
SENATE BILL 5652

State of Washington

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By Senators Darneille, Kohl-Welles, Frockt, Jayapal, Keiser, and Hasegawa

Read first time 01/28/15. Referred to Committee on Human Services, Mental Health & Housing.

1 AN ACT Relating to recommendations of the joint legislative task
2 force on juvenile sentencing reform; amending RCW 13.40.110,
3 9.94A.533, and 9.94A.535; and reenacting and amending RCW 13.04.030.

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

5 **Sec. 1.** RCW 13.04.030 and 2009 c 526 s 1 and 2009 c 454 s 1 are
6 each reenacted and amended to read as follows:

7 (1) Except as provided in this section, the juvenile courts in
8 this state shall have exclusive original jurisdiction over all
9 proceedings:

10 (a) Under the interstate compact on placement of children as
11 provided in chapter 26.34 RCW;

12 (b) Relating to children alleged or found to be dependent as
13 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161;

14 (c) Relating to the termination of a parent and child
15 relationship as provided in RCW 13.34.180 through 13.34.210;

16 (d) To approve or disapprove out-of-home placement as provided in
17 RCW 13.32A.170;

18 (e) Relating to juveniles alleged or found to have committed
19 offenses, traffic or civil infractions, or violations as provided in
20 RCW 13.40.020 through 13.40.230, unless:

1 (i) The juvenile court transfers jurisdiction of a particular
2 juvenile to adult criminal court pursuant to RCW 13.40.110;

3 (ii) The statute of limitations applicable to adult prosecution
4 for the offense, traffic or civil infraction, or violation has
5 expired;

6 (iii) The alleged offense or infraction is a traffic, fish,
7 boating, or game offense, or traffic or civil infraction committed by
8 a juvenile sixteen years of age or older and would, if committed by
9 an adult, be tried or heard in a court of limited jurisdiction, in
10 which instance the appropriate court of limited jurisdiction shall
11 have jurisdiction over the alleged offense or infraction, and no
12 guardian ad litem is required in any such proceeding due to the
13 juvenile's age. If such an alleged offense or infraction and an
14 alleged offense or infraction subject to juvenile court jurisdiction
15 arise out of the same event or incident, the juvenile court may have
16 jurisdiction of both matters. The jurisdiction under this subsection
17 does not constitute "transfer" or a "decline" for purposes of RCW
18 13.40.110 (1) and (2) or (e)(i) of this subsection. Courts of limited
19 jurisdiction which confine juveniles for an alleged offense or
20 infraction may place juveniles in juvenile detention facilities under
21 an agreement with the officials responsible for the administration of
22 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

23 (iv) The alleged offense is a traffic or civil infraction, a
24 violation of compulsory school attendance provisions under chapter
25 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction
26 has assumed concurrent jurisdiction over those offenses as provided
27 in RCW 13.04.0301(~~or~~);

28 ~~(v) The juvenile is sixteen or seventeen years old on the date~~
29 ~~the alleged offense is committed and the alleged offense is:~~

30 ~~(A) A serious violent offense as defined in RCW 9.94A.030;~~

31 ~~(B) A violent offense as defined in RCW 9.94A.030 and the~~
32 ~~juvenile has a criminal history consisting of: (I) One or more prior~~
33 ~~serious violent offenses; (II) two or more prior violent offenses; or~~
34 ~~(III) three or more of any combination of the following offenses: Any~~
35 ~~class A felony, any class B felony, vehicular assault, or~~
36 ~~manslaughter in the second degree, all of which must have been~~
37 ~~committed after the juvenile's thirteenth birthday and prosecuted~~
38 ~~separately;~~

39 ~~(C) Robbery in the first degree, rape of a child in the first~~
40 ~~degree, or drive by shooting, committed on or after July 1, 1997;~~

1 ~~(D) Burglary in the first degree committed on or after July 1,~~
2 ~~1997, and the juvenile has a criminal history consisting of one or~~
3 ~~more prior felony or misdemeanor offenses; or~~

4 ~~(E) Any violent offense as defined in RCW 9.94A.030 committed on~~
5 ~~or after July 1, 1997, and the juvenile is alleged to have been armed~~
6 ~~with a firearm.~~

7 ~~(I) In such a case the adult criminal court shall have exclusive~~
8 ~~original jurisdiction, except as provided in (e)(v)(E)(II) and (III)~~
9 ~~of this subsection.~~

10 ~~(II) The juvenile court shall have exclusive jurisdiction over~~
11 ~~the disposition of any remaining charges in any case in which the~~
12 ~~juvenile is found not guilty in the adult criminal court of the~~
13 ~~charge or charges for which he or she was transferred, or is~~
14 ~~convicted in the adult criminal court of a lesser included offense~~
15 ~~that is not also an offense listed in (e)(v) of this subsection. The~~
16 ~~juvenile court shall enter an order extending juvenile court~~
17 ~~jurisdiction if the juvenile has turned eighteen years of age during~~
18 ~~the adult criminal court proceedings pursuant to RCW 13.40.300.~~
19 ~~However, once the case is returned to juvenile court, the court may~~
20 ~~hold a decline hearing pursuant to RCW 13.40.110 to determine whether~~
21 ~~to retain the case in juvenile court for the purpose of disposition~~
22 ~~or return the case to adult criminal court for sentencing.~~

23 ~~(III) The prosecutor and respondent may agree to juvenile court~~
24 ~~jurisdiction and waive application of exclusive adult criminal~~
25 ~~jurisdiction in (e)(v)(A) through (E) of this subsection and remove~~
26 ~~the proceeding back to juvenile court with the court's approval.~~

27 ~~If the juvenile challenges the state's determination of the~~
28 ~~juvenile's criminal history under (e)(v) of this subsection, the~~
29 ~~state may establish the offender's criminal history by a~~
30 ~~preponderance of the evidence. If the criminal history consists of~~
31 ~~adjudications entered upon a plea of guilty, the state shall not bear~~
32 ~~a burden of establishing the knowing and voluntariness of the plea));~~

33 ~~(f) Under the interstate compact on juveniles as provided in~~
34 ~~chapter 13.24 RCW;~~

35 ~~(g) Relating to termination of a diversion agreement under RCW~~
36 ~~13.40.080, including a proceeding in which the divertee has attained~~
37 ~~eighteen years of age;~~

38 ~~(h) Relating to court validation of a voluntary consent to an~~
39 ~~out-of-home placement under chapter 13.34 RCW, by the parent or~~
40 ~~Indian custodian of an Indian child, except if the parent or Indian~~

1 custodian and child are residents of or domiciled within the
2 boundaries of a federally recognized Indian reservation over which
3 the tribe exercises exclusive jurisdiction;

4 (i) Relating to petitions to compel disclosure of information
5 filed by the department of social and health services pursuant to RCW
6 74.13.042; and

7 (j) Relating to judicial determinations and permanency planning
8 hearings involving developmentally disabled children who have been
9 placed in out-of-home care pursuant to a voluntary placement
10 agreement between the child's parent, guardian, or legal custodian
11 and the department of social and health services.

12 (2) The family court shall have concurrent original jurisdiction
13 with the juvenile court over all proceedings under this section if
14 the superior court judges of a county authorize concurrent
15 jurisdiction as provided in RCW 26.12.010.

16 (3) The juvenile court shall have concurrent original
17 jurisdiction with the family court over child custody proceedings
18 under chapter 26.10 RCW and parenting plans or residential schedules
19 under chapters 26.09 and 26.26 RCW as provided for in RCW 13.34.155.

20 (4) A juvenile subject to adult superior court jurisdiction under
21 subsection (1)(e)(i) through ~~((v))~~ (iv) of this section, who is
22 detained pending trial, may be detained in a detention facility as
23 defined in RCW 13.40.020 pending sentencing or a dismissal.

24 **Sec. 2.** RCW 13.40.110 and 2009 c 454 s 3 are each amended to
25 read as follows:

26 (1) Discretionary decline hearing - The prosecutor, respondent,
27 or the court on its own motion may, before a hearing on the
28 information on its merits, file a motion requesting the court to
29 transfer the respondent for adult criminal prosecution and the matter
30 shall be set for a hearing on the question of declining jurisdiction,
31 if the respondent is fourteen years of age or older on the date the
32 alleged offense is committed.

33 (2) Mandatory decline hearing - Unless waived by the court, the
34 parties, and their counsel, a decline hearing shall be held when:

35 (a) The respondent is sixteen or seventeen years of age ~~((and the~~
36 ~~information alleges a class A felony or an attempt, solicitation, or~~
37 ~~conspiracy to commit a class A felony))~~ on the date the alleged
38 offense is committed and the alleged offense is:

1 (i) A class A felony or an attempt, solicitation, or conspiracy
2 to commit a class A felony;

3 (ii) A violent offense as defined in RCW 9.94A.030 and the
4 juvenile has a criminal history consisting of: (A) One or more prior
5 serious violent offenses; (B) two or more prior violent offenses; or
6 (C) three or more of any combination of the following offenses: Any
7 class A felony, any class B felony, vehicular assault, or
8 manslaughter in the second degree, all of which must have been
9 committed after the juvenile's thirteenth birthday and prosecuted
10 separately;

11 (iii) Any violent offense as defined in RCW 9.94A.030 committed
12 on or after July 1, 1997, and the juvenile is alleged to have been
13 armed with a firearm;

14 (b) The respondent is seventeen years of age and the information
15 alleges assault in the second degree, extortion in the first degree,
16 indecent liberties, child molestation in the second degree,
17 kidnapping in the second degree, or robbery in the second degree; or

18 (c) The information alleges an escape by the respondent and the
19 respondent is serving a minimum juvenile sentence to age twenty-one.

20 (3) The court after a decline hearing may order the case
21 transferred for adult criminal prosecution upon a finding that the
22 declination would be in the best interest of the juvenile or the
23 public. The court shall consider the relevant reports, facts,
24 opinions, and arguments presented by the parties and their counsel.

25 (4) When the respondent is transferred for criminal prosecution
26 or retained for prosecution in juvenile court, the court shall set
27 forth in writing its finding which shall be supported by relevant
28 facts and opinions produced at the hearing.

29 (5) If the respondent challenges the state's determination of the
30 respondent's criminal history under subsection (2)(a) of this
31 section, the state may establish the offender's criminal history by a
32 preponderance of the evidence. If the criminal history consists of
33 adjudications entered upon a plea of guilty, the state does not bear
34 a burden of establishing the knowing and voluntariness of the plea.

35 **Sec. 3.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to
36 read as follows:

37 (1) The provisions of this section apply to the standard sentence
38 ranges determined by RCW 9.94A.510 or 9.94A.517.

1 (2) For persons convicted of the anticipatory offenses of
2 criminal attempt, solicitation, or conspiracy under chapter 9A.28
3 RCW, the standard sentence range is determined by locating the
4 sentencing grid sentence range defined by the appropriate offender
5 score and the seriousness level of the completed crime, and
6 multiplying the range by seventy-five percent.

7 (3) The following additional times shall be added to the standard
8 sentence range for felony crimes committed after July 23, 1995, if
9 the offender or an accomplice was armed with a firearm as defined in
10 RCW 9.41.010 and the offender is being sentenced for one of the
11 crimes listed in this subsection as eligible for any firearm
12 enhancements based on the classification of the completed felony
13 crime. If the offender is being sentenced for more than one offense,
14 the firearm enhancement or enhancements must be added to the total
15 period of confinement for all offenses, regardless of which
16 underlying offense is subject to a firearm enhancement. If the
17 offender or an accomplice was armed with a firearm as defined in RCW
18 9.41.010 and the offender is being sentenced for an anticipatory
19 offense under chapter 9A.28 RCW to commit one of the crimes listed in
20 this subsection as eligible for any firearm enhancements, the
21 following additional times shall be added to the standard sentence
22 range determined under subsection (2) of this section based on the
23 felony crime of conviction as classified under RCW 9A.28.020:

24 (a) Five years for any felony defined under any law as a class A
25 felony or with a statutory maximum sentence of at least twenty years,
26 or both, and not covered under (f) of this subsection;

27 (b) Three years for any felony defined under any law as a class B
28 felony or with a statutory maximum sentence of ten years, or both,
29 and not covered under (f) of this subsection;

30 (c) Eighteen months for any felony defined under any law as a
31 class C felony or with a statutory maximum sentence of five years, or
32 both, and not covered under (f) of this subsection;

33 (d) If the offender is being sentenced for any firearm
34 enhancements under (a), (b), and/or (c) of this subsection and the
35 offender has previously been sentenced for any deadly weapon
36 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
37 subsection or subsection (4)(a), (b), and/or (c) of this section, or
38 both, all firearm enhancements under this subsection shall be twice
39 the amount of the enhancement listed;

1 (e) (~~Notwithstanding any other provision of law,~~) All firearm
2 enhancements under this section are mandatory, shall be served in
3 total confinement, and, except as provided in subsection (15) of this
4 section, shall run consecutively to all other sentencing provisions,
5 including other firearm or deadly weapon enhancements, for all
6 offenses sentenced under this chapter. However, whether or not a
7 mandatory minimum term has expired, an offender serving a sentence
8 under this subsection may be granted an extraordinary medical
9 placement when authorized under RCW 9.94A.728(3);

10 (f) The firearm enhancements in this section shall apply to all
11 felony crimes except the following: Possession of a machine gun,
12 possessing a stolen firearm, drive-by shooting, theft of a firearm,
13 unlawful possession of a firearm in the first and second degree, and
14 use of a machine gun in a felony;

15 (g) If the standard sentence range under this section exceeds the
16 statutory maximum sentence for the offense, the statutory maximum
17 sentence shall be the presumptive sentence unless the offender is a
18 persistent offender. If the addition of a firearm enhancement
19 increases the sentence so that it would exceed the statutory maximum
20 for the offense, the portion of the sentence representing the
21 enhancement may not be reduced.

22 (4) The following additional times shall be added to the standard
23 sentence range for felony crimes committed after July 23, 1995, if
24 the offender or an accomplice was armed with a deadly weapon other
25 than a firearm as defined in RCW 9.41.010 and the offender is being
26 sentenced for one of the crimes listed in this subsection as eligible
27 for any deadly weapon enhancements based on the classification of the
28 completed felony crime. If the offender is being sentenced for more
29 than one offense, the deadly weapon enhancement or enhancements must
30 be added to the total period of confinement for all offenses,
31 regardless of which underlying offense is subject to a deadly weapon
32 enhancement. If the offender or an accomplice was armed with a deadly
33 weapon other than a firearm as defined in RCW 9.41.010 and the
34 offender is being sentenced for an anticipatory offense under chapter
35 9A.28 RCW to commit one of the crimes listed in this subsection as
36 eligible for any deadly weapon enhancements, the following additional
37 times shall be added to the standard sentence range determined under
38 subsection (2) of this section based on the felony crime of
39 conviction as classified under RCW 9A.28.020:

1 (a) Two years for any felony defined under any law as a class A
2 felony or with a statutory maximum sentence of at least twenty years,
3 or both, and not covered under (f) of this subsection;

4 (b) One year for any felony defined under any law as a class B
5 felony or with a statutory maximum sentence of ten years, or both,
6 and not covered under (f) of this subsection;

7 (c) Six months for any felony defined under any law as a class C
8 felony or with a statutory maximum sentence of five years, or both,
9 and not covered under (f) of this subsection;

10 (d) If the offender is being sentenced under (a), (b), and/or (c)
11 of this subsection for any deadly weapon enhancements and the
12 offender has previously been sentenced for any deadly weapon
13 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
14 subsection or subsection (3)(a), (b), and/or (c) of this section, or
15 both, all deadly weapon enhancements under this subsection shall be
16 twice the amount of the enhancement listed;

17 (e) (~~Notwithstanding any other provision of law,~~) All deadly
18 weapon enhancements under this section are mandatory, shall be served
19 in total confinement, and, except as provided in subsection (15) of
20 this section, shall run consecutively to all other sentencing
21 provisions, including other firearm or deadly weapon enhancements,
22 for all offenses sentenced under this chapter. However, whether or
23 not a mandatory minimum term has expired, an offender serving a
24 sentence under this subsection may be granted an extraordinary
25 medical placement when authorized under RCW 9.94A.728(3);

26 (f) The deadly weapon enhancements in this section shall apply to
27 all felony crimes except the following: Possession of a machine gun,
28 possessing a stolen firearm, drive-by shooting, theft of a firearm,
29 unlawful possession of a firearm in the first and second degree, and
30 use of a machine gun in a felony;

31 (g) If the standard sentence range under this section exceeds the
32 statutory maximum sentence for the offense, the statutory maximum
33 sentence shall be the presumptive sentence unless the offender is a
34 persistent offender. If the addition of a deadly weapon enhancement
35 increases the sentence so that it would exceed the statutory maximum
36 for the offense, the portion of the sentence representing the
37 enhancement may not be reduced.

38 (5) The following additional times shall be added to the standard
39 sentence range if the offender or an accomplice committed the offense
40 while in a county jail or state correctional facility and the

1 offender is being sentenced for one of the crimes listed in this
2 subsection. If the offender or an accomplice committed one of the
3 crimes listed in this subsection while in a county jail or state
4 correctional facility, and the offender is being sentenced for an
5 anticipatory offense under chapter 9A.28 RCW to commit one of the
6 crimes listed in this subsection, the following additional times
7 shall be added to the standard sentence range determined under
8 subsection (2) of this section:

9 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
10 (a) or (b) or 69.50.410;

11 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
12 (c), (d), or (e);

13 (c) Twelve months for offenses committed under RCW 69.50.4013.

14 For the purposes of this subsection, all of the real property of
15 a state correctional facility or county jail shall be deemed to be
16 part of that facility or county jail.

17 (6) An additional twenty-four months shall be added to the
18 standard sentence range for any ranked offense involving a violation
19 of chapter 69.50 RCW if the offense was also a violation of RCW
20 69.50.435 or 9.94A.827. All enhancements under this subsection shall
21 run consecutively to all other sentencing provisions, for all
22 offenses sentenced under this chapter, except as provided in
23 subsection (15) of this section.

24 (7) An additional two years shall be added to the standard
25 sentence range for vehicular homicide committed while under the
26 influence of intoxicating liquor or any drug as defined by RCW
27 46.61.502 for each prior offense as defined in RCW 46.61.5055. All
28 enhancements under this subsection shall be mandatory, shall be
29 served in total confinement, and, except as provided in subsection
30 (15) of this section, shall run consecutively to all other sentencing
31 provisions.

32 (8)(a) The following additional times shall be added to the
33 standard sentence range for felony crimes committed on or after July
34 1, 2006, if the offense was committed with sexual motivation, as that
35 term is defined in RCW 9.94A.030. If the offender is being sentenced
36 for more than one offense, the sexual motivation enhancement must be
37 added to the total period of total confinement for all offenses,
38 regardless of which underlying offense is subject to a sexual
39 motivation enhancement. If the offender committed the offense with
40 sexual motivation and the offender is being sentenced for an

1 anticipatory offense under chapter 9A.28 RCW, the following
2 additional times shall be added to the standard sentence range
3 determined under subsection (2) of this section based on the felony
4 crime of conviction as classified under RCW 9A.28.020:

5 (i) Two years for any felony defined under the law as a class A
6 felony or with a statutory maximum sentence of at least twenty years,
7 or both;

8 (ii) Eighteen months for any felony defined under any law as a
9 class B felony or with a statutory maximum sentence of ten years, or
10 both;

11 (iii) One year for any felony defined under any law as a class C
12 felony or with a statutory maximum sentence of five years, or both;

13 (iv) If the offender is being sentenced for any sexual motivation
14 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
15 the offender has previously been sentenced for any sexual motivation
16 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
17 (iii) of this subsection, all sexual motivation enhancements under
18 this subsection shall be twice the amount of the enhancement listed;

19 (b) (~~Notwithstanding any other provision of law,~~) All sexual
20 motivation enhancements under this subsection are mandatory, shall be
21 served in total confinement, and, except as provided in subsection
22 (15) of this section, shall run consecutively to all other sentencing
23 provisions, including other sexual motivation enhancements, for all
24 offenses sentenced under this chapter. However, whether or not a
25 mandatory minimum term has expired, an offender serving a sentence
26 under this subsection may be granted an extraordinary medical
27 placement when authorized under RCW 9.94A.728(3);

28 (c) The sexual motivation enhancements in this subsection apply
29 to all felony crimes;

30 (d) If the standard sentence range under this subsection exceeds
31 the statutory maximum sentence for the offense, the statutory maximum
32 sentence shall be the presumptive sentence unless the offender is a
33 persistent offender. If the addition of a sexual motivation
34 enhancement increases the sentence so that it would exceed the
35 statutory maximum for the offense, the portion of the sentence
36 representing the enhancement may not be reduced;

37 (e) The portion of the total confinement sentence which the
38 offender must serve under this subsection shall be calculated before
39 any earned early release time is credited to the offender;

1 (f) Nothing in this subsection prevents a sentencing court from
2 imposing a sentence outside the standard sentence range pursuant to
3 RCW 9.94A.535.

4 (9) An additional one-year enhancement shall be added to the
5 standard sentence range for the felony crimes of RCW 9A.44.073,
6 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
7 or after July 22, 2007, if the offender engaged, agreed, or offered
8 to engage the victim in the sexual conduct in return for a fee. If
9 the offender is being sentenced for more than one offense, the
10 one-year enhancement must be added to the total period of total
11 confinement for all offenses, regardless of which underlying offense
12 is subject to the enhancement. If the offender is being sentenced for
13 an anticipatory offense for the felony crimes of RCW 9A.44.073,
14 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
15 offender attempted, solicited another, or conspired to engage, agree,
16 or offer to engage the victim in the sexual conduct in return for a
17 fee, an additional one-year enhancement shall be added to the
18 standard sentence range determined under subsection (2) of this
19 section. For purposes of this subsection, "sexual conduct" means
20 sexual intercourse or sexual contact, both as defined in chapter
21 9A.44 RCW.

22 (10)(a) For a person age eighteen or older convicted of any
23 criminal street gang-related felony offense for which the person
24 compensated, threatened, or solicited a minor in order to involve the
25 minor in the commission of the felony offense, the standard sentence
26 range is determined by locating the sentencing grid sentence range
27 defined by the appropriate offender score and the seriousness level
28 of the completed crime, and multiplying the range by one hundred
29 twenty-five percent. If the standard sentence range under this
30 subsection exceeds the statutory maximum sentence for the offense,
31 the statutory maximum sentence is the presumptive sentence unless the
32 offender is a persistent offender.

33 (b) This subsection does not apply to any criminal street gang-
34 related felony offense for which involving a minor in the commission
35 of the felony offense is an element of the offense.

36 (c) The increased penalty specified in (a) of this subsection is
37 unavailable in the event that the prosecution gives notice that it
38 will seek an exceptional sentence based on an aggravating factor
39 under RCW 9.94A.535.

1 (11) An additional twelve months and one day shall be added to
2 the standard sentence range for a conviction of attempting to elude a
3 police vehicle as defined by RCW 46.61.024, if the conviction
4 included a finding by special allegation of endangering one or more
5 persons under RCW 9.94A.834.

6 (12) An additional twelve months shall be added to the standard
7 sentence range for an offense that is also a violation of RCW
8 9.94A.831.

9 (13) An additional twelve months shall be added to the standard
10 sentence range for vehicular homicide committed while under the
11 influence of intoxicating liquor or any drug as defined by RCW
12 46.61.520 or for vehicular assault committed while under the
13 influence of intoxicating liquor or any drug as defined by RCW
14 46.61.522, or for any felony driving under the influence (RCW
15 46.61.502(6)) or felony physical control under the influence (RCW
16 46.61.504(6)) for each child passenger under the age of sixteen who
17 is an occupant in the defendant's vehicle. These enhancements shall
18 be mandatory, shall be served in total confinement, and, except as
19 provided in subsection (15) of this section, shall run consecutively
20 to all other sentencing provisions. If the addition of a minor child
21 enhancement increases the sentence so that it would exceed the
22 statutory maximum for the offense, the portion of the sentence
23 representing the enhancement may not be reduced.

24 (14) An additional twelve months shall be added to the standard
25 sentence range for an offense that is also a violation of RCW
26 9.94A.832.

27 (15) If the offender is being sentenced in adult court for a
28 crime committed as a minor, the court has the discretion whether to
29 impose consecutive or concurrent enhancements, and to reduce the
30 sentence when the sentencing enhancements result in a sentence that
31 is clearly excessive.

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

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

1 Whenever a sentence outside the standard sentence range is
2 imposed, the court shall set forth the reasons for its decision in
3 written findings of fact and conclusions of law. A sentence outside
4 the standard sentence range shall be a determinate sentence.

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

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

13 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

29 (e) The defendant's capacity to appreciate the wrongfulness of
30 his or her conduct, or to conform his or her conduct to the
31 requirements of the law, was significantly impaired. Voluntary use of
32 drugs or alcohol is excluded.

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

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

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

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

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

11 (k) The defendant's age, sophistication, and role in the crime if
12 the defendant is under adult court jurisdiction for a crime committed
13 as a minor.

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

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

19 (a) The defendant and the state both stipulate that justice is
20 best served by the imposition of an exceptional sentence outside the
21 standard range, and the court finds the exceptional sentence to be
22 consistent with and in furtherance of the interests of justice and
23 the purposes of the sentencing reform act.

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

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

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

35 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
36 the Court

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

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

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

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

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

11 (i) The current offense involved multiple victims or multiple
12 incidents per victim;

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

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

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

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

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

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

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

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

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

39 (vi) The offender used his or her position or status to
40 facilitate the commission of the current offense, including positions

1 of trust, confidence or fiduciary responsibility (e.g., pharmacist,
2 physician, or other medical professional).

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

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

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

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

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

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

18 (i) The offense resulted in the pregnancy of a child victim of
19 rape.

20 (j) The defendant knew that the victim of the current offense was
21 a youth who was not residing with a legal custodian and the defendant
22 established or promoted the relationship for the primary purpose of
23 victimization.

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

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

30 (m) The offense involved a high degree of sophistication or
31 planning.

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

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

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

38 (q) The defendant demonstrated or displayed an egregious lack of
39 remorse.

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

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

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

8 (u) The current offense is a burglary and the victim of the
9 burglary was present in the building or residence when the crime was
10 committed.

11 (v) The offense was committed against a law enforcement officer
12 who was performing his or her official duties at the time of the
13 offense, the offender knew that the victim was a law enforcement
14 officer, and the victim's status as a law enforcement officer is not
15 an element of the offense.

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

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

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

24 (z)(i)(A) The current offense is theft in the first degree, theft
25 in the second degree, possession of stolen property in the first
26 degree, or possession of stolen property in the second degree; (B)
27 the stolen property involved is metal property; and (C) the property
28 damage to the victim caused in the course of the theft of metal
29 property is more than three times the value of the stolen metal
30 property, or the theft of the metal property creates a public hazard.

31 (ii) For purposes of this subsection, "metal property" means
32 commercial metal property, private metal property, or nonferrous
33 metal property, as defined in RCW 19.290.010.

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

38 (bb) The current offense involved paying to view, over the
39 internet in violation of RCW 9.68A.075, depictions of a minor engaged

1 in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)
2 (a) through (g).

3 (cc) The offense was intentionally committed because the
4 defendant perceived the victim to be homeless, as defined in RCW
5 9.94A.030.

6 (dd) The current offense involved a felony crime against persons,
7 except for assault in the third degree pursuant to RCW
8 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's
9 chamber, or any waiting area or corridor immediately adjacent to a
10 courtroom, jury room, or judge's chamber. This subsection shall apply
11 only: (i) During the times when a courtroom, jury room, or judge's
12 chamber is being used for judicial purposes during court proceedings;
13 and (ii) if signage was posted in compliance with RCW 2.28.200 at the
14 time of the offense.

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

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