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ENGROSSED SENATE BILL 5484

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Kline, Frockt, Ranker, Rolfes, Padden, Fain, and Kohl-Welles; by request of Attorney General

Read first time 01/31/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to assault in the third degree occurring in areas  
2 used in connection with court proceedings; amending RCW 9.94A.535;  
3 reenacting and amending RCW 9A.36.031; and prescribing penalties.

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

5 **Sec. 1.** RCW 9A.36.031 and 2011 c 336 s 359 and 2011 c 238 s 1 are  
6 each reenacted and amended to read as follows:

7 (1) A person is guilty of assault in the third degree if he or she,  
8 under circumstances not amounting to assault in the first or second  
9 degree:

10 (a) With intent to prevent or resist the execution of any lawful  
11 process or mandate of any court officer or the lawful apprehension or  
12 detention of himself, herself, or another person, assaults another; or

13 (b) Assaults a person employed as a transit operator or driver, the  
14 immediate supervisor of a transit operator or driver, a mechanic, or a  
15 security officer, by a public or private transit company or a  
16 contracted transit service provider, while that person is performing  
17 his or her official duties at the time of the assault; or

18 (c) Assaults a school bus driver, the immediate supervisor of a  
19 driver, a mechanic, or a security officer, employed by a school

1 district transportation service or a private company under contract for  
2 transportation services with a school district, while the person is  
3 performing his or her official duties at the time of the assault; or

4 (d) With criminal negligence, causes bodily harm to another person  
5 by means of a weapon or other instrument or thing likely to produce  
6 bodily harm; or

7 (e) Assaults a firefighter or other employee of a fire department,  
8 county fire marshal's office, county fire prevention bureau, or fire  
9 protection district who was performing his or her official duties at  
10 the time of the assault; or

11 (f) With criminal negligence, causes bodily harm accompanied by  
12 substantial pain that extends for a period sufficient to cause  
13 considerable suffering; or

14 (g) Assaults a law enforcement officer or other employee of a law  
15 enforcement agency who was performing his or her official duties at the  
16 time of the assault; or

17 (h) Assaults a peace officer with a projectile stun gun; or

18 (i) Assaults a nurse, physician, or health care provider who was  
19 performing his or her nursing or health care duties at the time of the  
20 assault. For purposes of this subsection: "Nurse" means a person  
21 licensed under chapter 18.79 RCW; "physician" means a person licensed  
22 under chapter 18.57 or 18.71 RCW; and "health care provider" means a  
23 person certified under chapter 18.71 or 18.73 RCW who performs  
24 emergency medical services or a person regulated under Title 18 RCW and  
25 employed by, or contracting with, a hospital licensed under chapter  
26 70.41 RCW; or

27 (j) Assaults a judicial officer, court-related employee, county  
28 clerk, or county clerk's employee, while that person is performing his  
29 or her official duties at the time of the assault or as a result of  
30 that person's employment within the judicial system. For purposes of  
31 this subsection, "court-related employee" includes bailiffs, court  
32 reporters, judicial assistants, court managers, court managers'  
33 employees, and any other employee, regardless of title, who is engaged  
34 in equivalent functions; or

35 (k) Assaults a person located in any area of a building that is  
36 used in connection with court proceedings, including courtrooms, jury  
37 rooms, judge's chambers, offices, and areas used to conduct court  
38 business, waiting areas, and corridors adjacent to areas used in

1 connection with court proceedings. The covered areas also include  
2 common areas of ingress and egress to the building that is used in  
3 connection with court proceedings. Where a building, or part of a  
4 building, is used at certain times for judicial purposes and at other  
5 times for other governmental purposes, this section shall apply only  
6 during the times when it is being used for judicial purposes.

7 (2) Assault in the third degree is a class C felony.

8 **Sec. 2.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read  
9 as follows:

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

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

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

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

28 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (d) The failure to consider the defendant's prior criminal history  
5 which was omitted from the offender score calculation pursuant to RCW  
6 9.94A.525 results in a presumptive sentence that is clearly too  
7 lenient.

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

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

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

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

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

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

23 (i) The current offense involved multiple victims or multiple  
24 incidents per victim;

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

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

29 (iv) The defendant used his or her position of trust, confidence,  
30 or fiduciary responsibility to facilitate the commission of the current  
31 offense.

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

37 (i) The current offense involved at least three separate

- 1 transactions in which controlled substances were sold, transferred, or  
2 possessed with intent to do so;
- 3 (ii) The current offense involved an attempted or actual sale or  
4 transfer of controlled substances in quantities substantially larger  
5 than for personal use;
- 6 (iii) The current offense involved the manufacture of controlled  
7 substances for use by other parties;
- 8 (iv) The circumstances of the current offense reveal the offender  
9 to have occupied a high position in the drug distribution hierarchy;
- 10 (v) The current offense involved a high degree of sophistication or  
11 planning, occurred over a lengthy period of time, or involved a broad  
12 geographic area of disbursement; or
- 13 (vi) The offender used his or her position or status to facilitate  
14 the commission of the current offense, including positions of trust,  
15 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
16 other medical professional).
- 17 (f) The current offense included a finding of sexual motivation  
18 pursuant to RCW 9.94A.835.
- 19 (g) The offense was part of an ongoing pattern of sexual abuse of  
20 the same victim under the age of eighteen years manifested by multiple  
21 incidents over a prolonged period of time.
- 22 (h) The current offense involved domestic violence, as defined in  
23 RCW 10.99.020, and one or more of the following was present:
- 24 (i) The offense was part of an ongoing pattern of psychological,  
25 physical, or sexual abuse of a victim or multiple victims manifested by  
26 multiple incidents over a prolonged period of time;
- 27 (ii) The offense occurred within sight or sound of the victim's or  
28 the offender's minor children under the age of eighteen years; or
- 29 (iii) The offender's conduct during the commission of the current  
30 offense manifested deliberate cruelty or intimidation of the victim.
- 31 (i) The offense resulted in the pregnancy of a child victim of  
32 rape.
- 33 (j) The defendant knew that the victim of the current offense was  
34 a youth who was not residing with a legal custodian and the defendant  
35 established or promoted the relationship for the primary purpose of  
36 victimization.
- 37 (k) The offense was committed with the intent to obstruct or impair

1 human or animal health care or agricultural or forestry research or  
2 commercial production.

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

6 (m) The offense involved a high degree of sophistication or  
7 planning.

8 (n) The defendant used his or her position of trust, confidence, or  
9 fiduciary responsibility to facilitate the commission of the current  
10 offense.

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

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

14 (q) The defendant demonstrated or displayed an egregious lack of  
15 remorse.

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

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

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

23 (u) The current offense is a burglary and the victim of the  
24 burglary was present in the building or residence when the crime was  
25 committed.

26 (v) The offense was committed against a law enforcement officer who  
27 was performing his or her official duties at the time of the offense,  
28 the offender knew that the victim was a law enforcement officer, and  
29 the victim's status as a law enforcement officer is not an element of  
30 the offense.

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

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

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

1 (z)(i)(A) The current offense is theft in the first degree, theft  
2 in the second degree, possession of stolen property in the first  
3 degree, or possession of stolen property in the second degree; (B) the  
4 stolen property involved is metal property; and (C) the property damage  
5 to the victim caused in the course of the theft of metal property is  
6 more than three times the value of the stolen metal property, or the  
7 theft of the metal property creates a public hazard.

8 (ii) For purposes of this subsection, "metal property" means  
9 commercial metal property, private metal property, or nonferrous metal  
10 property, as defined in RCW 19.290.010.

11 (aa) The defendant committed the offense with the intent to  
12 directly or indirectly cause any benefit, aggrandizement, gain, profit,  
13 or other advantage to or for a criminal street gang as defined in RCW  
14 9.94A.030, its reputation, influence, or membership.

15 (bb) The current offense involved paying to view, over the internet  
16 in violation of RCW 9.68A.075, depictions of a minor engaged in an act  
17 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through  
18 (g).

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

21 (dd) The current offense involved a felony crime against persons,  
22 except for assault in the third degree pursuant to RCW 9A.36.031(1) (j)  
23 or (k), that occurs in those areas in any building that are used in  
24 connection with court proceedings, including courtrooms, jury rooms,  
25 judge's chambers, offices, and areas used to conduct court business,  
26 waiting areas, and corridors adjacent to areas used in connection with  
27 court proceedings. The covered areas also include common areas of  
28 ingress and egress to the building that is used in connection with  
29 court proceedings.

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