

2 **SHB 2906** - H AMD TO H AMD (H-4293.2/94) **1126 LOST 02/21/94**

3 By Representative J. Kohl and others

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5 On page 78, after line 4 of the amendment, insert the following:

6 "Sec. 503. RCW 9.94A.390 and 1990 c 3 s 603 are each amended to
7 read as follows:

8 If the sentencing court finds that an exceptional sentence outside
9 the standard range should be imposed in accordance with RCW
10 9.94A.120(2), the sentence is subject to review only as provided for in
11 RCW 9.94A.210(4).

12 The following are illustrative factors which the court may consider
13 in the exercise of its discretion to impose an exceptional sentence.
14 The following are illustrative only and are not intended to be
15 exclusive reasons for exceptional sentences.

16 (1) Mitigating Circumstances

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

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

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

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

27 (e) The defendant's capacity to appreciate the wrongfulness of his
28 conduct or to conform his conduct to the requirements of the law, was
29 significantly impaired (voluntary use of drugs or alcohol is excluded).

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

33 (g) The operation of the multiple offense policy of RCW 9.94A.400
34 results in a presumptive sentence that is clearly excessive in light of
35 the purpose of this chapter, as expressed in RCW 9.94A.010.

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

4 (i) The defendant is subject to adult criminal court jurisdiction
5 pursuant to RCW 13.04.030(1)(e)(iv) and the court finds that the
6 presumptive sentence is excessive in light of the defendant's age.

7 (2) Aggravating Circumstances

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

10 (b) The defendant knew or should have known that the victim of the
11 current offense was particularly vulnerable or incapable of resistance
12 due to extreme youth, advanced age, disability, or ill health.

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

16 (i) The current offense involved multiple victims or multiple
17 incidents per victim;

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

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

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

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

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

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

36 (iii) The current offense involved the manufacture of controlled
37 substances for use by other parties; or

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

1 (v) The current offense involved a high degree of sophistication or
2 planning or occurred over a lengthy period of time or involved a broad
3 geographic area of disbursement; or

4 (vi) The offender used his or her position or status to facilitate
5 the commission of the current offense, including positions of trust,
6 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
7 other medical professional); or

8 (e) The current offense included a finding of sexual motivation
9 pursuant to RCW 9.94A.127;

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

13 (g) The operation of the multiple offense policy of RCW 9.94A.400
14 results in a presumptive sentence that is clearly too lenient in light
15 of the purpose of this chapter, as expressed in RCW 9.94A.010.

16 NEW SECTION. **Sec. 504.** A new section is added to chapter 9.94A
17 RCW to read as follows:

18 When the defendant is convicted of a crime the defendant committed
19 when he or she was less than eighteen years old and the adult criminal
20 court acquired jurisdiction over the defendant under RCW
21 13.04.030(1)(e)(iv), the court shall consider the defendant's age when
22 sentencing the defendant and may impose an exceptional sentence below
23 the presumptive range pursuant to RCW 9.94A.390(1)(i)."

24 EFFECT: If the adult court has jurisdiction over an offender
25 because the juvenile was automatically considered an adult under the
26 new "decline" standards, and the juvenile is convicted, the court must
27 consider the juvenile's age at sentencing and may impose an exceptional
28 sentence below the presumptive range if the court finds that the
29 presumptive range is excessive in light of the offender's age. The
30 same standards and caselaw that apply to imposition of exceptional
31 sentences will apply to this provision. The difference between this
32 provision and other mitigating factors is that the court must consider
33 the juvenile's age at sentencing while the court may consider whether
34 other mitigating factors exist.

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