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HOUSE BILL 1096

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State of Washington

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By Representatives Cairnes, O'Brien, Schindler, Constantine, Lovick, D. Schmidt, Alexander, Romero, Barlean, Keiser, Morris, Carlson, Cooper, Kessler, Esser and Fortunato

Read first time 01/14/1999. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to assault; amending RCW 9.94A.390; adding a new  
2 section to chapter 9A.36 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.36 RCW  
5 to read as follows:

6 In sentencing an offender convicted of a violation of assault in  
7 the fourth degree under RCW 9A.36.041, the court shall consider as an  
8 aggravating factor the fact that the offender assaulted a:

9 (1) School employee: (a) Who was performing his or her employment  
10 duties at the time of the assault; or (b) after or before the school  
11 employee performed or was about to perform his or her duties, if the  
12 assault occurred in the vicinity of the school or other location at  
13 which the school employee performed, or was about to perform, his or  
14 her duties. For purposes of this subsection "school employee" means an  
15 employee of a public or private school, grades kindergarten through  
16 twelve, of a public or private vocational school, of a public or  
17 private community college, or of a public or private college or  
18 university, but does not include a school bus driver to the extent the  
19 driver is covered under RCW 9A.36.031(1)(c); or

1 (2) Sports official: (a) Who was performing his or her sports  
2 official duties at the time of the assault; or (b) after the sports  
3 official performed his or her sports official duties at an athletic  
4 event if the assault occurred within the confines or immediate vicinity  
5 of the athletic facility at which the event occurred. For purposes of  
6 this subsection, "sports official" means an individual who serves as a  
7 referee, umpire, or linesman, or who serves in a similar capacity but  
8 might be known by another title, and who is registered with or is a  
9 member of a local, state, regional, or national organization engaged in  
10 part in providing education and training to sports officials.

11 **Sec. 2.** RCW 9.94A.390 and 1997 c 52 s 4 are each amended to read  
12 as follows:

13 If the sentencing court finds that an exceptional sentence outside  
14 the standard range should be imposed in accordance with RCW  
15 9.94A.120(2), the sentence is subject to review only as provided for in  
16 RCW 9.94A.210(4).

17 The following are illustrative factors which the court may consider  
18 in the exercise of its discretion to impose an exceptional sentence.  
19 The following are illustrative only and are not intended to be  
20 exclusive reasons for exceptional sentences.

21 (1) Mitigating Circumstances

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

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

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

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

32 (e) The defendant's capacity to appreciate the wrongfulness of his  
33 or her conduct or to conform his or her conduct to the requirements of  
34 the law, was significantly impaired (voluntary use of drugs or alcohol  
35 is excluded).

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

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

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

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 violent offense, and the defendant  
14 knew that the victim of the current offense was pregnant.

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

18 (i) The current offense involved multiple victims or multiple  
19 incidents per victim;

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

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

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

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

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

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

38 (iii) The current offense involved the manufacture of controlled  
39 substances for use by other parties;

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

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

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

10 (f) The current offense included a finding of sexual motivation  
11 pursuant to RCW 9.94A.127.

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

15 (h) The current offense involved domestic violence, as defined in  
16 RCW 10.99.020 and one or more of the following was present:

17 (i) The offense was part of an ongoing pattern of psychological,  
18 physical, or sexual abuse of the victim manifested by multiple  
19 incidents over a prolonged period of time;

20 (ii) The offense occurred within sight or sound of the victim's or  
21 the offender's minor children under the age of eighteen years; or

22 (iii) The offender's conduct during the commission of the current  
23 offense manifested deliberate cruelty or intimidation of the victim.

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

27 (j) The defendant's prior unscored misdemeanor or prior unscored  
28 foreign criminal history results in a presumptive sentence that is  
29 clearly too lenient in light of the purpose of this chapter as  
30 expressed in RCW 9.94A.010.

31 (k) The offense resulted in the pregnancy of a child victim of  
32 rape.

33 (l) In the case of a conviction for assault in the first, second,  
34 or third degree, the offender assaulted a:

35 (i) School employee: (A) Who was performing his or her employment  
36 duties at the time of the assault; or (B) after or before the school  
37 employee performed or was about to perform his or her duties, if the  
38 assault occurred in the vicinity of the school or other location at  
39 which the school employee performed, or was about to perform, his or

1 her duties. For purposes of this subsection "school employee" means an  
2 employee of a public or private school, grades kindergarten through  
3 twelve, of a public or private vocational school, of a public or  
4 private community college, or of a public or private college or  
5 university, but does not include a school bus driver to the extent the  
6 driver is covered under RCW 9A.36.031(1)(c); or

7 (ii) Sports official: (A) Who was performing his or her sports  
8 official duties at the time of the assault; or (B) after the sports  
9 official performed his or her sports official duties at an athletic or  
10 event if the assault occurred within the confines or immediate vicinity  
11 of the athletic facility at which the event occurred. For purposes of  
12 this subsection, "sports official" means an individual who serves as a  
13 referee, umpire, or linesman, or who serves in a similar capacity but  
14 might be known by another title, and who is registered with or is a  
15 member of a local, state, regional, or national organization engaged in  
16 part in providing education and training to sports officials.

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