
HOUSE BILL 2578

State of Washington

58th Legislature

2004 Regular Session

By Representatives O'Brien, Delvin, Pettigrew, Benson, Kessler, Haigh, Boldt, Clibborn and Pearson

Read first time 01/16/2004. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to adding situations in which a crime victim is
2 vulnerable or incapable of resistance due to the lack of a fixed
3 residence to the list of illustrative aggravating circumstances for
4 which an exceptional sentence may be imposed; and amending RCW
5 9.94A.535.

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

7 **Sec. 1.** RCW 9.94A.535 and 2003 c 267 s 4 are each amended to read
8 as follows:

9 The court may impose a sentence outside the standard sentence range
10 for an offense if it finds, considering the purpose of this chapter,
11 that there are substantial and compelling reasons justifying an
12 exceptional sentence. Whenever a sentence outside the standard
13 sentence range is imposed, the court shall set forth the reasons for
14 its decision in written findings of fact and conclusions of law. A
15 sentence outside the standard sentence range shall be a determinate
16 sentence unless it is imposed on an offender sentenced under RCW
17 9.94A.712. An exceptional sentence imposed on an offender sentenced
18 under RCW 9.94A.712 shall be to a minimum term set by the court and a

1 maximum term equal to the statutory maximum sentence for the offense of
2 conviction under chapter 9A.20 RCW.

3 If the sentencing court finds that an exceptional sentence outside
4 the standard sentence range should be imposed, the sentence is subject
5 to review only as provided for in RCW 9.94A.585(4).

6 A departure from the standards in RCW 9.94A.589 (1) and (2)
7 governing whether sentences are to be served consecutively or
8 concurrently is an exceptional sentence subject to the limitations in
9 this section, and may be appealed by the offender or the state as set
10 forth in RCW 9.94A.585 (2) through (6).

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.

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

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

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

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

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

33 (g) The operation of the multiple offense policy of RCW 9.94A.589
34 results in a presumptive sentence that is clearly excessive in light of
35 the purpose of this chapter, as expressed in RCW 9.94A.010.

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

1 (2) Aggravating Circumstances

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

4 (b) The defendant knew or should have known that the victim of the
5 current offense was particularly vulnerable or incapable of resistance
6 due to extreme youth, advanced age, disability, ~~((or))~~ ill health, or
7 the lack of a fixed residence.

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

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

13 (i) The current offense involved multiple victims or multiple
14 incidents per victim;

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

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

19 (iv) The defendant used his or her position of trust, confidence,
20 or fiduciary responsibility to facilitate the commission of the current
21 offense.

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

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

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

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

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

37 (v) The current offense involved a high degree of sophistication or

1 planning, occurred over a lengthy period of time, or involved a broad
2 geographic area of disbursement; or

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

7 (f) The current offense included a finding of sexual motivation
8 pursuant to RCW 9.94A.835.

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

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

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

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

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

21 (i) The operation of the multiple offense policy of RCW 9.94A.589
22 results in a presumptive sentence that is clearly too lenient in light
23 of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

28 (k) The offense resulted in the pregnancy of a child victim of
29 rape.

30 (l) The defendant knew that the victim of the current offense was
31 a youth who was not residing with a legal custodian and the defendant
32 established or promoted the relationship for the primary purpose of
33 victimization.

34 (m) The offense was committed with the intent to obstruct or impair
35 human or animal health care or agricultural or forestry research or
36 commercial production.

37 (n) The current offense is trafficking in the first degree or

1 trafficking in the second degree and any victim was a minor at the time
2 of the offense.

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