

DRAFT** Group R Draft Language **DRAFT

9.94A.010. Purpose

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony defendants which guides discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the defendant's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the defendant an opportunity to improve himself or herself;
- (6) Make frugal use of the state's and local governments' resources; and
- (7) Reduce the risk of reoffending by defendants in the community by offering, where appropriate, rehabilitative and treatment services.
- (8) More evenly balance sentencing decisions between the executive and the judiciary.

9.94A.015. Finding--Intent--2000 c 28

The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to simplify Washington State's sentencing scheme.

The legislature does not intend chapter 28, Laws of 2000 to make, and no provision of chapter 28, Laws of 2000 shall be construed as making, a substantive change in the sentencing reform act.

The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement.

9.94A.020. Short title

This chapter may be known and cited as the Judicial Accountability in Sentencing Act.

Commented [RR1]: Greg Link and Kim Gordon suggest, "In the absence of a cap, we would instead propose:
1) keep you proposed ranges;
2) require aggravating factors be pleaded and proven to jury beyond a reasonable doubt;
3) a finding of an aggravator adds 10% to the top of the range.
As with your proposal, this assumes: (1) elimination of multipliers; (2) enhancements and aggravators are treated as the same thing and (3) court is imposing single sentence regardless of number of offenses."

DRAFT** Group R Draft Language **DRAFT

9.94A.505. Sentences

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2) The court shall impose a sentence as provided in this section and as applicable in the case:

(a) Unless another term of confinement applies, the court shall first calculate both the mandatory sentencing range and the advisory sentencing range and state the Court's understanding of both ranges on the record in open court. If either party objects to the Court's calculation, that party shall object in open court and state for the record that party's understanding of the appropriate mandatory and advisory range. Once the Court has established the applicable ranges, the Court shall consider the circumstances of the offense, the rehabilitative and other needs of the defendant, the impact of the crime on the victim and/or the community, and the purposes of this chapter as set forth in RCW 9.94A.010. The Court may also consider whether:

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

(ii) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident;

(iii) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained;

(iv) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct;

(v) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime;

(vi) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired;

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

(viii) The operation of the multiple offense policy, or the existence of unscored misdemeanors or other offenses results in a presumptive sentence that is clearly excessive or lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010;

(ix) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse;

Commented [GL2]: Cases have held that other than when entering a guilty plea defendant is not obligated to provide statement of what the correct sentence is.

DRAFT** Group R Draft Language **DRAFT

(x) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose;

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

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

(xiii) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim;

(xiv) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance;

(xv) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant;

(xvi) The current offense was a major economic offense or series of offenses

(xvii) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition:

(xviii) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835;

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

(xx) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; the offense occurred within sight or sound of the victim's or the defendant's minor children under the age of eighteen years; or the defendant's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim;

(xxi) The offense resulted in the pregnancy of a child victim of rape;

(xxii) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization;

(xxiii) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production;

DRAFT** Group R Draft Language **DRAFT

(xxiv) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense;

(xxv) The offense involved a high degree of sophistication or planning;

(xxvi) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense;

(xxvii) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment;

(xxviii) The offense involved an invasion of the victim's privacy;

(xxix) The defendant demonstrated or displayed an egregious lack of remorse;

(xxx) The offense involved a destructive and foreseeable impact on persons other than the victim;

(xxxi) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(xxxii) The defendant committed the current offense shortly after being released from incarceration;

(xxxiii) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed;

(xxxiv) The offense was committed against a law enforcement officer or law enforcement employee who was performing his or her official duties at the time of the offense, the defendant knew that the victim was a law enforcement officer or employee, and the victim's status as a law enforcement officer or employee is not an element of the offense;

(xxxv) The defendant committed the offense against a victim who was acting as a good Samaritan;

(xxxvi) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system;

(xxxvii) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense.

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

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

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

DRAFT** Group R Draft Language **DRAFT

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

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

(xliii) Whether the offense is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW.

(xliv) Whether during the commission of the offense, or in immediate flight therefrom, the defendant or an accomplice was armed with a firearm as defined in RCW 9.41.010.

(xlv) Whether during the commission of the offense, or in immediate flight therefrom, the defendant or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010,

(xlvii) Whether the defendant or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the following crimes or an anticipatory offense under chapter 9A.28 to commit one of the following crimes:

(A) RCW 69.50.401(2) (a) or (b) or 69.50.410;

(B) RCW 69.50.401(2) (c), (d), or (e);

(C) RCW 69.50.4013.

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

(xlviii) Whether the crime was a violation of RCW 69.50.401 by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substances listed under RCW 69.50.401 or a violation of RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana to a person, and was committed:

(A) In a school;

(B) On a school bus;

(C) Within one thousand feet of a school bus route stop designated by the school district;

(D) Within one thousand feet of the perimeter of the school grounds;

(E) In a public park;

(F) In a public housing project designated by a local governing authority as a drug-free zone;

DRAFT** Group R Draft Language **DRAFT

(G) On a public transit vehicle;

(H) In a public transit stop shelter;

(I) At a civic center designated as a drug-free zone by the local governing authority; or

(J) Within one thousand feet of the perimeter of a facility designated under (I) of this subsection

(xlviii) Whether the defendant was age eighteen or older and convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, unless involving a minor in the commission of the street gang-related felony is an element of the offense.

(xlviv) Whether the offense of conviction is attempting to elude a police vehicle as defined by RCW 46.61.024 and the defendant endangered one or more persons under RCW 9.94A.834.

(i) Whether the offense is also a violation of RCW 9.94A.831.

(ii) Whether the offense is a vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) where a child passenger under the age of sixteen was an occupant in the defendant's vehicle.

(iii) Whether the offense is also a violation of RCW 9.94A.832.

(b) Once the Court has considered all these factors on the record, the Court shall impose a reasonable sentence.

(c) The Court shall not sentence an defendant to a sentence below or above the mandatory sentencing range.

(d) A sentence within the advisory sentencing range is presumed reasonable.

(e) A sentence more than 25% above the high end of the advisory sentencing range shall be presumed unreasonable on appeal, unless the parties have agreed to a higher sentence.

(f) A sentence more than 50% below the low end of the advisory sentencing range shall be presumed unreasonable on appeal, unless the parties have agreed to a higher sentence.

(g) If Defendant is under 18 years of age, the presumptions of unreasonableness, above, do not apply. The Court shall consider mitigating circumstances related to the defendant's youth, including age, immaturity, impetuosity, failure to appreciate risks and consequences, the nature of the juvenile's surrounding environment and family circumstances, the extent of the juvenile's participation in the crime, the way familial and peer pressures may have affected them, how youth impacted any legal defense, and any factors suggesting that the child might be successfully rehabilitated.

Commented [GL3]: I suggested the presumption of unreasonableness on aggravated sentences because the proposal would eliminate the role of the jury as a check on both prosecutorial and judicial discretion. Since the jury doesn't have any such role in mitigated sentences I don't see a similar justification for a presumption of unreasonableness on mitigated sentences. Too, I think that for at least juveniles convicted as adults this is contrary to *Houston-Sconniers* holding that 8th Amnd't requires complete discretion.

Commented [RR4]: Greg Link and Kim Gordon have further suggested that this language read, "a sentence is unreasonable if exceeds the top of the advisor rage by more than 25% unless the parties agree a higher sentence his appropriate." [50% for mitigated sentence]

DRAFT** Group R Draft Language **DRAFT

(h) The Court shall further consider whether the following provisions apply to the defendant's sentence:

- (ii) [RCW 9.94A.701](#) and [9.94A.702](#), relating to community custody;
- (iii) [RCW 9.94A.570](#), relating to persistent offenders;
- (iv) [RCW 9.94A.540](#), relating to mandatory minimum terms;ed Stat
- (v) [RCW 9.94A.650](#), relating to the first-time offender waiver;
- (vi) [RCW 9.94A.660](#), relating to the drug offender sentencing alternative;
- (vii) [RCW 9.94A.670](#), relating to the special sex offender sentencing alternative;
- (viii) [RCW 9.94A.655](#), relating to the parenting sentencing alternative;
- (ix) [RCW 9.94A.507](#), relating to certain sex offenses;

(xi) If there are more than one matter being sentenced on the same date, the Court shall calculate the mandatory and advisory guidelines for each offense. However, the Court shall only impose sentence on the highest range, considering the existence of the other current offenses as a factor for determining the appropriate sentence within the mandatory sentencing range.

(xii) [RCW 9.94A.603](#), relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(i) If a standard sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under [RCW 9.94A.702](#) not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under [RCW 9.94A.701](#) if the court finds reasons justifying an exceptional sentence as provided in [RCW 9.94A.535](#).

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in [RCW 9.94A.750](#), [9.94A.753](#), [9.94A.760](#), and [43.43.7541](#).

(5) Except as provided under [RCW 9.94A.750\(4\)](#) and [9.94A.753\(4\)](#), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the defendant credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the defendant is being sentenced.

DRAFT** Group R Draft Language **DRAFT

(7) The sentencing court shall not give the defendant credit for any time the defendant was required to comply with an electronic monitoring program prior to sentencing if the defendant was convicted of one of the following offenses:

- (a) A violent offense;
- (b) Any sex offense;
- (c) Any drug offense;
- (d) Reckless burning in the first or second degree as defined in [RCW 9A.48.040](#) or [9A.48.050](#);
- (e) Assault in the third degree as defined in [RCW 9A.36.031](#);
- (f) Assault of a child in the third degree;
- (g) Unlawful imprisonment as defined in [RCW 9A.40.040](#); or
- (h) Harassment as defined in [RCW 9A.46.020](#).

(8) The court shall order restitution as provided in [RCW 9.94A.750](#) and [9.94A.753](#).

(9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. "Crime-related prohibitions" may include a prohibition on the use or possession of alcohol or controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

(10) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.