
SENATE BILL 5488

State of Washington

54th Legislature

1995 Regular Session

By Senators Smith, Oke, Wood, Winsley, Long, Hale, Moyer, Deccio, Palmer, Roach, Schow, Sellar and Snyder; by request of Governor Lowry

Read first time 01/24/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to making domestic violence an aggravating
2 circumstance for purposes of sentencing decisions; and amending RCW
3 9.94A.390.

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

5 **Sec. 1.** RCW 9.94A.390 and 1990 c 3 s 603 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 conduct or to conform his conduct to the requirements of the law, was
11 significantly impaired (voluntary use of drugs or alcohol is excluded).

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

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

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

21 (2) Aggravating Circumstances

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

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

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

30 (i) The current offense involved multiple victims or multiple
31 incidents per victim;

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

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

36 (iv) The defendant used his or her position of trust, confidence,
37 or fiduciary responsibility to facilitate the commission of the current
38 offense.

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

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

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

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

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

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

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

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

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

28 (g) The offense was one of domestic violence as defined in RCW
29 10.99.020(2).

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

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