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HOUSE BILL 2595

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By Representatives Rolfes, Kelley, Ericks, Kirby, and Hurst

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1 AN ACT Relating to imposing a sentence outside the standard  
2 sentence range for defendants who intercept police communication as a  
3 means to facilitate the crime; and reenacting and amending RCW  
4 9.94A.535.

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

6 **Sec. 1.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are  
7 each reenacted and amended to read as follows:

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

14 Whenever a sentence outside the standard sentence range is imposed,  
15 the court shall set forth the reasons for its decision in written  
16 findings of fact and conclusions of law. A sentence outside the  
17 standard sentence range shall be a determinate sentence.

18 If the sentencing court finds that an exceptional sentence outside

1 the standard sentence range should be imposed, the sentence is subject  
2 to review only as provided for in RCW 9.94A.585(4).

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

8 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

23 (e) The defendant's capacity to appreciate the wrongfulness of his  
24 or her conduct, or to conform his or her conduct to the requirements of  
25 the law, was significantly impaired. Voluntary use of drugs or alcohol  
26 is excluded.

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

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

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

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

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

1 (a) The defendant and the state both stipulate that justice is best  
2 served by the imposition of an exceptional sentence outside the  
3 standard range, and the court finds the exceptional sentence to be  
4 consistent with and in furtherance of the interests of justice and the  
5 purposes of the sentencing reform act.

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

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

13 (d) The failure to consider the defendant's prior criminal history  
14 which was omitted from the offender score calculation pursuant to RCW  
15 9.94A.525 results in a presumptive sentence that is clearly too  
16 lenient.

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

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

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

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

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

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

32 (i) The current offense involved multiple victims or multiple  
33 incidents per victim;

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

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

1 (iv) The defendant used his or her position of trust, confidence,  
2 or fiduciary responsibility to facilitate the commission of the current  
3 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (i) The offense resulted in the pregnancy of a child victim of  
4 rape.

5 (j) The defendant knew that the victim of the current offense was  
6 a youth who was not residing with a legal custodian and the defendant  
7 established or promoted the relationship for the primary purpose of  
8 victimization.

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

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

15 (m) The offense involved a high degree of sophistication or  
16 planning.

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

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

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

23 (q) The defendant demonstrated or displayed an egregious lack of  
24 remorse.

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

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

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

32 (u) The current offense is a burglary and the victim of the  
33 burglary was present in the building or residence when the crime was  
34 committed.

35 (v) The offense was committed against a law enforcement officer who  
36 was performing his or her official duties at the time of the offense,  
37 the offender knew that the victim was a law enforcement officer, and

1 the victim's status as a law enforcement officer is not an element of  
2 the offense.

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

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

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

11 (z)(i)(A) The current offense is theft in the first degree, theft  
12 in the second degree, possession of stolen property in the first  
13 degree, or possession of stolen property in the second degree; (B) the  
14 stolen property involved is metal property; and (C) the property damage  
15 to the victim caused in the course of the theft of metal property is  
16 more than three times the value of the stolen metal property, or the  
17 theft of the metal property creates a public hazard.

18 (ii) For purposes of this subsection, "metal property" means  
19 commercial metal property, private metal property, or nonferrous metal  
20 property, as defined in RCW 19.290.010.

21 (aa) The defendant committed the offense with the intent to  
22 directly or indirectly cause any benefit, aggrandizement, gain, profit,  
23 or other advantage to or for a criminal street gang as defined in RCW  
24 9.94A.030, its reputation, influence, or membership.

25 (bb) The defendant intercepted police communication as a means to  
26 facilitate the crime.

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