

2 ESHB 1569 - S AMD - 000726

3 By Senator Nelson

4 NOT ADOPTED 4/13/93 - Roll Call Vote 21-24

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
8 as follows:

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

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

17 (1) Mitigating Circumstances

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

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

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

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

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

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

34 (g) The operation of the multiple offense policy of RCW 9.94A.400
35 results in a presumptive sentence that is clearly excessive in light of
36 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 (2) Aggravating Circumstances

5 (a) The defendant's conduct during the commission of the current
6 offense either (i) manifested deliberate cruelty to the victim; or (ii)
7 demonstrated malice toward a characteristic or characteristics of the
8 victim, such as race, religion, ethnicity, or gender.

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

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

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

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

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

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

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

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

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

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

37 (iv) The circumstances of the current offense reveal the offender
38 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 **Sec. 2.** RCW 13.40.150 and 1992 c 205 s 109 are each amended to
17 read as follows:

18 (1) In disposition hearings all relevant and material evidence,
19 including oral and written reports, may be received by the court and
20 may be relied upon to the extent of its probative value, even though
21 such evidence may not be admissible in a hearing on the information.
22 The youth or the youth's counsel and the prosecuting attorney shall be
23 afforded an opportunity to examine and controvert written reports so
24 received and to cross-examine individuals making reports when such
25 individuals are reasonably available, but sources of confidential
26 information need not be disclosed. The prosecutor and counsel for the
27 juvenile may submit recommendations for disposition.

28 (2) For purposes of disposition:

29 (a) Violations which are current offenses count as misdemeanors;

30 (b) Violations may not count as part of the offender's criminal
31 history;

32 (c) In no event may a disposition for a violation include
33 confinement.

34 (3) Before entering a dispositional order as to a respondent found
35 to have committed an offense, the court shall hold a disposition
36 hearing, at which the court shall:

37 (a) Consider the facts supporting the allegations of criminal
38 conduct by the respondent;

- 1 (b) Consider information and arguments offered by parties and their
2 counsel;
- 3 (c) Consider any predisposition reports;
- 4 (d) Consult with the respondent's parent, guardian, or custodian on
5 the appropriateness of dispositional options under consideration and
6 afford the respondent and the respondent's parent, guardian, or
7 custodian an opportunity to speak in the respondent's behalf;
- 8 (e) Allow the victim or a representative of the victim and an
9 investigative law enforcement officer to speak;
- 10 (f) Determine the amount of restitution owing to the victim, if
11 any;
- 12 (g) Determine whether the respondent is a serious offender, a
13 middle offender, or a minor or first offender;
- 14 (h) Consider whether or not any of the following mitigating factors
15 exist:
- 16 (i) The respondent's conduct neither caused nor threatened serious
17 bodily injury or the respondent did not contemplate that his or her
18 conduct would cause or threaten serious bodily injury;
- 19 (ii) The respondent acted under strong and immediate provocation;
- 20 (iii) The respondent was suffering from a mental or physical
21 condition that significantly reduced his or her culpability for the
22 offense though failing to establish a defense;
- 23 (iv) Prior to his or her detection, the respondent compensated or
24 made a good faith attempt to compensate the victim for the injury or
25 loss sustained; and
- 26 (v) There has been at least one year between the respondent's
27 current offense and any prior criminal offense;
- 28 (i) Consider whether or not any of the following aggravating
29 factors exist:
- 30 (i) In the commission of the offense, or in flight therefrom, the
31 respondent inflicted or attempted to inflict serious bodily injury to
32 another;
- 33 (ii) The offense either (A) was committed in an especially heinous,
34 cruel, or depraved manner; or (B) demonstrated malice toward a
35 characteristic or characteristics of the victim, such as race,
36 religion, ethnicity, or gender;
- 37 (iii) The victim or victims were particularly vulnerable;

1 (iv) The respondent has a recent criminal history or has failed to
2 comply with conditions of a recent dispositional order or diversion
3 agreement;

4 (v) The current offense included a finding of sexual motivation
5 pursuant to RCW 9.94A.127;

6 (vi) The respondent was the leader of a criminal enterprise
7 involving several persons; and

8 (vii) There are other complaints which have resulted in diversion
9 or a finding or plea of guilty but which are not included as criminal
10 history.

11 (4) The following factors may not be considered in determining the
12 punishment to be imposed:

13 (a) The sex of the respondent;

14 (b) The race or color of the respondent or the respondent's family;

15 (c) The creed or religion of the respondent or the respondent's
16 family;

17 (d) The economic or social class of the respondent or the
18 respondent's family; and

19 (e) Factors indicating that the respondent may be or is a dependent
20 child within the meaning of this chapter.

21 (5) A court may not commit a juvenile to a state institution solely
22 because of the lack of facilities, including treatment facilities,
23 existing in the community."

24 **ESHB 1569** - S AMD

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26 NOT ADOPTED 4/13/93

27 On page 1, line 1 of the title, after "harassment;" strike the
28 remainder of the title and insert "amending RCW 9.94A.390 and
29 13.40.150; and prescribing penalties."

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