

2 2SHB 1938 - S COMM AMD
3 By Committee on Judiciary

4 NOT ADOPTED 03/07/02

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 9.94A.535 and 2001 2nd sp.s. c 12 s 314 are each
8 amended to read as follows:

9 The court may impose a sentence outside the standard sentence range
10 for an offense if it finds, considering the purpose of this chapter,
11 that there are substantial and compelling reasons justifying an
12 exceptional sentence. Whenever a sentence outside the standard
13 sentence range is imposed, the court shall set forth the reasons for
14 its decision in written findings of fact and conclusions of law. A
15 sentence outside the standard sentence range shall be a determinate
16 sentence unless it is imposed on an offender sentenced under RCW
17 9.94A.712. An exceptional sentence imposed on an offender sentenced
18 under RCW 9.94A.712 shall be to a minimum term set by the court and a
19 maximum term equal to the statutory maximum sentence for the offense of
20 conviction under chapter 9A.20 RCW.

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

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

29 The following are illustrative factors which the court may consider
30 in the exercise of its discretion to impose an exceptional sentence.
31 The following are illustrative only and are not intended to be
32 exclusive reasons for exceptional sentences.

33 (1) Mitigating Circumstances

34 (a) To a significant degree, the victim was an initiator, willing
35 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 (2) Aggravating Circumstances

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 due to extreme youth, advanced age, disability, or ill health.

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

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

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

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

37 (iii) The current offense involved a high degree of sophistication
38 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

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

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

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

8 (k) The offense resulted in the pregnancy of a child victim of
9 rape.

10 (l) The defendant knew that the victim of the current offense was
11 a youth who was not residing with a legal custodian and the defendant
12 established or promoted the relationship for the primary purpose of
13 victimization.

14 (m) The offense was committed with intent that the act may injure,
15 nullify, impair, or obstruct the owner's or operator's management,
16 operation, or control of any structure used for horticultural or
17 biological research, health care facility, or public or private
18 forestry research facility."

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22 On page 1, line 2 of the title, after "property;" strike the
23 remainder of the title and insert "and amending RCW 9.94A.535."

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