

2 **E2SHB 2319** - S AMD TO S AMD (S-5375.4/94) - 501

3 By Senators Nelson, Roach, Schow, Anderson, L. Smith and McDonald

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5 On page 26, after line 14 of the amendment, insert the following:

6 "NEW SECTION. **Sec. 401.** The legislature finds that treatment of
7 the emotional problems of victims and families of victims of sex
8 offenses and victims of violent offenses may be impaired by lengthy
9 delay in trial of the accused and the resulting delay in testimony of
10 the victim or the victim's representative. The trauma of the abusive
11 or violent incident is likely to be exacerbated by requiring testimony
12 from a victim who has substantially completed therapy and is forced to
13 relive the incident. The legislature finds that it is necessary to
14 prevent, to the extent reasonably possible, lengthy and unnecessary
15 delays in trial of a person charged with a sex offense or of a violent
16 offense.

17 NEW SECTION. **Sec. 402.** A new section is added to chapter 10.46
18 RCW to read as follows:

19 When a defendant is charged with a violent offense as defined in
20 RCW 9.94A.030 which constitutes a violation of RCW 9A.64.020 or chapter
21 9.68, 9.68A, 9A.32, 9A.36, 9A.40, 9A.42, 9A.44, or 9A.46 RCW, neither
22 the defendant nor the prosecuting attorney may agree to extend the
23 originally scheduled trial date unless, after a hearing, the court
24 finds that there are substantial and compelling reasons for a
25 continuance of the trial date and that the benefit of the postponement
26 outweighs the detriment to the victim or, if the victim is deceased, to
27 the victim's family. At the hearing the court shall consider the
28 testimony of lay witnesses and of expert witnesses, if available,
29 regarding the impact of the continuance on the victim. Whenever the
30 court grants the request for a continuance, the court shall set forth
31 the reasons for its decision in written findings of fact and
32 conclusions of law.

33 **Sec. 403.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to
34 read as follows:

1 If the sentencing court finds that an exceptional sentence outside
2 the standard range should be imposed in accordance with RCW
3 9.94A.120(2), the sentence is subject to review only as provided for in
4 RCW 9.94A.210(4).

5 The following are illustrative factors which the court may consider
6 in the exercise of its discretion to impose an exceptional sentence.
7 The following are illustrative only and are not intended to be
8 exclusive reasons for exceptional sentences.

9 (1) Mitigating Circumstances

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

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

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

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

20 (e) The defendant's capacity to appreciate the wrongfulness of his
21 conduct or to conform his conduct to the requirements of the law, was
22 significantly impaired (voluntary use of drugs or alcohol is excluded).

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

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

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

32 (2) Aggravating Circumstances

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

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

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

4 (i) The current offense involved multiple victims or multiple
5 incidents per victim;

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

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

10 (iv) The defendant used his or her position of trust, confidence,
11 or fiduciary responsibility to facilitate the commission of the current
12 offense.

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

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

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

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

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

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

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

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

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

1 (g) 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; or

4 (h) The current offense is a sexually violent offense as defined by
5 RCW 9.94A.030 and either:

6 (i) The offender committed the current offense within twenty-four
7 months of a conviction or convictions for a sexually violent offense or
8 offenses, whether the offender was an adult or juvenile, when the
9 offender committed the prior sexually violent offense or offenses. The
10 twenty-four month period shall be tolled during any time period the
11 offender is confined in jail, prison, a mental institution, or a
12 juvenile detention or correctional facility, and is not in the
13 community; or

14 (ii) The offender's criminal history includes two prior convictions
15 for sexually violent offenses, whether the offender was an adult or a
16 juvenile when the offender committed the prior sexually violent
17 offenses.

18 When the court imposes an exceptional sentence under subsection
19 (2)(h)(i) or (ii) of this section, the court may sentence the offender
20 to a prison term up to life imprisonment as provided in RCW 9.94A.120.
21 This subsection (2)(h) shall be effective only if the supreme court of
22 Washington in a final decision holds that chapter 71.09 RCW is invalid.

23 **Sec. 404.** RCW 13.40.030 and 1989 c 407 s 3 are each amended to
24 read as follows:

25 (1)(a) The juvenile disposition standards commission shall
26 recommend to the legislature no later than November 1st of each year
27 disposition standards for all offenses. The standards shall establish,
28 in accordance with the purposes of this chapter, ranges which may
29 include terms of confinement and/or community supervision established
30 on the basis of a youth's age, the instant offense, and the history and
31 seriousness of previous offenses, but in no case may the period of
32 confinement and supervision exceed that to which an adult may be
33 subjected for the same offense(s). Standards recommended for offenders
34 listed in RCW 13.40.020(1) shall include a range of confinement which
35 may not be less than thirty days. No standard range may include a
36 period of confinement which includes both more than thirty, and thirty
37 or less, days. Disposition standards recommended by the commission
38 shall provide that in all cases where a youth is sentenced to a term of

1 confinement in excess of thirty days the department may impose an
2 additional period of parole not to exceed eighteen months, except that
3 in the case of a juvenile sentenced for rape in the first or second
4 degree, rape of a child in the first or second degree, child
5 molestation in the first degree, or indecent liberties with forcible
6 compulsion, the parole period shall be twenty-four months. Standards
7 of confinement which may be proposed may relate only to the length of
8 the proposed terms and not to the nature of the security to be imposed.
9 In developing recommended disposition standards, the commission shall
10 consider the capacity of the state juvenile facilities and the
11 projected impact of the proposed standards on that capacity.

12 (b) The secretary shall submit guidelines pertaining to the nature
13 of the security to be imposed on youth placed in his or her custody
14 based on the age, offense(s), and criminal history of the juvenile
15 offender. Such guidelines shall be submitted to the legislature for
16 its review no later than November 1st of each year. At the same time
17 the secretary shall submit a report on security at juvenile facilities
18 during the preceding year. The report shall include the number of
19 escapes from each juvenile facility, the most serious offense for which
20 each escapee had been confined, the number and nature of offenses found
21 to have been committed by juveniles while on escape status, the number
22 of authorized leaves granted, the number of failures to comply with
23 leave requirements, the number and nature of offenses committed while
24 on leave, and the number and nature of offenses committed by juveniles
25 while in the community on minimum security status; to the extent this
26 information is available to the secretary. The department shall
27 include security status definitions in the security guidelines it
28 submits to the legislature pursuant to this section.

29 (2) In developing recommendations for the permissible ranges of
30 confinement under this section the commission shall be subject to the
31 following limitations:

32 (a) Where the maximum term in the range is ninety days or less, the
33 minimum term in the range may be no less than fifty percent of the
34 maximum term in the range;

35 (b) Where the maximum term in the range is greater than ninety days
36 but not greater than one year, the minimum term in the range may be no
37 less than seventy-five percent of the maximum term in the range; and

1 (c) Where the maximum term in the range is more than one year, the
2 minimum term in the range may be no less than eighty percent of the
3 maximum term in the range."

4 Renumber the remaining sections consecutively and correct internal
5 references accordingly.

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7 By Senator

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9 On page 159, line 21 of the title amendment, after "70.190.900,"
10 insert "9.94A.390, 13.40.030,"

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14 On page 160, line 2 of the title amendment, after "43.20A RCW;"
15 insert "adding a new section to chapter 10.46 RCW;"

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