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SENATE BILL 5536

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State of Washington

53rd Legislature

1993 Regular Session

By Senators A. Smith and Quigley

Read first time 02/02/93. Referred to Committee on Law & Justice.

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

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 or her conduct or to conform his or her conduct to the requirements of  
8 the law, was significantly impaired (voluntary use of drugs or alcohol  
9 is excluded).

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

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

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

19 (2) Aggravating Circumstances

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

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

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

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

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

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

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

37 (d) The current offense was a major violation of the Uniform  
38 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
39 trafficking in controlled substances, which was more onerous than the

1 typical offense of its statutory definition: The presence of ANY of  
2 the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

20 (e) The defendant is being sentenced for an offense involving the  
21 use or threatened use of physical violence and poses a future danger of  
22 violent behavior that will not be sufficiently mitigated by a period of  
23 incarceration within the standard range. This finding may be made upon  
24 conviction of any violent offense and must be supported by:

25 (i) A history of similar misconduct. This history may be  
26 established by prior criminal convictions or other competent evidence;  
27 and

28 (ii) A finding that the defendant is not amenable to treatment.  
29 The following are among the factors the court may consider in making  
30 such a finding:

31 (A) The opinion of a mental health professional that the defendant  
32 would likely not be amenable to treatment;

33 (B) The defendant has been refused treatment at all available  
34 facilities;

35 (C) The defendant refuses to cooperate with necessary evaluations  
36 to determine the usefulness of treatment; or

37 (D) The current offense was committed less than six months after  
38 the defendant was released from incarceration for a similar offense.

1        (f) The current offense included a finding of sexual motivation  
2 pursuant to RCW 9.94A.127(~~(f)~~).

3        (~~(f)~~) (g) The offense was part of an ongoing pattern of sexual  
4 abuse of the same victim under the age of eighteen years manifested by  
5 multiple incidents over a prolonged period of time(~~(f)~~).

6        (~~(g)~~) (h) The operation of the multiple offense policy of RCW  
7 9.94A.400 results in a presumptive sentence that is clearly too lenient  
8 in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

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