
SUBSTITUTE HOUSE BILL 1663

State of Washington

57th Legislature

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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.

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