
HOUSE BILL 2903

State of Washington

57th Legislature

2002 Regular Session

By Representatives Morell, Ballasiotes, Ahern, Schmidt and Roach

Read first time 02/04/2002. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to hate crimes; amending RCW 9.94A.535; adding a
2 new section to chapter 9A.36 RCW; creating a new section; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that our current
6 criminal sentencing laws recognize no race, color, religion, ancestry,
7 national origin, gender, sexual orientation, or mental, physical, or
8 sensory handicap when it comes to applying a punishment. However,
9 current law fails to recognize that a crime committed out of hate is
10 not just an attack on an individual victim but is an act of terror
11 directed at an entire group of people.

12 The legislature further finds that if a person is falsely accused
13 of a hate crime that it has the same effect of terrorizing a community
14 as an actual hate crime does. The legislature also finds that a false
15 report of a hate crime is in and of itself a hate crime and should be
16 treated appropriately.

17 The legislature intends by this act to hold crimes motivated by
18 hate to a higher standard than ordinary crimes.

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

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

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.585(4).

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

23 The following are illustrative factors which the court may consider
24 in the exercise of its discretion to impose an exceptional sentence.
25 The following are illustrative only and are not intended to be
26 exclusive reasons for exceptional sentences.

27 (1) Mitigating Circumstances

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

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

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

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

38 (e) The defendant's capacity to appreciate the wrongfulness of his
39 or her conduct, or to conform his or her conduct to the requirements of

1 the law, was significantly impaired. Voluntary use of drugs or alcohol
2 is excluded.

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

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

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

12 (2) Aggravating Circumstances

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

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

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

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

23 (i) The current offense involved multiple victims or multiple
24 incidents per victim;

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

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

29 (iv) The defendant used his or her position of trust, confidence,
30 or fiduciary responsibility to facilitate the commission of the current
31 offense.

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

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

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

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

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

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

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

15 (f) The current offense included a finding of sexual motivation
16 pursuant to RCW 9.94A.835.

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

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

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

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

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

29 (i) The operation of the multiple offense policy of RCW 9.94A.589
30 results in a presumptive sentence that is clearly too lenient in light
31 of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

36 (k) The offense resulted in the pregnancy of a child victim of
37 rape.

38 (l) The defendant knew that the victim of the current offense was
39 a youth who was not residing with a legal custodian and the defendant

1 established or promoted the relationship for the primary purpose of
2 victimization.

3 (m) The defendant committed the current offense because of the
4 defendant's perception of the victim's race, color, religion, ancestry,
5 national origin, gender, sexual orientation, or mental, physical, or
6 sensory handicap.

7 NEW SECTION. Sec. 3. A new section is added to chapter 9A.36 RCW
8 to read as follows:

9 (1) A person is guilty of false reporting of a hate crime if, with
10 knowledge that the information reported, conveyed, or circulated is
11 false, he or she makes or circulates a false report to a law
12 enforcement officer or a prosecuting attorney of an alleged occurrence
13 of a hate crime knowing that the false report is likely to be relied
14 upon as an aggravating circumstance in the imposition of an exceptional
15 sentence under RCW 9.94A.535.

16 (2) False reporting of a hate crime is a gross misdemeanor.

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