
HOUSE BILL 2357

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By Representatives Johanson, Long, Morris, Kessler, Finkbeiner, Shin, Brough, Van Luven, Wood, Schoesler and Jones

Read first time 01/14/94. Referred to Committee on Corrections.

1 AN ACT Relating to exceptional sentences; and amending RCW
2 9.94A.390 and 9.94A.370.

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

4 **Sec. 1.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
5 as follows:

6 If the sentencing court finds that an exceptional sentence outside
7 the standard range should be imposed in accordance with RCW
8 9.94A.120(2), the sentence is subject to review only as provided for in
9 RCW 9.94A.210(4).

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

14 (1) Mitigating Circumstances

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

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

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

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

6 (e) The defendant's capacity to appreciate the wrongfulness of his
7 conduct or to conform his conduct to the requirements of the law, was
8 significantly impaired (voluntary use of drugs or alcohol is excluded).

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

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

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

18 (2) Aggravating Circumstances

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

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

24 (c) The current offense was a major economic offense or series of
25 offenses, so identified by a consideration of any of the following
26 factors:

27 (i) The current offense involved multiple victims or multiple
28 incidents per victim;

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

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

33 (iv) The defendant used his or her position of trust, confidence,
34 or fiduciary responsibility to facilitate the commission of the current
35 offense.

36 (d) The current offense was a major violation of the Uniform
37 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
38 trafficking in controlled substances, which was more onerous than the

1 typical offense of its statutory definition: The presence of ANY of
2 the following may identify a current offense as a major VUCSA:

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

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

9 (iii) The current offense involved the manufacture of controlled
10 substances for use by other parties; or

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

13 (v) The current offense involved a high degree of sophistication or
14 planning or occurred over a lengthy period of time or involved a broad
15 geographic area of disbursement; or

16 (vi) The offender used his or her position or status to facilitate
17 the commission of the current offense, including positions of trust,
18 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
19 other medical professional); or

20 (e) The current offense included a finding of sexual motivation
21 pursuant to RCW 9.94A.127;

22 (f) The offense was part of an ongoing pattern of sexual abuse of
23 the same victim under the age of eighteen years manifested by multiple
24 incidents over a prolonged period of time; (~~or~~)

25 (g) The current offense was a sexual offense committed against a
26 child under age eighteen and to facilitate commission of the offense,
27 the offender hurt or injured the child, threatened to hurt or injure
28 the child, or used or threatened to use a weapon; or

29 (h) The operation of the multiple offense policy of RCW 9.94A.400
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 **Sec. 2.** RCW 9.94A.370 and 1989 c 124 s 2 are each amended to read
33 as follows:

34 (1) The intersection of the column defined by the offender score
35 and the row defined by the offense seriousness score determines the
36 presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The
37 additional time for deadly weapon findings or for those offenses
38 enumerated in RCW 9.94A.310(4) that were committed in a state

1 correctional facility or county jail shall be added to the entire
2 presumptive sentence range. The court may impose any sentence within
3 the range that it deems appropriate. All presumptive sentence ranges
4 are expressed in terms of total confinement.

5 (2) In determining any sentence, the trial court may rely on no
6 more information than is admitted by the plea agreement, or admitted,
7 acknowledged, or proved in a trial or at the time of sentencing.
8 Acknowledgement includes not objecting to information stated in the
9 presentence reports. Where the defendant disputes material facts, the
10 court must either not consider the fact or grant an evidentiary hearing
11 on the point. The facts shall be deemed proved at the hearing by a
12 preponderance of the evidence. Facts that establish the elements of a
13 more serious crime or additional crimes may not be used to go outside
14 the presumptive sentence range except upon stipulation or when
15 specifically provided for in RCW 9.94A.390(2) (c), (d), (f), and
16 ~~((e))~~ (g).

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