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SENATE BILL 6350

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State of Washington

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By Senators Patterson, Roach, Kline, Long, Franklin, Anderson, Brown, Stevens, Kohl, Oke, Winsley, Swecker, Goings and Spanel

Read first time 01/16/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to delivery of a controlled substance to a pregnant  
2 woman; amending RCW 9.94A.390 and 13.40.150; and providing an effective  
3 date.

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

5 **Sec. 1.** RCW 9.94A.390 and 1997 c 52 s 4 are each amended to read  
6 as follows:

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

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

15 (1) Mitigating Circumstances

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

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

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

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

9 (e) The defendant's capacity to appreciate the wrongfulness of his  
10 or her conduct or to conform his or her conduct to the requirements of  
11 the law, was significantly impaired (voluntary use of drugs or alcohol  
12 is excluded).

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

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

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

22 (2) Aggravating Circumstances

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

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

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

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

33 (i) The current offense involved multiple victims or multiple  
34 incidents per victim;

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

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

1 (iv) The defendant used his or her position of trust, confidence,  
2 or fiduciary responsibility to facilitate the commission of the current  
3 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (k) The offense resulted in the pregnancy of a child victim of  
9 rape.

10 (l) The current offense involved delivery of a controlled substance  
11 to a woman when the deliverer knew that the woman was pregnant.

12 **Sec. 2.** RCW 13.40.150 and 1997 c 338 s 24 are each amended to read  
13 as follows:

14 (1) In disposition hearings all relevant and material evidence,  
15 including oral and written reports, may be received by the court and  
16 may be relied upon to the extent of its probative value, even though  
17 such evidence may not be admissible in a hearing on the information.  
18 The youth or the youth's counsel and the prosecuting attorney shall be  
19 afforded an opportunity to examine and controvert written reports so  
20 received and to cross-examine individuals making reports when such  
21 individuals are reasonably available, but sources of confidential  
22 information need not be disclosed. The prosecutor and counsel for the  
23 juvenile may submit recommendations for disposition.

24 (2) For purposes of disposition:

25 (a) Violations which are current offenses count as misdemeanors;

26 (b) Violations may not count as part of the offender's criminal  
27 history;

28 (c) In no event may a disposition for a violation include  
29 confinement.

30 (3) Before entering a dispositional order as to a respondent found  
31 to have committed an offense, the court shall hold a disposition  
32 hearing, at which the court shall:

33 (a) Consider the facts supporting the allegations of criminal  
34 conduct by the respondent;

35 (b) Consider information and arguments offered by parties and their  
36 counsel;

37 (c) Consider any predisposition reports;

1 (d) Consult with the respondent's parent, guardian, or custodian on  
2 the appropriateness of dispositional options under consideration and  
3 afford the respondent and the respondent's parent, guardian, or  
4 custodian an opportunity to speak in the respondent's behalf;

5 (e) Allow the victim or a representative of the victim and an  
6 investigative law enforcement officer to speak;

7 (f) Determine the amount of restitution owing to the victim, if  
8 any, or set a hearing for a later date to determine the amount;

9 (g) Determine the respondent's offender score;

10 (h) Consider whether or not any of the following mitigating factors  
11 exist:

12 (i) The respondent's conduct neither caused nor threatened serious  
13 bodily injury or the respondent did not contemplate that his or her  
14 conduct would cause or threaten serious bodily injury;

15 (ii) The respondent acted under strong and immediate provocation;

16 (iii) The respondent was suffering from a mental or physical  
17 condition that significantly reduced his or her culpability for the  
18 offense though failing to establish a defense;

19 (iv) Prior to his or her detection, the respondent compensated or  
20 made a good faith attempt to compensate the victim for the injury or  
21 loss sustained; and

22 (v) There has been at least one year between the respondent's  
23 current offense and any prior criminal offense;

24 (i) Consider whether or not any of the following aggravating  
25 factors exist:

26 (i) In the commission of the offense, or in flight therefrom, the  
27 respondent inflicted or attempted to inflict serious bodily injury to  
28 another;

29 (ii) The offense was committed in an especially heinous, cruel, or  
30 depraved manner;

31 (iii) The victim or victims were particularly vulnerable;

32 (iv) The respondent has a recent criminal history or has failed to  
33 comply with conditions of a recent dispositional order or diversion  
34 agreement;

35 (v) The current offense included a finding of sexual motivation  
36 pursuant to RCW 13.40.135;

37 (vi) The respondent was the leader of a criminal enterprise  
38 involving several persons;

1 (vii) There are other complaints which have resulted in diversion  
2 or a finding or plea of guilty but which are not included as criminal  
3 history; (~~and~~)

4 (viii) The current offense involved delivery of a controlled  
5 substance to a woman when the deliverer knew that the woman was  
6 pregnant; and

7 (ix) The standard range disposition is clearly too lenient  
8 considering the seriousness of the juvenile's prior adjudications.

9 (4) The following factors may not be considered in determining the  
10 punishment to be imposed:

11 (a) The sex of the respondent;

12 (b) The race or color of the respondent or the respondent's family;

13 (c) The creed or religion of the respondent or the respondent's  
14 family;

15 (d) The economic or social class of the respondent or the  
16 respondent's family; and

17 (e) Factors indicating that the respondent may be or is a dependent  
18 child within the meaning of this chapter.

19 (5) A court may not commit a juvenile to a state institution solely  
20 because of the lack of facilities, including treatment facilities,  
21 existing in the community.

22 NEW SECTION. **Sec. 3.** This act takes effect July 1, 1998.

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