
SENATE BILL 5023

State of Washington 56th Legislature 1999 Regular Session

By Senators Goings, Rasmussen and Costa

Read first time 01/11/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to aggravating circumstances affecting sentencing
2 decisions; and amending RCW 9.94A.390 and 13.40.150.

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 or should have known that the victim of the
23 current offense was particularly vulnerable or incapable of resistance
24 due to extreme youth, advanced age, disability, or ill health.

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

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

30 (i) The current offense involved multiple victims or multiple
31 incidents per victim;

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

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

36 (iv) The defendant used his or her position of trust, confidence,
37 or fiduciary responsibility to facilitate the commission of the current
38 offense.

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

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

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

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

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

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

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

23 (f) The current offense was a felony violation of chapter 69.50 RCW
24 committed in the presence of a person under age eighteen who is a child
25 of the defendant.

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

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

31 (~~(h)~~) (i) The current offense involved domestic violence, as
32 defined in 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))~~ (j) The current offense was an assault in the first,
2 second, or third degree committed by one family or household member on
3 another family or household member in the presence of a person under
4 age eighteen who is a child of the victim. For the purposes of this
5 subsection (2)(j) "family or household member" has the meaning given in
6 RCW 26.50.010.

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

10 ~~((j))~~ (l) The defendant's prior unscored misdemeanor or prior
11 unscored foreign criminal history results in a presumptive sentence
12 that is clearly too lenient in light of the purpose of this chapter as
13 expressed in RCW 9.94A.010.

14 ~~((k))~~ (m) The offense resulted in the pregnancy of a child victim
15 of rape.

16 **Sec. 2.** RCW 13.40.150 and 1998 c 86 s 1 are each amended to read
17 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, or set a hearing for a later date not to exceed one hundred eighty
12 days from the date of the disposition hearing to determine the amount,
13 except that the court may continue the hearing beyond the one hundred
14 eighty days for good cause;

15 (g) Determine the respondent's offender score;

16 (h) Consider whether or not any of the following mitigating factors
17 exist:

18 (i) The respondent's conduct neither caused nor threatened serious
19 bodily injury or the respondent did not contemplate that his or her
20 conduct would cause or threaten serious bodily injury;

21 (ii) The respondent acted under strong and immediate provocation;

22 (iii) The respondent was suffering from a mental or physical
23 condition that significantly reduced his or her culpability for the
24 offense though failing to establish a defense;

25 (iv) Prior to his or her detection, the respondent compensated or
26 made a good faith attempt to compensate the victim for the injury or
27 loss sustained; and

28 (v) There has been at least one year between the respondent's
29 current offense and any prior criminal offense;

30 (i) Consider whether or not any of the following aggravating
31 factors exist:

32 (i) In the commission of the offense, or in flight therefrom, the
33 respondent inflicted or attempted to inflict serious bodily injury to
34 another;

35 (ii) The offense was committed in an especially heinous, cruel, or
36 depraved manner;

37 (iii) The victim or victims were particularly vulnerable;

1 (iv) The current offense was a felony violation of chapter 69.50
2 RCW committed in the presence of a person under age eighteen who is a
3 child of the respondent;

4 (v) The current offense was an assault in the first, second, or
5 third degree committed by one family or household member on another
6 family or household member in the presence of a person under age
7 eighteen who is a child of the victim. For the purposes of this
8 subsection (3)(i)(v) "family or household member" has the meaning given
9 in RCW 26.50.010;

10 (vi) The respondent has a recent criminal history or has failed to
11 comply with conditions of a recent dispositional order or diversion
12 agreement;

13 ~~((v))~~ (vii) The current offense included a finding of sexual
14 motivation pursuant to RCW 13.40.135;

15 ~~((vi))~~ (viii) The respondent was the leader of a criminal
16 enterprise involving several persons;

17 ~~((vii))~~ (ix) There are other complaints which have resulted in
18 diversion or a finding or plea of guilty but which are not included as
19 criminal history; and

20 ~~((viii))~~ (x) The standard range disposition is clearly too
21 lenient considering the seriousness of the juvenile's prior
22 adjudications.

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

25 (a) The sex of the respondent;

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

27 (c) The creed or religion of the respondent or the respondent's
28 family;

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

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

33 (5) A court may not commit a juvenile to a state institution solely
34 because of the lack of facilities, including treatment facilities,
35 existing in the community.

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