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HOUSE BILL 1465

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State of Washington

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By Representatives Kirby, O'Brien, Gombosky, Cairnes, Roach, Lovick, Jarrett and Keiser

Read first time 01/26/2001. 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 2000 c 28 s 8 are each amended to read  
12 as follows:

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

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

24 A departure from the standards in RCW 9.94A.400 (1) and (2)  
25 governing whether sentences are to be served consecutively or  
26 concurrently is an exceptional sentence subject to the limitations in  
27 this section, and may be appealed by the offender or the state as set  
28 forth in RCW 9.94A.210 (2) through (6).

29 The following are illustrative factors which the court may consider  
30 in the exercise of its discretion to impose an exceptional sentence.  
31 The following are illustrative only and are not intended to be  
32 exclusive reasons for exceptional sentences.

33 (1) Mitigating Circumstances

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

36 (b) Before detection, the defendant compensated, or made a good  
37 faith effort to compensate, the victim of the criminal conduct for any  
38 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, 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 included a finding of sexual motivation  
24 pursuant to RCW 9.94A.127.

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

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

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

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

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

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

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

5 (k) The offense resulted in the pregnancy of a child victim of  
6 rape.

7 (l) The defendant knew that the victim of the current offense was  
8 a youth who was not residing with a legal custodian and the defendant  
9 established or promoted the relationship for the primary purpose of  
10 victimization.

11 (m) In the case of a conviction for assault in the first, second,  
12 or third degree, the offender assaulted a:

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

24 (ii) Sports official: (A) Who was performing his or her sports  
25 official duties at the time of the assault; or (B) after the sports  
26 official performed his or her sports official duties at an athletic  
27 event if the assault occurred within the confines or immediate vicinity  
28 of the athletic facility at which the event occurred. For purposes of  
29 this subsection, "sports official" means an individual who serves as a  
30 referee, umpire, or linesman, or who serves in a similar capacity but  
31 might be known by another title, and who is registered with or is a  
32 member of a local, state, regional, or national organization engaged in  
33 part in providing education and training to sports officials.

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