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SENATE BILL 5916

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State of Washington

57th Legislature

2001 Regular Session

By Senators Parlette, Haugen, B. Sheldon, Oke, T. Sheldon, Morton,  
Hewitt and Kohl-Welles

Read first time 02/07/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to vehicular offenses within roadway  
2 construction zones; and amending RCW 9.94A.390.

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

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

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

14 If the sentencing court finds that an exceptional sentence  
15 outside the standard sentence range should be imposed, the  
16 sentence is subject to review only as provided for in RCW  
17 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  
2 in this section, and may be appealed by the offender or the state  
3 as set forth in RCW 9.94A.210 (2) through (6).

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

8 (1) Mitigating Circumstances

9 (a) To a significant degree, the victim was an initiator,  
10 willing 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  
13 any damage or injury sustained.

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

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

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

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

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

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

33 (2) Aggravating Circumstances

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

36 (b) The defendant knew or should have known that the victim of  
37 the current offense was particularly vulnerable or incapable of

1 resistance due to extreme youth, advanced age, disability, or ill  
2 health.

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

6 (d) The current offense was a major economic offense or series  
7 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  
12 loss substantially greater than typical for the offense;

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

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

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

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

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

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

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

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

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

5 (f) The current offense included a finding of sexual motivation  
6 pursuant to RCW 9.94A.127.

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

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

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

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

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

21 (i) The operation of the multiple offense policy of RCW  
22 9.94A.400 results in a presumptive sentence that is clearly too  
23 lenient in light of the purpose of this chapter, as expressed in  
24 RCW 9.94A.010.

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

29 (k) The offense resulted in the pregnancy of a child victim of  
30 rape.

31 (l) The defendant knew that the victim of the current offense  
32 was a youth who was not residing with a legal custodian and the  
33 defendant established or promoted the relationship for the primary  
34 purpose of victimization.

35 (m) The current offense is a vehicular assault or vehicular  
36 homicide and the person injured or killed was within a roadway  
37 construction zone as defined in RCW 46.61.527.

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