
SENATE BILL 6783

State of Washington 57th Legislature

2002 Regular Session

By Senators Kline and Franklin

Read first time 02/05/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to mitigating circumstances allowing departures
2 from sentencing guidelines; and amending RCW 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 (i) This chapter's purpose of ensuring that sentences are
38 commensurate with the punishment imposed on others committing similar
39 offense has been compromised at a stage prior to sentencing.

1 (j) The defendant's offender score overrepresents the seriousness
2 of the defendant's criminal history or the likelihood that the
3 defendant will commit future crimes.

4 (2) Aggravating Circumstances

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

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

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

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

15 (i) The current offense involved multiple victims or multiple
16 incidents per victim;

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

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

21 (iv) The defendant used his or her position of trust, confidence,
22 or fiduciary responsibility to facilitate the commission of the current
23 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (j) The defendant's prior unscored misdemeanor or prior unscored
26 foreign criminal history results in a presumptive sentence that is
27 clearly too lenient in light of the purpose of this chapter, as
28 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 was
32 a youth who was not residing with a legal custodian and the defendant
33 established or promoted the relationship for the primary purpose of
34 victimization.

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