through (g)."

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15 On page 20, line 1 of the title amendment, after "9.94A.515" insert
16 "and 9.94A.535"

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