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SENATE BILL 5005

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State of Washington

53rd Legislature

1993 Regular Session

By Senator Nelson

Read first time 01/11/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to exceptional sentences; amending RCW 9.94A.390  
2 and 13.40.150; and prescribing penalties.

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 either (i) manifested deliberate cruelty to the victim; or (ii)  
21 was motivated by animus toward a characteristic or characteristics of  
22 the victim, such as race, religion, ethnicity, or gender.

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

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

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

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

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

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

38 (d) The current offense was a major violation of the Uniform  
39 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to

1 trafficking in controlled substances, which was more onerous than the  
2 typical offense of its statutory definition: The presence of ANY of  
3 the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

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

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

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

29 **Sec. 2.** RCW 13.40.150 and 1992 c 205 s 109 are each amended to  
30 read as follows:

31 (1) In disposition hearings all relevant and material evidence,  
32 including oral and written reports, may be received by the court and  
33 may be relied upon to the extent of its probative value, even though  
34 such evidence may not be admissible in a hearing on the information.  
35 The youth or the youth's counsel and the prosecuting attorney shall be  
36 afforded an opportunity to examine and controvert written reports so  
37 received and to cross-examine individuals making reports when such  
38 individuals are reasonably available, but sources of confidential

1 information need not be disclosed. The prosecutor and counsel for the  
2 juvenile may submit recommendations for disposition.

3 (2) For purposes of disposition:

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

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

7 (c) In no event may a disposition for a violation include  
8 confinement.

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

12 (a) Consider the facts supporting the allegations of criminal  
13 conduct by the respondent;

14 (b) Consider information and arguments offered by parties and their  
15 counsel;

16 (c) Consider any predisposition reports;

17 (d) Consult with the respondent's parent, guardian, or custodian on  
18 the appropriateness of dispositional options under consideration and  
19 afford the respondent and the respondent's parent, guardian, or  
20 custodian an opportunity to speak in the respondent's behalf;

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

23 (f) Determine the amount of restitution owing to the victim, if  
24 any;

25 (g) Determine whether the respondent is a serious offender, a  
26 middle offender, or a minor or first offender;

27 (h) Consider whether or not any of the following mitigating factors  
28 exist:

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

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

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

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

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

3 (i) Consider whether or not any of the following aggravating  
4 factors exist:

5 (i) In the commission of the offense, or in flight therefrom, the  
6 respondent inflicted or attempted to inflict serious bodily injury to  
7 another;

8 (ii) The offense either (A) was committed in an especially heinous,  
9 cruel, or depraved manner; or (B) was motivated by animus toward a  
10 characteristic or characteristics of the victim, such as race,  
11 religion, ethnicity, or gender;

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

13 (iv) The respondent has a recent criminal history or has failed to  
14 comply with conditions of a recent dispositional order or diversion  
15 agreement;

16 (v) The current offense included a finding of sexual motivation  
17 pursuant to RCW 9.94A.127;

18 (vi) The respondent was the leader of a criminal enterprise  
19 involving several persons; and

20 (vii) There are other complaints which have resulted in diversion  
21 or a finding or plea of guilty but which are not included as criminal  
22 history.

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

25 (a) The sex of the respondent;

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

27 (c) The creed or religion of the respondent or the respondent's  
28 family;

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

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

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

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