
HOUSE BILL 1150

State of Washington

55th Legislature

1997 Regular Session

By Representatives Cairnes, Cooper, L. Thomas, Sterk, Zellinsky, Radcliff, Wood, Hankins, Clements, Skinner, McMorris, Wensman, D. Schmidt, DeBolt, Keiser, Thompson, Carlson, O'Brien, Quall and Anderson

Read first time 01/15/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to assault; reenacting and amending RCW 9.94A.390;
2 adding a new section to chapter 9A.36 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.36 RCW
5 to read as follows:

6 In sentencing an offender convicted of a violation of assault in
7 the fourth degree under RCW 9A.36.041, the court shall consider as an
8 aggravating factor the fact that the offender assaulted a:

9 (1) School employee who was performing his or her employment duties
10 at the time of the assault. For purposes of this subsection "school
11 employee" means an employee of a public or private school, grades
12 kindergarten through twelve, of a public or private vocational school,
13 of a public or private community college, or of a public or private
14 college or university, but does not include a school bus driver to the
15 extent the driver is included in RCW 9A.36.031(1)(c); or

16 (2) Sports official: (a) Who was performing his or her sports
17 official duties at the time of the assault; or (b) after the sports
18 official performed his or her sports official duties at an athletic
19 event if the assault occurred within the confines or immediate vicinity

1 of the athletic facility at which the event occurred. For purposes of
2 this subsection, "sports official" means an individual who serves as a
3 referee, umpire, or linesman, or who serves in a similar capacity but
4 might be known by another title, and who is registered with or is a
5 member of a local, state, regional, or national organization engaged in
6 part in providing education and training to sports officials.

7 **Sec. 2.** RCW 9.94A.390 and 1996 c 248 s 2 and 1996 c 121 s 1 are
8 each reenacted and amended to read as follows:

9 If the sentencing court finds that an exceptional sentence outside
10 the standard range should be imposed in accordance with RCW
11 9.94A.120(2), the sentence is subject to review only as provided for in
12 RCW 9.94A.210(4).

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

17 (1) Mitigating Circumstances

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

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

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

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

28 (e) The defendant's capacity to appreciate the wrongfulness of his
29 or her conduct or to conform his or her conduct to the requirements of
30 the law, was significantly impaired (voluntary use of drugs or alcohol
31 is excluded).

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

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

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

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 or 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.127.

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.400
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) In the case of a conviction for assault in the first, second,
30 or third degree, the offender assaulted a:

31 (i) School employee who was performing his or her employment duties
32 at the time of the assault. For purposes of this subsection "school
33 employee" means an employee of a public or private school, grades
34 kindergarten through twelve, of a public or private vocational school,
35 of a public or private community college, or of a public or private
36 college or university, but does not include a school bus driver to the
37 extent the driver is included in RCW 9A.36.031(1)(c); or

38 (ii) Sports official: (A) Who was performing his or her sports
39 official duties at the time of the assault; or (B) after the sports

1 official performed his or her sports official duties at an athletic
2 event if the assault occurred within the confines or immediate vicinity
3 of the athletic facility at which the event occurred. For purposes of
4 this subsection, "sports official" means an individual who serves as a
5 referee, umpire, or linesman, or who serves in a similar capacity but
6 might be known by another title, and who is registered with or is a
7 member of a local, state, regional, or national organization engaged in
8 part in providing education and training to sports officials.

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