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ENGROSSED SUBSTITUTE HOUSE BILL 1663

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State of Washington

57th Legislature

2002 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives McDermott, O'Brien, Darneille, Ruderman, Murray, Schual-Berke, Romero, Conway, Poulsen and Santos; by request of Governor Locke)

Read first time 01/23/2002. Referred to Committee on .

1 AN ACT Relating to sentencing of hate crimes; and amending RCW  
2 9.94A.535.

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

4 **Sec. 1.** RCW 9.94A.535 and 2001 2nd sp.s. c 12 s 314 are each  
5 amended to read as follows:

6 The court may impose a sentence outside the standard sentence range  
7 for an offense if it finds, considering the purpose of this chapter,  
8 that there are substantial and compelling reasons justifying an  
9 exceptional sentence. Whenever a sentence outside the standard  
10 sentence range is imposed, the court shall set forth the reasons for  
11 its decision in written findings of fact and conclusions of law. A  
12 sentence outside the standard sentence range shall be a determinate  
13 sentence unless it is imposed on an offender sentenced under RCW  
14 9.94A.712. An exceptional sentence imposed on an offender sentenced  
15 under RCW 9.94A.712 shall be to a minimum term set by the court and a  
16 maximum term equal to the statutory maximum sentence for the offense of  
17 conviction under chapter 9A.20 RCW.

1 If the sentencing court finds that an exceptional sentence outside  
2 the standard sentence range should be imposed, the sentence is subject  
3 to review only as provided for in RCW 9.94A.585(4).

4 A departure from the standards in RCW 9.94A.589 (1) and (2)  
5 governing whether sentences are to be served consecutively or  
6 concurrently is an exceptional sentence subject to the limitations in  
7 this section, and may be appealed by the offender or the state as set  
8 forth in RCW 9.94A.585 (2) through (6).

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

13 (1) Mitigating Circumstances

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

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

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

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

24 (e) The defendant's capacity to appreciate the wrongfulness of his  
25 or her conduct, or to conform his or her conduct to the requirements of  
26 the law, was significantly impaired. Voluntary use of drugs or alcohol  
27 is excluded.

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

31 (g) The operation of the multiple offense policy of RCW 9.94A.589  
32 results in a presumptive sentence that is clearly excessive in light of  
33 the purpose of this chapter, as expressed in RCW 9.94A.010.

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

37 (2) Aggravating Circumstances

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

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

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

6 (d) The current offense was a major economic offense or series of  
7 offenses, so identified by a consideration of any of the following  
8 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) The current offense was a major violation of the Uniform  
19 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
20 trafficking in controlled substances, which was more onerous than the  
21 typical offense of its statutory definition: The presence of ANY of  
22 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) The current offense included a finding of sexual motivation  
2 pursuant to RCW 9.94A.835.

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

6 (h) The current offense involved domestic violence, as defined in  
7 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) The operation of the multiple offense policy of RCW 9.94A.589  
16 results in a presumptive sentence that is clearly too lenient in light  
17 of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

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

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

28 (m) The defendant committed the current offense because of the  
29 defendant's perception of the victim's race, color, religion, ancestry,  
30 national origin, gender, sexual orientation, or mental, physical, or  
31 sensory handicap.

32 (n) The current offense involved knowingly and maliciously making  
33 a false statement punishable under RCW 9A.76.175 accusing another  
34 person of committing an offense because of the person's perception of  
35 the alleged victim's race, color, religion, ancestry, national origin,  
36 gender, sexual orientation, or mental, physical, or sensory handicap.

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