

SB 6025 - S AMD 482

By Senators Kline, Pedersen

NOT ADOPTED 02/17/2014

1 Beginning on page 15, line 20, strike all of sections 2 through 4
2 and insert the following:

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

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

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

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

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

23 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

22 (i) The defendant was making a good faith effort to obtain or
23 provide medical assistance for someone who is experiencing a drug-
24 related overdose.

25 (j) The current offense involved domestic violence, as defined in
26 RCW 10.99.020, and the defendant suffered a continuing pattern of
27 coercion, control, or abuse by the victim of the offense and the
28 offense is a response to that coercion, control, or abuse.

29 (2) Aggravating Circumstances - Considered and Imposed by the Court
30 The trial court may impose an aggravated exceptional sentence
31 without a finding of fact by a jury under the following circumstances:

32 (a) The defendant and the state both stipulate that justice is best
33 served by the imposition of an exceptional sentence outside the
34 standard range, and the court finds the exceptional sentence to be
35 consistent with and in furtherance of the interests of justice and the
36 purposes of the sentencing reform act.

37 (b) The defendant's prior unscored misdemeanor or prior unscored

1 foreign criminal history results in a presumptive sentence that is
2 clearly too lenient in light of the purpose of this chapter, as
3 expressed in RCW 9.94A.010.

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

7 (d) The failure to consider the defendant's prior criminal history
8 which was omitted from the offender score calculation pursuant to RCW
9 9.94A.525 results in a presumptive sentence that is clearly too
10 lenient.

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

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

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

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

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

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

26 (i) The current offense involved multiple victims or multiple
27 incidents per victim;

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

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

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

35 (e) The current offense was a major violation of the Uniform
36 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
37 trafficking in controlled substances, which was more onerous than the

1 typical offense of its statutory definition: The presence of ANY of
2 the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

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

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

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

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

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

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

35 (i) The offense resulted in the pregnancy of a child victim of
36 rape.

37 (j) The defendant knew that the victim of the current offense was

1 a youth who was not residing with a legal custodian and the defendant
2 established or promoted the relationship for the primary purpose of
3 victimization.

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

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

10 (m) The offense involved a high degree of sophistication or
11 planning.

12 (n) The offender or an accomplice was wearing body armor at the
13 time of the offense and was armed with a firearm, as defined in RCW
14 9.41.010, or a deadly weapon, as defined in RCW 9A.04.110.

15 (o) The defendant used his or her position of trust, confidence, or
16 fiduciary responsibility to facilitate the commission of the current
17 offense.

18 ((+o)) (p) The defendant committed a current sex offense, has a
19 history of sex offenses, and is not amenable to treatment.

20 ((+p)) (q) The offense involved an invasion of the victim's
21 privacy.

22 ((+q)) (r) The defendant demonstrated or displayed an egregious
23 lack of remorse.

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

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

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

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

34 ((+v)) (w) The offense was committed against a law enforcement
35 officer who was performing his or her official duties at the time of
36 the offense, the offender knew that the victim was a law enforcement
37 officer, and the victim's status as a law enforcement officer is not an
38 element of the offense.

1 ~~((w))~~ (x) The defendant committed the offense against a victim
2 who was acting as a good samaritan.

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

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

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

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

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

24 ~~((bb))~~ (cc) The current offense involved paying to view, over the
25 internet in violation of RCW 9.68A.075, depictions of a minor engaged
26 in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)
27 (a) through (g).

28 ~~((cc))~~ (dd) The offense was intentionally committed because the
29 defendant perceived the victim to be homeless, as defined in RCW
30 9.94A.030.

31 ~~((dd))~~ (ee) The current offense involved a felony crime against
32 persons, except for assault in the third degree pursuant to RCW
33 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's
34 chamber, or any waiting area or corridor immediately adjacent to a
35 courtroom, jury room, or judge's chamber. This subsection shall apply
36 only: (i) During the times when a courtroom, jury room, or judge's
37 chamber is being used for judicial purposes during court proceedings;

1 and (ii) if signage was posted in compliance with RCW 2.28.200 at the
2 time of the offense.

3 ~~((ee))~~ (ff) During the commission of the current offense, the
4 defendant was driving in the opposite direction of the normal flow of
5 traffic on a multiple lane highway, as defined by RCW 46.04.350, with
6 a posted speed limit of forty-five miles per hour or greater."

7 Renumber the remaining section consecutively.

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8 On page 1, line 1 of the title, after "9.94A.030" strike the
9 remainder of the title and insert "and 9.94A.535; and providing an
10 effective date."

EFFECT: Removes provisions related to special allegation and
mandatory enhancement for use of body armor. Makes use of body armor
in offenses involving guns and deadly weapons an aggravating factor at
sentencing.

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