
SUBSTITUTE HOUSE BILL 1398

State of Washington

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By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Morris, Barlean, Lovick, O'Brien, Conway, Keiser, Roach, Bush, Simpson, Esser, Rockefeller and Kessler)

Read first time . Referred to Committee on .

1 AN ACT Relating to enhancing the penalties for crimes against law
2 enforcement officers; amending RCW 9.94A.390, 9A.36.031, 9A.48.070, and
3 9A.48.080; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read
6 as follows:

7 The court may impose a sentence outside the standard sentence range
8 for an offense if it finds, considering the purpose of this chapter,
9 that there are substantial and compelling reasons justifying an
10 exceptional sentence. Whenever a sentence outside the standard
11 sentence range is imposed, the court shall set forth the reasons for
12 its decision in written findings of fact and conclusions of law. A
13 sentence outside the standard sentence range shall be a determinate
14 sentence.

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

18 A departure from the standards in RCW 9.94A.400 (1) and (2)
19 governing whether sentences are to be served consecutively or

1 concurrently is an exceptional sentence subject to the limitations in
2 this section, and may be appealed by the offender or the state as set
3 forth in RCW 9.94A.210 (2) through (6).

4 The following are illustrative factors which the court may consider
5 in the exercise of its discretion to impose an exceptional sentence.
6 The following are illustrative only and are not intended to be
7 exclusive reasons for exceptional sentences.

8 (1) Mitigating Circumstances

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

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

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

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

19 (e) The defendant's capacity to appreciate the wrongfulness of his
20 or her conduct, or to conform his or her conduct to the requirements of
21 the law, was significantly impaired. Voluntary use of drugs or alcohol
22 is excluded.

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

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

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

32 (2) Aggravating Circumstances

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

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

38 (c) The defendant knew that the victim of the current offense was
39 a law enforcement officer as defined in RCW 9.41.010, and the defendant

1 committed the offense to retaliate against the victim for an act the
2 victim performed during a previous contact with the defendant while the
3 victim was performing his or her official duties.

4 (d) The current offense was a violent offense, and the defendant
5 knew that the victim of the current offense was pregnant.

6 (~~(d)~~) (e) The current offense was a major economic offense or
7 series of offenses, so identified by a consideration of any of the
8 following factors:

9 (i) The current offense involved multiple victims or multiple
10 incidents per victim;

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

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

15 (iv) The defendant used his or her position of trust, confidence,
16 or fiduciary responsibility to facilitate the commission of the current
17 offense.

18 (~~(e)~~) (f) The current offense was a major violation of the
19 Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related
20 to trafficking in controlled substances, which was more onerous than
21 the typical offense of its statutory definition: The presence of ANY
22 of the following may identify a current offense as a major VUCSA:

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

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

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

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

33 (v) The current offense involved a high degree of sophistication or
34 planning, occurred over a lengthy period of time, or involved a broad
35 geographic area of disbursement; or

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

1 (~~(f)~~) (g) The current offense included a finding of sexual
2 motivation pursuant to RCW 9.94A.127.

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

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

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

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

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

15 (~~(i)~~) (j) The operation of the multiple offense policy of RCW
16 9.94A.400 results in a presumptive sentence that is clearly too lenient
17 in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

18 (~~(j)~~) (k) The defendant's prior unscored misdemeanor or prior
19 unscored foreign criminal history results in a presumptive sentence
20 that is clearly too lenient in light of the purpose of this chapter, as
21 expressed in RCW 9.94A.010.

22 (~~(k)~~) (l) The offense resulted in the pregnancy of a child victim
23 of rape.

24 (~~(l)~~) (m) The defendant knew that the victim of the current
25 offense was a youth who was not residing with a legal custodian and the
26 defendant established or promoted the relationship for the primary
27 purpose of victimization.

28 **Sec. 2.** RCW 9A.36.031 and 1999 c 328 s 1 are each amended to read
29 as follows:

30 (1) A person is guilty of assault in the third degree if he or she,
31 under circumstances not amounting to assault in the first or second
32 degree:

33 (a) With intent to prevent or resist the execution of any lawful
34 process or mandate of any court officer or the lawful apprehension or
35 detention of himself, herself, or another person, assaults another; or

36 (b) Assaults a person employed as a transit operator or driver, the
37 immediate supervisor of a transit operator or driver, a mechanic, or a
38 security officer, by a public or private transit company or a

1 contracted transit service provider, while that person is performing
2 his or her official duties at the time of the assault; or

3 (c) Assaults a school bus driver, the immediate supervisor of a
4 driver, a mechanic, or a security officer, employed by a school
5 district transportation service or a private company under contract for
6 transportation services with a school district, while the person is
7 performing his or her official duties at the time of the assault; or

8 (d) With criminal negligence, causes bodily harm to another person
9 by means of a weapon or other instrument or thing likely to produce
10 bodily harm; or

11 (e) Assaults a fire fighter or other employee of a fire department,
12 county fire marshal's office, county fire prevention bureau, or fire
13 protection district who was performing his or her official duties at
14 the time of the assault; or

15 (f) With criminal negligence, causes bodily harm accompanied by
16 substantial pain that extends for a period sufficient to cause
17 considerable suffering; or

18 (g) Assaults a law enforcement officer or other employee of a law
19 enforcement agency who was performing his or her official duties at the
20 time of the assault; or

21 (h) Assaults a person knowing the person is a law enforcement
22 officer as defined in RCW 9.41.010, and the defendant committed the
23 assault to retaliate against the victim for an act the victim performed
24 during a previous contact with the defendant while the victim was
25 performing his or her official duties; or

26 (i) Assaults a nurse, physician, or health care provider who was
27 performing his or her nursing or health care duties at the time of the
28 assault. For purposes of this subsection: "Nurse" means a person
29 licensed under chapter 18.79 RCW; "physician" means a person licensed
30 under chapter 18.57 or 18.71 RCW; and "health care provider" means a
31 person certified under chapter 18.71 or 18.73 RCW who performs
32 emergency medical services or a person regulated under Title 18 RCW and
33 employed by, or contracting with, a hospital licensed under chapter
34 70.41 RCW.

35 (2) Assault in the third degree is a class C felony.

36 **Sec. 3.** RCW 9A.48.070 and 1983 1st ex.s. c 4 s 1 are each amended
37 to read as follows:

1 (1) A person is guilty of malicious mischief in the first degree if
2 he or she knowingly and maliciously:

3 (a)(i) Causes physical damage to the property of another in an
4 amount exceeding one thousand five hundred dollars, except as provided
5 in (a)(ii) of this subsection; or

6 (ii) Causes physical damage to the property of another person,
7 knowing the person is a law enforcement officer as defined in RCW
8 9.41.010, and the defendant caused the damage to retaliate against the
9 victim for an act the victim performed during a previous contact with
10 the defendant while the victim was performing his or her official
11 duties, in an amount exceeding two hundred fifty dollars;

12 (b) Causes an interruption or impairment of service rendered to the
13 public by physically damaging or tampering with an emergency vehicle or
14 property of the state, a political subdivision thereof, or a public
15 utility or mode of public transportation, power, or communication; or

16 (c) Causes an impairment of the safety, efficiency, or operation of
17 an aircraft by physically damaging or tampering with the aircraft or
18 aircraft equipment, fuel, lubricant, or parts.

19 (2) Malicious mischief in the first degree is a class B felony.

20 **Sec. 4.** RCW 9A.48.080 and 1994 c 261 s 17 are each amended to read
21 as follows:

22 (1) A person is guilty of malicious mischief in the second degree
23 if he or she knowingly and maliciously:

24 (a)(i) Causes physical damage to the property of another in an
25 amount exceeding two hundred fifty dollars, except as provided in
26 (a)(ii) of this subsection; or

27 (ii) Causes physical damage to the property of another person,
28 knowing the person is a law enforcement officer as defined in RCW
29 9.41.010, and the defendant caused the damage to retaliate against the
30 victim for an act the victim performed during a previous contact with
31 the defendant while the victim was performing his or her official
32 duties, in an amount less than or equal to two hundred fifty dollars;

33 or

34 (b) Creates a substantial risk of interruption or impairment of
35 service rendered to the public, by physically damaging or tampering
36 with an emergency vehicle or property of the state, a political
37 subdivision thereof, or a public utility or mode of public
38 transportation, power, or communication.

1 (2) Malicious mischief in the second degree is a class C felony.

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