
SUBSTITUTE SENATE BILL 5225

State of Washington 61st Legislature 2009 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline and Hargrove)

READ FIRST TIME 02/24/09.

1 AN ACT Relating to crimes against property; amending RCW 43.10.232,
2 4.24.230, 9A.48.070, 9A.48.080, 9A.48.090, 9A.56.030, 9A.56.040,
3 9A.56.050, 9A.56.060, 9A.56.096, 9A.56.150, 9A.56.160, 9A.56.170, and
4 9A.56.350; reenacting and amending RCW 9.94A.535; adding a new section
5 to chapter 43.10 RCW; adding a new section to chapter 3.50 RCW; adding
6 a new section to chapter 3.66 RCW; adding a new section to chapter
7 35.20 RCW; creating a new section; and prescribing penalties.

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

9 NEW SECTION. **Sec. 1.** (1) An organized retail crime task force is
10 created for the purpose of monitoring the effects of raising the
11 monetary threshold amounts differentiating the various degrees of
12 property crimes in Washington state. The task force is directed to
13 examine the impact of raising these values on (a) the retail industry;
14 (b) the district and municipal courts; and (c) the county and city
15 offices of the prosecuting attorney. The task force shall also examine
16 whether civil immunity should be granted for retailers who create a
17 common database of individuals suspected of theft and who deliver the
18 database to law enforcement agencies. In addition, the task force is

1 charged with identifying any policies or procedures which would enhance
2 the successful investigation and prosecution of property crimes in
3 Washington state.

4 (2) The task force shall consist of the following members:

5 (a) One member from each of the two largest caucuses of the house
6 of representatives, appointed by the speaker of the house of
7 representatives;

8 (b) One member from each of the two largest caucuses of the senate,
9 appointed by the president of the senate;

10 (c) One member appointed by the Washington association of
11 prosecuting attorneys;

12 (d) One member appointed by the Washington association of criminal
13 defense lawyers;

14 (e) One member appointed by the association of Washington cities;

15 (f) One member appointed by the association of Washington counties;

16 (g) One member appointed by the food industry association of
17 Washington representing retail grocers who own a single store or a
18 regional chain with less than ten million five hundred thousand dollars
19 in gross revenues per location annually; and

20 (h) One member appointed by the Washington association of retailers
21 representing a retailer who owns a single store or a chain with one
22 million five hundred thousand dollars or more in gross revenues
23 annually.

24 The superior court judges association and the district and
25 municipal court judges association are each invited to select a judge
26 to be a member of the task force.

27 (3) The task force shall choose its chair from among its members
28 and may conduct meetings, select officers, and prescribe rules of
29 procedure.

30 (4) Staff for the task force will be provided by the staff of the
31 legislature.

32 (5) Legislative members of the task force shall not be reimbursed
33 for travel expenses. Nonlegislative members must seek reimbursement
34 for travel and other membership expenses through their respective
35 agencies or organizations.

36 (6) The task force is subject to the open public meetings act,
37 chapter 42.30 RCW.

1 (7) The task force shall report its findings and recommendations to
2 the appropriate committees of the legislature eighteen months after the
3 effective date of this section.

4 **Sec. 2.** RCW 43.10.232 and 1986 c 257 s 16 are each amended to read
5 as follows:

6 (1) The attorney general shall have concurrent authority and power
7 with the prosecuting attorneys to investigate crimes and initiate and
8 conduct prosecutions upon the request of or with the concurrence of any
9 of the following:

10 (a) The county prosecuting attorney of the jurisdiction in which
11 the offense has occurred;

12 (b) The city attorney of the jurisdiction in which the offense has
13 occurred, with regard to the crime of theft;

14 (c) The governor of the state of Washington; or

15 ~~((e))~~ (d) A majority of the committee charged with the oversight
16 of the organized crime intelligence unit.

17 (2) Such request or concurrence shall be communicated in writing to
18 the attorney general.

19 (3) Prior to any prosecution by the attorney general under this
20 section, the attorney general and the county in which the offense
21 occurred shall reach an agreement regarding the payment of all costs,
22 including expert witness fees, and defense attorneys' fees associated
23 with any such prosecution.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.10 RCW
25 to read as follows:

26 In cases of alleged theft committed by one person or one group of
27 persons, occurring in multiple jurisdictions, upon the request of at
28 least one of the jurisdictions, the attorney general shall have the
29 authority to bring a criminal action in any jurisdiction in which the
30 thefts are alleged to have occurred and apportion the costs of
31 prosecution proportionally to the counties and cities involved. The
32 attorney general, within ten business days of receiving the request,
33 shall give notice to each jurisdiction in which an alleged theft has
34 occurred as to his or her intention to consolidate and prosecute the
35 alleged offenses. Any jurisdiction in which an alleged theft has
36 occurred may, within ten business days of receipt of notice from the

1 attorney general, notify the attorney general that it does not consent
2 to the attorney general prosecuting its case in the consolidated
3 action.

4 **Sec. 4.** RCW 4.24.230 and 1994 c 9 s 1 are each amended to read as
5 follows:

6 (1) An adult or emancipated minor who takes possession of any
7 goods, wares, or merchandise displayed or offered for sale by any
8 wholesale or retail store or other mercantile establishment without the
9 consent of the owner or seller, and with the intention of converting
10 such goods, wares, or merchandise to his or her own use without having
11 paid the purchase price thereof (~~((shall be))~~) is liable in addition to
12 actual damages, for a penalty to the owner or seller in the amount of
13 the retail value thereof not to exceed (~~((one))~~) three thousand eight
14 hundred dollars, plus an additional penalty of not less than one
15 hundred dollars nor more than (~~((two))~~) eight hundred fifty dollars, plus
16 all reasonable attorney's fees and court costs expended by the owner or
17 seller. A customer who orders a meal in a restaurant or other eating
18 establishment, receives at least a portion thereof, and then leaves
19 without paying, is subject to liability under this section. A person
20 who shall receive any food, money, credit, lodging, or accommodation at
21 any hotel, motel, boarding house, or lodging house, and then leaves
22 without paying the proprietor, manager, or authorized employee thereof,
23 is subject to liability under this section.

24 (2) The parent or legal guardian having the custody of an
25 unemancipated minor who takes possession of any goods, wares, or
26 merchandise displayed or offered for sale by any wholesale or retail
27 store or other mercantile establishment without the consent of the
28 owner or seller and with the intention of converting such goods, wares,
29 or merchandise to his or her own use without having paid the purchase
30 price thereof, (~~((shall be))~~) is liable as a penalty to the owner or
31 seller for the retail value of such goods, wares, or merchandise not to
32 exceed (~~((five))~~) one thousand nine hundred dollars plus an additional
33 penalty of not less than one hundred dollars nor more than (~~((two))~~)
34 eight hundred fifty dollars, plus all reasonable attorney's fees and
35 court costs expended by the owner or seller. The parent or legal
36 guardian having the custody of an unemancipated minor, who orders a
37 meal in a restaurant or other eating establishment, receives at least

1 a portion thereof, and then leaves without paying, is subject to
2 liability under this section. The parent or legal guardian having the
3 custody of an unemancipated minor, who receives any food, money,
4 credit, lodging, or accommodation at any hotel, motel, boarding house,
5 or lodging house, and then leaves without paying the proprietor,
6 manager, or authorized employee thereof, is subject to liability under
7 this section. For the purposes of this subsection, liability shall not
8 be imposed upon any governmental entity, private agency, or foster
9 parent assigned responsibility for the minor child pursuant to court
10 order or action of the department of social and health services.

11 (3) Judgments and claims arising under this section may be
12 assigned.

13 (4) A conviction for violation of chapter 9A.56 RCW shall not be a
14 condition precedent to maintenance of a civil action authorized by this
15 section.

16 (5) An owner or seller demanding payment of a penalty under
17 subsection (1) or (2) of this section shall give written notice to the
18 person or persons from whom the penalty is sought. The notice shall
19 state:

20 "IMPORTANT NOTICE: The payment of any penalty demanded of you does
21 not prevent criminal prosecution under a related criminal provision."

22 This notice shall be boldly and conspicuously displayed, in at
23 least the same size type as is used in the demand, and shall be sent
24 with the demand for payment of a penalty described in subsection (1) or
25 (2) of this section.

26 **Sec. 5.** RCW 9A.48.070 and 1983 1st ex.s. c 4 s 1 are each amended
27 to read as follows:

28 (1) A person is guilty of malicious mischief in the first degree if
29 he or she knowingly and maliciously:

30 (a) Causes physical damage to the property of another in an amount
31 exceeding ((one)) five thousand ((five hundred)) dollars;

32 (b) Causes an interruption or impairment of service rendered to the
33 public by physically damaging or tampering with an emergency vehicle or
34 property of the state, a political subdivision thereof, or a public
35 utility or mode of public transportation, power, or communication; or

36 (c) Causes an impairment of the safety, efficiency, or operation of

1 an aircraft by physically damaging or tampering with the aircraft or
2 aircraft equipment, fuel, lubricant, or parts.

3 (2) Malicious mischief in the first degree is a class B felony.

4 **Sec. 6.** RCW 9A.48.080 and 1994 c 261 s 17 are each amended to read
5 as follows:

6 (1) A person is guilty of malicious mischief in the second degree
7 if he or she knowingly and maliciously:

8 (a) Causes physical damage to the property of another in an amount
9 exceeding (~~two hundred fifty~~) one thousand dollars; or

10 (b) Creates a substantial risk of interruption or impairment of
11 service rendered to the public, by physically damaging or tampering
12 with an emergency vehicle or property of the state, a political
13 subdivision thereof, or a public utility or mode of public
14 transportation, power, or communication.

15 (2) Malicious mischief in the second degree is a class C felony.

16 **Sec. 7.** RCW 9A.48.090 and 2003 c 53 s 71 are each amended to read
17 as follows:

18 (1) A person is guilty of malicious mischief in the third degree if
19 he or she:

20 (a) Knowingly and maliciously causes physical damage to the
21 property of another, under circumstances not amounting to malicious
22 mischief in the first or second degree; or

23 (b) Writes, paints, or draws any inscription, figure, or mark of
24 any type on any public or private building or other structure or any
25 real or personal property owned by any other person unless the person
26 has obtained the express permission of the owner or operator of the
27 property, under circumstances not amounting to malicious mischief in
28 the first or second degree.

29 (2)(~~(a)~~) Malicious mischief in the third degree (~~under~~
30 ~~subsection (1)(a) of this section is a gross misdemeanor if the damage~~
31 ~~to the property is in an amount exceeding fifty dollars.~~

32 ~~(b) Malicious mischief in the third degree under subsection (1)(a)~~
33 ~~of this section is a misdemeanor if the damage to the property is fifty~~
34 ~~dollars or less.~~

35 ~~(c) Malicious mischief in the third degree under subsection (1)(b)~~
36 ~~of this section)) is a gross misdemeanor.~~

1 **Sec. 8.** RCW 9A.56.030 and 2007 c 199 s 3 are each amended to read
2 as follows:

3 (1) A person is guilty of theft in the first degree if he or she
4 commits theft of:

5 (a) Property or services which exceed(s) (~~one~~) five thousand
6 (~~five hundred~~) dollars in value other than a firearm as defined in
7 RCW 9.41.010;

8 (b) Property of any value, other than a firearm as defined in RCW
9 9.41.010 or a motor vehicle, taken from the person of another; or

10 (c) A search and rescue dog, as defined in RCW 9.91.175, while the
11 search and rescue dog is on duty.

12 (2) Theft in the first degree is a class B felony.

13 **Sec. 9.** RCW 9A.56.040 and 2007 c 199 s 4 are each amended to read
14 as follows:

15 (1) A person is guilty of theft in the second degree if he or she
16 commits theft of:

17 (a) Property or services which exceed(s) (~~two hundred fifty~~) one
18 thousand dollars in value but does not exceed (~~one~~) five thousand
19 (~~five hundred~~) dollars in value, other than a firearm as defined in
20 RCW 9.41.010 or a motor vehicle; or

21 (b) A public record, writing, or instrument kept, filed, or
22 deposited according to law with or in the keeping of any public office
23 or public servant; or

24 (c) An access device.

25 (2) Theft in the second degree is a class C felony.

26 **Sec. 10.** RCW 9A.56.050 and 1998 c 236 s 4 are each amended to read
27 as follows:

28 (1) A person is guilty of theft in the third degree if he or she
29 commits theft of property or services which (a) does not exceed (~~two~~
30 ~~hundred and fifty~~) one thousand dollars in value, or (b) includes ten
31 or more merchandise pallets, or ten or more beverage crates, or a
32 combination of ten or more merchandise pallets and beverage crates.

33 (2) Theft in the third degree is a gross misdemeanor.

34 **Sec. 11.** RCW 9A.56.060 and 1982 c 138 s 1 are each amended to read
35 as follows:

1 (1) Any person who shall with intent to defraud, make, or draw, or
2 utter, or deliver to another person any check, or draft, on a bank or
3 other depository for the payment of money, knowing at the time of such
4 drawing, or delivery, that he or she has not sufficient funds in, or
5 credit with (~~said~~) the bank or other depository, to meet (~~said~~) the
6 check or draft, in full upon its presentation, (~~shall be~~) is guilty
7 of unlawful issuance of bank check. The word "credit" as used herein
8 shall be construed to mean an arrangement or understanding with the
9 bank or other depository for the payment of such check or draft, and
10 the uttering or delivery of such a check or draft to another person
11 without such fund or credit to meet the same shall be prima facie
12 evidence of an intent to defraud.

13 (2) Any person who shall with intent to defraud, make, or draw, or
14 utter, or deliver to another person any check, or draft on a bank or
15 other depository for the payment of money and who issues a stop-payment
16 order directing the bank or depository on which the check is drawn not
17 to honor (~~said~~) the check, and who fails to make payment of money in
18 the amount of the check or draft or otherwise arrange a settlement
19 agreed upon by the holder of the check within twenty days of issuing
20 (~~said~~) the check or draft (~~shall be~~) is guilty of unlawful issuance
21 of a bank check.

22 (3) When any series of transactions which constitute unlawful
23 issuance of a bank check would, when considered separately, constitute
24 unlawful issuance of a bank check in an amount of (~~two hundred fifty~~)
25 one thousand dollars or less because of value, and the series of
26 transactions are a part of a common scheme or plan, the transactions
27 may be aggregated in one count and the sum of the value of all of the
28 transactions shall be the value considered in determining whether the
29 unlawful issuance of a bank check is to be punished as a class C felony
30 or a gross misdemeanor.

31 (4) Unlawful issuance of a bank check in an amount greater than
32 (~~two hundred fifty~~) one thousand dollars is a class C felony.

33 (5) Unlawful issuance of a bank check in an amount of (~~two hundred~~
34 ~~fifty~~) one thousand dollars or less is a gross misdemeanor and shall
35 be punished as follows:

36 (a) The court shall order the defendant to make full restitution;

37 (b) The defendant need not be imprisoned, but the court shall
38 impose a (~~minimum~~) fine of up to one thousand five hundred dollars.

1 Of the fine imposed, at least (~~fifty~~) five hundred dollars or an
2 amount equal to two hundred percent of the amount of the bank check,
3 whichever is greater, shall not be suspended or deferred. Upon
4 conviction for a second offense within any twelve-month period, the
5 court may not suspend or defer (~~only that~~) any portion of the fine
6 (~~which is in excess of five hundred dollars~~).

7 **Sec. 12.** RCW 9A.56.096 and 2007 c 199 s 17 are each amended to
8 read as follows:

9 (1) A person who, with intent to deprive the owner or owner's
10 agent, wrongfully obtains, or exerts unauthorized control over, or by
11 color or aid of deception gains control of personal property that is
12 rented, leased, or loaned by written agreement to the person, is guilty
13 of theft of rental, leased, lease-purchased, or loaned property.

14 (2) The finder of fact may presume intent to deprive if the finder
15 of fact finds either of the following:

16 (a) That the person who rented or leased the property failed to
17 return or make arrangements acceptable to the owner of the property or
18 the owner's agent to return the property to the owner or the owner's
19 agent within seventy-two hours after receipt of proper notice following
20 the due date of the rental, lease, lease-purchase, or loan agreement;
21 or

22 (b) That the renter, lessee, or borrower presented identification
23 to the owner or the owner's agent that was materially false,
24 fictitious, or not current with respect to name, address, place of
25 employment, or other appropriate items.

26 (3) As used in subsection (2) of this section, "proper notice"
27 consists of a written demand by the owner or the owner's agent made
28 after the due date of the rental, lease, lease-purchase, or loan
29 period, mailed by certified or registered mail to the renter, lessee,
30 or borrower at: (a) The address the renter, lessee, or borrower gave
31 when the contract was made; or (b) the renter, lessee, or borrower's
32 last known address if later furnished in writing by the renter, lessee,
33 borrower, or the agent of the renter, lessee, or borrower.

34 (4) The replacement value of the property obtained must be utilized
35 in determining the amount involved in the theft of rental, leased,
36 lease-purchased, or loaned property.

1 (5)(a) Theft of rental, leased, lease-purchased, or loaned property
2 is a class B felony if the rental, leased, lease-purchased, or loaned
3 property is valued at (~~(one)~~) five thousand (~~(five hundred)~~) dollars or
4 more.

5 (b) Theft of rental, leased, lease-purchased, or loaned property is
6 a class C felony if the rental, leased, lease-purchased, or loaned
7 property is valued at (~~(two hundred fifty)~~) one thousand dollars or
8 more but less than (~~(one)~~) five thousand (~~(five hundred)~~) dollars.

9 (c) Theft of rental, leased, lease-purchased, or loaned property is
10 a gross misdemeanor if the rental, leased, lease-purchased, or loaned
11 property is valued at less than (~~(two hundred fifty)~~) one thousand
12 dollars.

13 (6) This section applies to rental agreements that provide that the
14 renter may return the property any time within the rental period and
15 pay only for the time the renter actually retained the property, in
16 addition to any minimum rental fee, to lease agreements, to lease-
17 purchase agreements as defined under RCW 63.19.010, and to vehicles
18 loaned to prospective purchasers borrowing a vehicle by written
19 agreement from a motor vehicle dealer licensed under chapter 46.70 RCW.
20 This section does not apply to rental or leasing of real property under
21 the residential landlord-tenant act, chapter 59.18 RCW.

22 **Sec. 13.** RCW 9A.56.150 and 2007 c 199 s 6 are each amended to read
23 as follows:

24 (1) A person is guilty of possessing stolen property in the first
25 degree if he or she possesses stolen property, other than a firearm as
26 defined in RCW 9.41.010 or a motor vehicle, which exceeds (~~(one)~~) five
27 thousand (~~(five hundred)~~) dollars in value.

28 (2) Possessing stolen property in the first degree is a class B
29 felony.

30 **Sec. 14.** RCW 9A.56.160 and 2007 c 199 s 7 are each amended to read
31 as follows:

32 (1) A person is guilty of possessing stolen property in the second
33 degree if:

34 (a) He or she possesses stolen property, other than a firearm as
35 defined in RCW 9.41.010 or a motor vehicle, which exceeds (~~(two hundred~~

1 ~~five~~) one thousand dollars in value but does not exceed (~~one~~) five
2 thousand (~~five hundred~~) dollars in value; or

3 (b) He or she possesses a stolen public record, writing or
4 instrument kept, filed, or deposited according to law; or

5 (c) He or she possesses a stolen access device.

6 (2) Possessing stolen property in the second degree is a class C
7 felony.

8 **Sec. 15.** RCW 9A.56.170 and 1998 c 236 s 2 are each amended to read
9 as follows:

10 (1) A person is guilty of possessing stolen property in the third
11 degree if he or she possesses (a) stolen property which does not exceed
12 (~~two hundred fifty~~) one thousand dollars in value, or (b) ten or more
13 stolen merchandise pallets, or ten or more stolen beverage crates, or
14 a combination of ten or more stolen merchandise pallets and beverage
15 crates.

16 (2) Possessing stolen property in the third degree is a gross
17 misdemeanor.

18 **Sec. 16.** RCW 9A.56.350 and 2006 c 277 s 2 are each amended to read
19 as follows:

20 (1) A person is guilty of organized retail theft if he or she:

21 (a) Commits theft of property with a value of at least (~~two~~
22 ~~hundred fifty~~) one thousand dollars from (~~a~~) one or more mercantile
23 establishments with an accomplice; or

24 (b) Possesses stolen property, as defined in RCW 9A.56.140, with a
25 value of at least (~~two hundred fifty~~) one thousand dollars from (~~a~~)
26 one or more mercantile establishments with an accomplice.

27 (2) A person is guilty of organized retail theft in the first
28 degree if the property stolen or possessed has a value of (~~one~~) five
29 thousand (~~five hundred~~) dollars or more. Organized retail theft in
30 the first degree is a class B felony.

31 (3) A person is guilty of organized retail theft in the second
32 degree if the property stolen or possessed has a value of at least
33 (~~two hundred fifty~~) one thousand dollars, but less than (~~one~~) five
34 thousand (~~five hundred~~) dollars. Organized retail theft in the
35 second degree is a class C felony.

1 (4) For purposes of this section, a series of thefts committed by
2 the same person from one or more mercantile establishments over a
3 period of one hundred eighty days may be aggregated in one count and
4 the sum of the value of all the property shall be the value considered
5 in determining the degree of the organized retail theft involved.
6 Thefts committed by the same person in different counties that have
7 been aggregated in one county may be prosecuted in any county in which
8 one of the thefts occurred.

9 **Sec. 17.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
10 each reenacted and amended to read as follows:

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

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

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 (1) Mitigating Circumstances - Court to Consider

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

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

36 (b) Before detection, the defendant compensated, or made a good

1 faith effort to compensate, the victim of the criminal conduct for any
2 damage or injury sustained.

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

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

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

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

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

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

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

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

24 (a) The defendant and the state both stipulate that justice is best
25 served by the imposition of an exceptional sentence outside the
26 standard range, and the court finds the exceptional sentence to be
27 consistent with and in furtherance of the interests of justice and the
28 purposes of the sentencing reform act.

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

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

36 (d) The failure to consider the defendant's prior criminal history
37 which was omitted from the offender score calculation pursuant to RCW

1 9.94A.525 results in a presumptive sentence that is clearly too
2 lenient.

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

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

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

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

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

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

18 (i) The current offense involved multiple victims or multiple
19 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

17 (h) The current offense involved domestic violence, as defined in
18 RCW 10.99.020, and one or more of the following was present:

19 (i) The offense was part of an ongoing pattern of psychological,
20 physical, or sexual abuse of the victim manifested by multiple
21 incidents over a prolonged period of time;

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

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

26 (i) The offense resulted in the pregnancy of a child victim of
27 rape.

28 (j) The defendant knew that the victim of the current offense was
29 a youth who was not residing with a legal custodian and the defendant
30 established or promoted the relationship for the primary purpose of
31 victimization.

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

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

- 1 (m) The offense involved a high degree of sophistication or
2 planning.
- 3 (n) The defendant used his or her position of trust, confidence, or
4 fiduciary responsibility to facilitate the commission of the current
5 offense.
- 6 (o) The defendant committed a current sex offense, has a history of
7 sex offenses, and is not amenable to treatment.
- 8 (p) The offense involved an invasion of the victim's privacy.
- 9 (q) The defendant demonstrated or displayed an egregious lack of
10 remorse.
- 11 (r) The offense involved a destructive and foreseeable impact on
12 persons other than the victim.
- 13 (s) The defendant committed the offense to obtain or maintain his
14 or her membership or to advance his or her position in the hierarchy of
15 an organization, association, or identifiable group.
- 16 (t) The defendant committed the current offense shortly after being
17 released from incarceration.
- 18 (u) The current offense is a burglary and the victim of the
19 burglary was present in the building or residence when the crime was
20 committed.
- 21 (v) The offense was committed against a law enforcement officer who
22 was performing his or her official duties at the time of the offense,
23 the offender knew that the victim was a law enforcement officer, and
24 the victim's status as a law enforcement officer is not an element of
25 the offense.
- 26 (w) The defendant committed the offense against a victim who was
27 acting as a good samaritan.
- 28 (x) The defendant committed the offense against a public official
29 or officer of the court in retaliation of the public official's
30 performance of his or her duty to the criminal justice system.
- 31 (y) The victim's injuries substantially exceed the level of bodily
32 harm necessary to satisfy the elements of the offense. This aggravator
33 is not an exception to RCW 9.94A.530(2).
- 34 (z)(i)(A) The current offense is theft in the first degree, theft
35 in the second degree, possession of stolen property in the first
36 degree, or possession of stolen property in the second degree; (B) the
37 stolen property involved is metal property; and (C) the property damage

1 to the victim caused in the course of the theft of metal property is
2 more than three times the value of the stolen metal property, or the
3 theft of the metal property creates a public hazard.

4 (ii) For purposes of this subsection, "metal property" means
5 commercial metal property, private metal property, or nonferrous metal
6 property, as defined in RCW 19.290.010.

7 (aa) The defendant committed the offense with the intent to
8 directly or indirectly cause any benefit, aggrandizement, gain, profit,
9 or other advantage to or for a criminal street gang as defined in RCW
10 9.94A.030, its reputation, influence, or membership.

11 (bb) The offense was for a single or aggregated series of offenses
12 constituting theft, unlawful issuance of a check or draft, or forgery
13 with a total monetary value over two hundred thousand dollars.

14 NEW SECTION. Sec. 18. A new section is added to chapter 3.50 RCW
15 to read as follows:

16 Before a sentence is imposed upon a defendant convicted of a crime
17 against property, the court or the prosecuting authority shall check
18 existing judicial information systems to determine the criminal history
19 of the defendant.

20 NEW SECTION. Sec. 19. A new section is added to chapter 3.66 RCW
21 to read as follows:

22 Before a sentence is imposed upon a defendant convicted of a crime
23 against property, the court or the prosecuting authority shall check
24 existing judicial information systems to determine the criminal history
25 of the defendant.

26 NEW SECTION. Sec. 20. A new section is added to chapter 35.20 RCW
27 to read as follows:

28 Before a sentence is imposed upon a defendant convicted of a crime
29 against property, the court or the prosecuting authority shall check
30 existing judicial information systems to determine the criminal history
31 of the defendant.

--- END ---