

EXCEPTIONAL SENTENCES

The standard sentence range is presumed to be appropriate for the *typical* felony case. The SRA, per RCW 9.94A.535, however, provides that the court “may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.”

An exceptional sentence must be for a determinate term and cannot exceed the statutory maximum for the crime. An exceptional sentence cannot include a term less than a mandatory minimum term of confinement if one exists. RCW 9.94A.540 sets a mandatory minimum term of confinement for certain offenses. Per terms specified in RCW 9.94A.570, persistent offenders sentenced to life in prison are not eligible for exceptional sentences.

Pursuant to the United States Supreme Court, before a court is permitted to impose sentences above the standard range, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). If an exceptional sentence is given, the sentencing court is required to set forth the reasons for the departure from the standard range (RCW 9.94A.535) or from the consecutive/concurrent policy (RCW 9.94A.589(1) and (2)) in written Findings of Fact and Conclusions of Law. Exceptional sentences may be appealed by the individual or by the state.

RCW 9.94A.535 provides a list of factors that the court may consider in deciding whether to impose an exceptional sentence.

Mitigating Circumstances for Exceptional Sentences

Mitigating circumstances justifying a sentence below the standard range can found in RCW 9.94A.535(1). The circumstances on this list are provided as examples only. It is not intended to be an exclusive list of reasons for a departure below the standard range.

Aggravating Circumstances for Exceptional Sentences

Unlike mitigating circumstances, an exceptional sentence that is aggravated must be based on one or more of the circumstances listed in the statute. The list is not illustrative.

The court may impose an aggravated exceptional sentence *without* a finding of fact by a jury if the defendant and state both stipulate that justice is best served by an exceptional sentence and the court agrees that the stipulation is in the interest of justice and consistent with the Sentencing Reform Act under RCW 9.94A.535(2).

The court may also impose an exceptional sentence above the standard range if the procedures specified in RCW 9.94A.537 are followed and a jury makes findings of fact supporting any of the aggravating circumstances found in RCW 9.94A.535(3).