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**SUBSTITUTE HOUSE BILL 1637**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Simmons, Taylor, Ryu, Bateman, Davis, Macri, Peterson, Pollet, Ormsby, Harris-Talley, and Frame; by request of Administrative Office of the Courts)

READ FIRST TIME 01/31/22.

1 AN ACT Relating to allowing a court to mitigate a criminal  
2 sentence when the defendant was experiencing mental illness at the  
3 time of the offense; and amending RCW 9.94A.535.

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

5 **Sec. 1.** RCW 9.94A.535 and 2019 c 219 s 1 are each amended to  
6 read as follows:

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

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

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

20 A departure from the standards in RCW 9.94A.589 (1) and (2)  
21 governing whether sentences are to be served consecutively or

1 concurrently is an exceptional sentence subject to the limitations in  
2 this section, and may be appealed by the offender or the state as set  
3 forth in RCW 9.94A.585 (2) through (6).

4 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

20 (e) The defendant's capacity to appreciate the wrongfulness of  
21 his or her conduct, or to conform his or her conduct to the  
22 requirements of the law, was significantly impaired. This includes,  
23 but is not limited to, impairment by a mental health condition at the  
24 time of the offense. Voluntary use of drugs or alcohol is excluded.

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

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

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

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

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

1 (k) The defendant was convicted of vehicular homicide, by the  
2 operation of a vehicle in a reckless manner and has committed no  
3 other previous serious traffic offenses as defined in RCW 9.94A.030,  
4 and the sentence is clearly excessive in light of the purpose of this  
5 chapter, as expressed in RCW 9.94A.010.

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

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

11 (a) The defendant and the state both stipulate that justice is  
12 best served by the imposition of an exceptional sentence outside the  
13 standard range, and the court finds the exceptional sentence to be  
14 consistent with and in furtherance of the interests of justice and  
15 the purposes of the sentencing reform act.

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

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

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

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

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

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

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

38 (c) The current offense was a violent offense, and the defendant  
39 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  
7 loss substantially greater than typical for the offense;

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

11 (iv) The defendant used his or her position of trust, confidence,  
12 or fiduciary responsibility to facilitate the commission of the  
13 current offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (i) The offense resulted in the pregnancy of a child victim of  
12 rape.

13 (j) The defendant knew that the victim of the current offense was  
14 a youth who was not residing with a legal custodian and the defendant  
15 established or promoted the relationship for the primary purpose of  
16 victimization.

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

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

23 (m) The offense involved a high degree of sophistication or  
24 planning.

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

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

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

31 (q) The defendant demonstrated or displayed an egregious lack of  
32 remorse.

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

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

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

1 (u) The current offense is a burglary and the victim of the  
2 burglary was present in the building or residence when the crime was  
3 committed.

4 (v) The offense was committed against a law enforcement officer  
5 who was performing his or her official duties at the time of the  
6 offense, the offender knew that the victim was a law enforcement  
7 officer, and the victim's status as a law enforcement officer is not  
8 an element of the offense.

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

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

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

17 (z) (i) (A) The current offense is theft in the first degree, theft  
18 in the second degree, possession of stolen property in the first  
19 degree, or possession of stolen property in the second degree; (B)  
20 the stolen property involved is metal property; and (C) the property  
21 damage to the victim caused in the course of the theft of metal  
22 property is more than three times the value of the stolen metal  
23 property, or the theft of the metal property creates a public hazard.

24 (ii) For purposes of this subsection, "metal property" means  
25 commercial metal property, private metal property, or nonferrous  
26 metal property, as defined in RCW 19.290.010.

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

31 (bb) The current offense involved paying to view, over the  
32 internet in violation of RCW 9.68A.075, depictions of a minor engaged  
33 in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)

34 (a) through (g).

35 (cc) The offense was intentionally committed because the  
36 defendant perceived the victim to be homeless, as defined in RCW  
37 9.94A.030.

38 (dd) The current offense involved a felony crime against persons,  
39 except for assault in the third degree pursuant to RCW  
40 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's

1 chamber, or any waiting area or corridor immediately adjacent to a  
2 courtroom, jury room, or judge's chamber. This subsection shall apply  
3 only: (i) During the times when a courtroom, jury room, or judge's  
4 chamber is being used for judicial purposes during court proceedings;  
5 and (ii) if signage was posted in compliance with RCW 2.28.200 at the  
6 time of the offense.

7 (ee) During the commission of the current offense, the defendant  
8 was driving in the opposite direction of the normal flow of traffic  
9 on a multiple lane highway, as defined by RCW 46.04.350, with a  
10 posted speed limit of forty-five miles per hour or greater.

11 (ff) The current offense involved the assault of a utility  
12 employee of any publicly or privately owned utility company or  
13 agency, who is at the time of the act engaged in official duties,  
14 including: (i) The maintenance or repair of utility poles, lines,  
15 conduits, pipes, or other infrastructure; or (ii) connecting,  
16 disconnecting, or recording utility meters.

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