
HOUSE BILL 1849

State of Washington

56th Legislature

1999 Regular Session

By Representatives Kagi, Carrell, Tokuda, Boldt, Lovick, Barlean, McIntire, Edwards, Kenney and Schual-Berke

Read first time 02/08/1999. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to imposing an exceptional sentence; and amending
2 RCW 9.94A.390.

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

4 **Sec. 1.** RCW 9.94A.390 and 1997 c 52 s 4 are each amended to read
5 as follows:

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

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

14 (1) Mitigating Circumstances

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

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

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

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

6 (e) The defendant's capacity to appreciate the wrongfulness of his
7 or her conduct or to conform his or her conduct to the requirements of
8 the law, was significantly impaired (voluntary use of drugs or alcohol
9 is excluded).

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

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

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

19 (2) Aggravating Circumstances

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

22 (b) The defendant knew that the victim of the current offense was
23 a youth who was not residing with a legal custodian and the defendant
24 established or promoted the relationship for the primary purpose of
25 victimization. The defendant knew or should have known that the victim
26 of the current offense was particularly vulnerable or incapable of
27 resistance due to extreme youth, advanced age, disability, or ill
28 health.

29 (c) The current offense was a violent offense, and the defendant
30 knew that the victim of the current offense was pregnant.

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

34 (i) The current offense involved multiple victims or multiple
35 incidents per victim;

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

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

1 (iv) The defendant used his or her position of trust, confidence,
2 or fiduciary responsibility to facilitate the commission of the current
3 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (k) The offense resulted in the pregnancy of a child victim of
9 rape.

--- END ---