

Exceptional Sentence Down: Finding and Litigating Mitigation

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- ❖ Materials
- ❖ Emerging Issues
- ❖ Areas for Expansion
- ❖ Working with the Client





Total felony sentences
15,370

Aggravated sentences
325

Mitigated sentences
1,123

2024 Statistical Summary of Adult Felony
Sentencing/CFC

**Table 15. Mitigated Exceptional Sentence Reasons
Fiscal Year 2024**

REASON	COUNT
Exceptional sentence is more appropriate/is in the interests of justice.	447
All parties agreed to mitigated sentence.	382
Part of plea agreement.	263
Defendant's age.	18
Capacity to appreciate the wrongfulness was significantly impaired.	16
The defendant's mental condition.	14
Victim was an initiator, willing participant, aggressor, or provoker.	11
To make frugal use of the state's resources.	6
The multiple offense policy results in a clearly excessive presumptive sentence.	3
With no apparent predisposition, was induced by others to participate.	2
Other mitigating factor.	2
For defendant's rehabilitation or treatment.	1
No prior convictions or they are remote in time.	1
Defendant's physical condition.	1
Crime committed under duress, coercion, threat, or compulsion.	1
Defendant is addressing psychological problem.	1
Total Mitigated Reasons:	1,169
Total Mitigated Sentences:	1,123
Total Reasons Per Case:	1.04

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1169 Reasons
1123 Cases

- Interest of Justice (447)
- All parties agreed to mitigated sentence (382)
- Part of the plea bargain (283)

→ 93% of the reasons
likely involved DPAs
support



What is
Mitigation



Why did this happen

Why is it not going to
happen again

Who is this person today

When Can You Use Mitigation



Anytime



When Can You Use Mitigation

ARR/Pretrial release

Trial – defense theory

Plea bargain- reduced charges/sentence

Sentencing

Resentencing

Early Release (Clemency/6164/Compassionate Release)

Sentencing

- Exceptional sentence down (up with reduction)
 - Length of comm custody
 - Length of confinement
 - Conditions of sentence
- Consecutive v. concurrent (vice versa too)
- Alternative sentences
- Alternatives to confinement

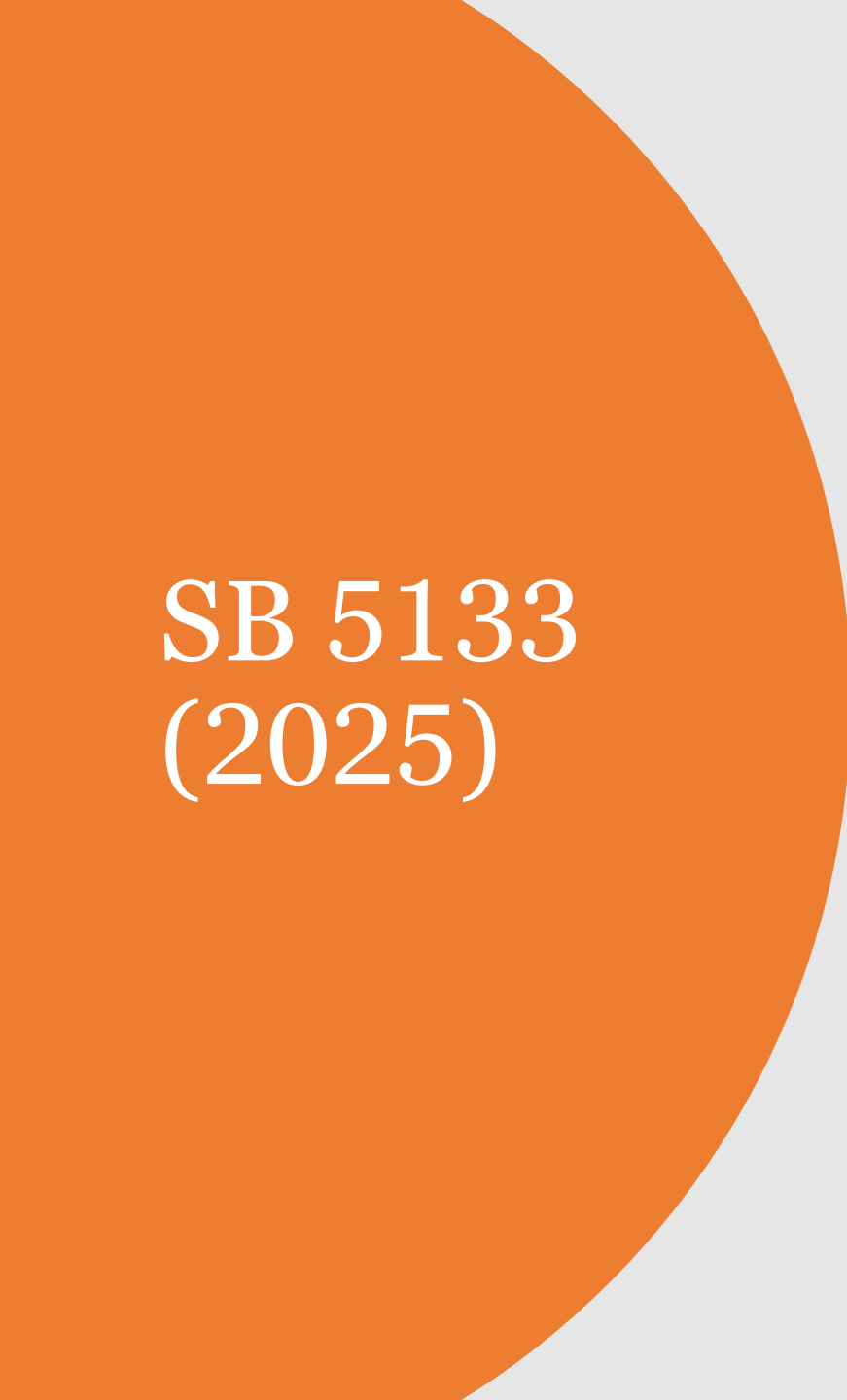


Mitigating Qualities of Youth

State v. Harris (2024)

c.f.

*State v. Carter, Reite
(2024)*

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SB 5133
(2025)

Parent or Caregiver
Mitigator



Failed defenses



Personal Circumstances



Substance Use



Rehabilitation Accountability



Cooperation
Turn Self In
Helped Victim



Rehabilitation Accountability



What else?

