
HOUSE BILL 2427

State of Washington

61st Legislature

2010 Regular Session

By Representatives Pearson, Hurst, Bailey, Goodman, Kirby, Chandler, Herrera, O'Brien, Warnick, Ross, Condotta, Dammeier, Shea, Klippert, Smith, Walsh, Parker, Jacks, Blake, Rodne, Williams, McCune, Campbell, Johnson, Eddy, Morrell, Kelley, Short, Maxwell, Sullivan, Conway, Roach, Kristiansen, Haler, Sells, Schmick, Ericks, Ormsby, Kretz, Moeller, and Hope; by request of Attorney General

Prefiled 12/07/09. Read first time 01/11/10. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to punishment for domestic violence offenders;
2 amending RCW 9.94A.030 and 9.94A.525; reenacting and amending RCW
3 9.94A.535; creating a new section; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes the substantial
6 and great impact upon society, families, children, and the victims of
7 offenses occurring between cohabitants. The legislature recognizes the
8 continuing nature of domestic violence, and the lasting psychological
9 trauma caused by such violence. The legislature finds that the
10 prevention of domestic violence, and the proper punishment for such
11 offenses, is a compelling state interest that has not been met under
12 current sentencing provisions. Toward this end, this act is necessary
13 to ensure that domestic violence offenders are punished accordingly and
14 that an end to domestic violence can be achieved.

15 **Sec. 2.** RCW 9.94A.030 and 2009 c 375 (ESSB 5288) s 4 are each
16 amended to read as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

1 (1) "Board" means the indeterminate sentence review board created
2 under chapter 9.95 RCW.

3 (2) "Collect," or any derivative thereof, "collect and remit," or
4 "collect and deliver," when used with reference to the department,
5 means that the department, either directly or through a collection
6 agreement authorized by RCW 9.94A.760, is responsible for monitoring
7 and enforcing the offender's sentence with regard to the legal
8 financial obligation, receiving payment thereof from the offender, and,
9 consistent with current law, delivering daily the entire payment to the
10 superior court clerk without depositing it in a departmental account.

11 (3) "Commission" means the sentencing guidelines commission.

12 (4) "Community corrections officer" means an employee of the
13 department who is responsible for carrying out specific duties in
14 supervision of sentenced offenders and monitoring of sentence
15 conditions.

16 (5) "Community custody" means that portion of an offender's
17 sentence of confinement in lieu of earned release time or imposed as
18 part of a sentence under this chapter and served in the community
19 subject to controls placed on the offender's movement and activities by
20 the department.

21 (6) "Community protection zone" means the area within eight hundred
22 eighty feet of the facilities and grounds of a public or private
23 school.

24 (7) "Community restitution" means compulsory service, without
25 compensation, performed for the benefit of the community by the
26 offender.

27 (8) "Confinement" means total or partial confinement.

28 (9) "Conviction" means an adjudication of guilt pursuant to Title
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
30 acceptance of a plea of guilty.

31 (10) "Crime-related prohibition" means an order of a court
32 prohibiting conduct that directly relates to the circumstances of the
33 crime for which the offender has been convicted, and shall not be
34 construed to mean orders directing an offender affirmatively to
35 participate in rehabilitative programs or to otherwise perform
36 affirmative conduct. However, affirmative acts necessary to monitor
37 compliance with the order of a court may be required by the department.

1 (11) "Criminal history" means the list of a defendant's prior
2 convictions and juvenile adjudications, whether in this state, in
3 federal court, or elsewhere.

4 (a) The history shall include, where known, for each conviction (i)
5 whether the defendant has been placed on probation and the length and
6 terms thereof; and (ii) whether the defendant has been incarcerated and
7 the length of incarceration.

8 (b) A conviction may be removed from a defendant's criminal history
9 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
10 a similar out-of-state statute, or if the conviction has been vacated
11 pursuant to a governor's pardon.

12 (c) The determination of a defendant's criminal history is distinct
13 from the determination of an offender score. A prior conviction that
14 was not included in an offender score calculated pursuant to a former
15 version of the sentencing reform act remains part of the defendant's
16 criminal history.

17 (12) "Criminal street gang" means any ongoing organization,
18 association, or group of three or more persons, whether formal or
19 informal, having a common name or common identifying sign or symbol,
20 having as one of its primary activities the commission of criminal
21 acts, and whose members or associates individually or collectively
22 engage in or have engaged in a pattern of criminal street gang
23 activity. This definition does not apply to employees engaged in
24 concerted activities for their mutual aid and protection, or to the
25 activities of labor and bona fide nonprofit organizations or their
26 members or agents.

27 (13) "Criminal street gang associate or member" means any person
28 who actively participates in any criminal street gang and who
29 intentionally promotes, furthers, or assists in any criminal act by the
30 criminal street gang.

31 (14) "Criminal street gang-related offense" means any felony or
32 misdemeanor offense, whether in this state or elsewhere, that is
33 committed for the benefit of, at the direction of, or in association
34 with any criminal street gang, or is committed with the intent to
35 promote, further, or assist in any criminal conduct by the gang, or is
36 committed for one or more of the following reasons:

37 (a) To gain admission, prestige, or promotion within the gang;

1 (b) To increase or maintain the gang's size, membership, prestige,
2 dominance, or control in any geographical area;

3 (c) To exact revenge or retribution for the gang or any member of
4 the gang;

5 (d) To obstruct justice, or intimidate or eliminate any witness
6 against the gang or any member of the gang;

7 (e) To directly or indirectly cause any benefit, aggrandizement,
8 gain, profit, or other advantage for the gang, its reputation,
9 influence, or membership; or

10 (f) To provide the gang with any advantage in, or any control or
11 dominance over any criminal market sector, including, but not limited
12 to, manufacturing, delivering, or selling any controlled substance
13 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
14 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
15 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
16 (chapter 9.68 RCW).

17 (15) "Day fine" means a fine imposed by the sentencing court that
18 equals the difference between the offender's net daily income and the
19 reasonable obligations that the offender has for the support of the
20 offender and any dependents.

21 (16) "Day reporting" means a program of enhanced supervision
22 designed to monitor the offender's daily activities and compliance with
23 sentence conditions, and in which the offender is required to report
24 daily to a specific location designated by the department or the
25 sentencing court.

26 (17) "Department" means the department of corrections.

27 (18) "Determinate sentence" means a sentence that states with
28 exactitude the number of actual years, months, or days of total
29 confinement, of partial confinement, of community custody, the number
30 of actual hours or days of community restitution work, or dollars or
31 terms of a legal financial obligation. The fact that an offender
32 through earned release can reduce the actual period of confinement
33 shall not affect the classification of the sentence as a determinate
34 sentence.

35 (19) "Disposable earnings" means that part of the earnings of an
36 offender remaining after the deduction from those earnings of any
37 amount required by law to be withheld. For the purposes of this
38 definition, "earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonuses, or
2 otherwise, and, notwithstanding any other provision of law making the
3 payments exempt from garnishment, attachment, or other process to
4 satisfy a court-ordered legal financial obligation, specifically
5 includes periodic payments pursuant to pension or retirement programs,
6 or insurance policies of any type, but does not include payments made
7 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
8 or Title 74 RCW.

9 (20) "Domestic violence" has the same meaning as defined in RCW
10 10.99.020(5) and 26.50.010.

11 (21) "Drug offender sentencing alternative" is a sentencing option
12 available to persons convicted of a felony offense other than a violent
13 offense or a sex offense and who are eligible for the option under RCW
14 9.94A.660.

15 ((+21+)) (22) "Drug offense" means:

16 (a) Any felony violation of chapter 69.50 RCW except possession of
17 a controlled substance (RCW 69.50.4013) or forged prescription for a
18 controlled substance (RCW 69.50.403);

19 (b) Any offense defined as a felony under federal law that relates
20 to the possession, manufacture, distribution, or transportation of a
21 controlled substance; or

22 (c) Any out-of-state conviction for an offense that under the laws
23 of this state would be a felony classified as a drug offense under (a)
24 of this subsection.

25 ((+22+)) (23) "Earned release" means earned release from
26 confinement as provided in RCW 9.94A.728.

27 ((+23+)) (24) "Escape" means:

28 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
29 first degree (RCW 9A.76.110), escape in the second degree (RCW
30 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
31 willful failure to return from work release (RCW 72.65.070), or willful
32 failure to be available for supervision by the department while in
33 community custody (RCW 72.09.310); or

34 (b) Any federal or out-of-state conviction for an offense that
35 under the laws of this state would be a felony classified as an escape
36 under (a) of this subsection.

37 ((+24+)) (25) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
2 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
3 run injury-accident (RCW 46.52.020(4)), felony driving while under the
4 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
5 felony physical control of a vehicle while under the influence of
6 intoxicating liquor or any drug (RCW 46.61.504(6)); or

7 (b) Any federal or out-of-state conviction for an offense that
8 under the laws of this state would be a felony classified as a felony
9 traffic offense under (a) of this subsection.

10 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the
11 sentencing court to be paid by the offender to the court over a
12 specific period of time.

13 ~~((+26+))~~ (27) "First-time offender" means any person who has no
14 prior convictions for a felony and is eligible for the first-time
15 offender waiver under RCW 9.94A.650.

16 ~~((+27+))~~ (28) "Home detention" means a program of partial
17 confinement available to offenders wherein the offender is confined in
18 a private residence subject to electronic surveillance.

19 ~~((+28+))~~ (29) "Legal financial obligation" means a sum of money
20 that is ordered by a superior court of the state of Washington for
21 legal financial obligations which may include restitution to the
22 victim, statutorily imposed crime victims' compensation fees as
23 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
24 drug funds, court-appointed attorneys' fees, and costs of defense,
25 fines, and any other financial obligation that is assessed to the
26 offender as a result of a felony conviction. Upon conviction for
27 vehicular assault while under the influence of intoxicating liquor or
28 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
29 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
30 legal financial obligations may also include payment to a public agency
31 of the expense of an emergency response to the incident resulting in
32 the conviction, subject to RCW 38.52.430.

33 ~~((+29+))~~ (30) "Most serious offense" means any of the following
34 felonies or a felony attempt to commit any of the following felonies:

35 (a) Any felony defined under any law as a class A felony or
36 criminal solicitation of or criminal conspiracy to commit a class A
37 felony;

38 (b) Assault in the second degree;

- 1 (c) Assault of a child in the second degree;
2 (d) Child molestation in the second degree;
3 (e) Controlled substance homicide;
4 (f) Extortion in the first degree;
5 (g) Incest when committed against a child under age fourteen;
6 (h) Indecent liberties;
7 (i) Kidnapping in the second degree;
8 (j) Leading organized crime;
9 (k) Manslaughter in the first degree;
10 (l) Manslaughter in the second degree;
11 (m) Promoting prostitution in the first degree;
12 (n) Rape in the third degree;
13 (o) Robbery in the second degree;
14 (p) Sexual exploitation;
15 (q) Vehicular assault, when caused by the operation or driving of
16 a vehicle by a person while under the influence of intoxicating liquor
17 or any drug or by the operation or driving of a vehicle in a reckless
18 manner;
19 (r) Vehicular homicide, when proximately caused by the driving of
20 any vehicle by any person while under the influence of intoxicating
21 liquor or any drug as defined by RCW 46.61.502, or by the operation of
22 any vehicle in a reckless manner;
23 (s) Any other class B felony offense with a finding of sexual
24 motivation;
25 (t) Any other felony with a deadly weapon verdict under RCW
26 9.94A.--- (section 41, chapter 28, Laws of 2009);
27 (u) Any felony offense in effect at any time prior to December 2,
28 1993, that is comparable to a most serious offense under this
29 subsection, or any federal or out-of-state conviction for an offense
30 that under the laws of this state would be a felony classified as a
31 most serious offense under this subsection;
32 (v)(i) A prior conviction for indecent liberties under RCW
33 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
34 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
35 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
36 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
37 (ii) A prior conviction for indecent liberties under RCW
38 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,

1 if: (A) The crime was committed against a child under the age of
2 fourteen; or (B) the relationship between the victim and perpetrator is
3 included in the definition of indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
5 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
6 through July 27, 1997;

7 (w) Any out-of-state conviction for a felony offense with a finding
8 of sexual motivation if the minimum sentence imposed was ten years or
9 more; provided that the out-of-state felony offense must be comparable
10 to a felony offense under Title 9 or 9A RCW and the out-of-state
11 definition of sexual motivation must be comparable to the definition of
12 sexual motivation contained in this section.

13 ~~((+30+))~~ (31) "Nonviolent offense" means an offense which is not a
14 violent offense.

15 ~~((+31+))~~ (32) "Offender" means a person who has committed a felony
16 established by state law and is eighteen years of age or older or is
17 less than eighteen years of age but whose case is under superior court
18 jurisdiction under RCW 13.04.030 or has been transferred by the
19 appropriate juvenile court to a criminal court pursuant to RCW
20 13.40.110. In addition, for the purpose of community custody
21 requirements under this chapter, "offender" also means a misdemeanor or
22 gross misdemeanor probationer convicted of an offense included in RCW
23 9.94A.501(1) and ordered by a superior court to probation under the
24 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
25 9.95.210. Throughout this chapter, the terms "offender" and
26 "defendant" are used interchangeably.

27 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more
28 than one year in a facility or institution operated or utilized under
29 contract by the state or any other unit of government, or, if home
30 detention or work crew has been ordered by the court, in an approved
31 residence, for a substantial portion of each day with the balance of
32 the day spent in the community. Partial confinement includes work
33 release, home detention, work crew, and a combination of work crew and
34 home detention.

35 ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:

36 (a) The commission, attempt, conspiracy, or solicitation of, or any
37 prior juvenile adjudication of or adult conviction of, two or more of
38 the following criminal street gang-related offenses:

1 (i) Any "serious violent" felony offense as defined in this
2 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
3 Child 1 (RCW 9A.36.120);
4 (ii) Any "violent" offense as defined by this section, excluding
5 Assault of a Child 2 (RCW 9A.36.130);
6 (iii) Deliver or Possession with Intent to Deliver a Controlled
7 Substance (chapter 69.50 RCW);
8 (iv) Any violation of the firearms and dangerous weapon act
9 (chapter 9.41 RCW);
10 (v) Theft of a Firearm (RCW 9A.56.300);
11 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
12 (vii) Malicious Harassment (RCW 9A.36.080);
13 (viii) Harassment where a subsequent violation or deadly threat is
14 made (RCW 9A.46.020(2)(b));
15 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
16 (x) Any felony conviction by a person eighteen years of age or
17 older with a special finding of involving a juvenile in a felony
18 offense under RCW 9.94A.833;
19 (xi) Residential Burglary (RCW 9A.52.025);
20 (xii) Burglary 2 (RCW 9A.52.030);
21 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
22 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
23 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
24 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
25 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
26 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
27 9A.56.075);
28 (xix) Extortion 1 (RCW 9A.56.120);
29 (xx) Extortion 2 (RCW 9A.56.130);
30 (xxi) Intimidating a Witness (RCW 9A.72.110);
31 (xxii) Tampering with a Witness (RCW 9A.72.120);
32 (xxiii) Reckless Endangerment (RCW 9A.36.050);
33 (xxiv) Coercion (RCW 9A.36.070);
34 (xxv) Harassment (RCW 9A.46.020); or
35 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
36 (b) That at least one of the offenses listed in (a) of this
37 subsection shall have occurred after July 1, 2008;

1 (c) That the most recent committed offense listed in (a) of this
2 subsection occurred within three years of a prior offense listed in (a)
3 of this subsection; and

4 (d) Of the offenses that were committed in (a) of this subsection,
5 the offenses occurred on separate occasions or were committed by two or
6 more persons.

7 (~~(+34+)~~) (35) "Persistent offender" is an offender who:

8 (a)(i) Has been convicted in this state of any felony considered a
9 most serious offense; and

10 (ii) Has, before the commission of the offense under (a) of this
11 subsection, been convicted as an offender on at least two separate
12 occasions, whether in this state or elsewhere, of felonies that under
13 the laws of this state would be considered most serious offenses and
14 would be included in the offender score under RCW 9.94A.525; provided
15 that of the two or more previous convictions, at least one conviction
16 must have occurred before the commission of any of the other most
17 serious offenses for which the offender was previously convicted; or

18 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
19 of a child in the first degree, child molestation in the first degree,
20 rape in the second degree, rape of a child in the second degree, or
21 indecent liberties by forcible compulsion; (B) any of the following
22 offenses with a finding of sexual motivation: Murder in the first
23 degree, murder in the second degree, homicide by abuse, kidnapping in
24 the first degree, kidnapping in the second degree, assault in the first
25 degree, assault in the second degree, assault of a child in the first
26 degree, assault of a child in the second degree, or burglary in the
27 first degree; or (C) an attempt to commit any crime listed in this
28 subsection (~~(+34+)~~) (35)(b)(i); and

29 (ii) Has, before the commission of the offense under (b)(i) of this
30 subsection, been convicted as an offender on at least one occasion,
31 whether in this state or elsewhere, of an offense listed in (b)(i) of
32 this subsection or any federal or out-of-state offense or offense under
33 prior Washington law that is comparable to the offenses listed in
34 (b)(i) of this subsection. A conviction for rape of a child in the
35 first degree constitutes a conviction under (b)(i) of this subsection
36 only when the offender was sixteen years of age or older when the
37 offender committed the offense. A conviction for rape of a child in

1 the second degree constitutes a conviction under (b)(i) of this
2 subsection only when the offender was eighteen years of age or older
3 when the offender committed the offense.

4 ~~((+35+))~~ (36) "Predatory" means: (a) The perpetrator of the crime
5 was a stranger to the victim, as defined in this section; (b) the
6 perpetrator established or promoted a relationship with the victim
7 prior to the offense and the victimization of the victim was a
8 significant reason the perpetrator established or promoted the
9 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
10 volunteer, or other person in authority in any public or private school
11 and the victim was a student of the school under his or her authority
12 or supervision. For purposes of this subsection, "school" does not
13 include home-based instruction as defined in RCW 28A.225.010; (ii) a
14 coach, trainer, volunteer, or other person in authority in any
15 recreational activity and the victim was a participant in the activity
16 under his or her authority or supervision; or (iii) a pastor, elder,
17 volunteer, or other person in authority in any church or religious
18 organization, and the victim was a member or participant of the
19 organization under his or her authority.

20 ~~((+36+))~~ (37) "Private school" means a school regulated under
21 chapter 28A.195 or 28A.205 RCW.

22 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW
23 28A.150.010.

24 ~~((+38+))~~ (39) "Restitution" means a specific sum of money ordered
25 by the sentencing court to be paid by the offender to the court over a
26 specified period of time as payment of damages. The sum may include
27 both public and private costs.

28 ~~((+39+))~~ (40) "Risk assessment" means the application of the risk
29 instrument recommended to the department by the Washington state
30 institute for public policy as having the highest degree of predictive
31 accuracy for assessing an offender's risk of reoffense.

32 ~~((+40+))~~ (41) "Serious domestic violence offense" means:
33 (a)(i) Nonfelony domestic violence assault (RCW 9A.36.041);
34 (ii) Nonfelony domestic violence violation of a court order (no
35 contact order under chapter 10.99 RCW or domestic violence protection
36 order issued under chapter 26.09, 26.10, 26.26, or 26.50 RCW);
37 (iii) Nonfelony domestic violence harassment (RCW 9A.46.020); or
38 (iv) Nonfelony domestic violence stalking (RCW 9A.46.110); or

1 (b) Any federal, out-of-state, tribal court, military, county, or
2 municipal conviction for an offense that under the laws of this state
3 would be classified as a serious domestic violence offense under (a) of
4 this subsection.

5 (42) "Serious traffic offense" means:

6 (a) Nonfelony driving while under the influence of intoxicating
7 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
8 while under the influence of intoxicating liquor or any drug (RCW
9 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
10 attended vehicle (RCW 46.52.020(5)); or

11 (b) Any federal, out-of-state, county, or municipal conviction for
12 an offense that under the laws of this state would be classified as a
13 serious traffic offense under (a) of this subsection.

14 ~~((41))~~ (43) "Serious violent offense" is a subcategory of violent
15 offense and means:

16 (a)(i) Murder in the first degree;

17 (ii) Homicide by abuse;

18 (iii) Murder in the second degree;

19 (iv) Manslaughter in the first degree;

20 (v) Assault in the first degree;

21 (vi) Kidnapping in the first degree;

22 (vii) Rape in the first degree;

23 (viii) Assault of a child in the first degree; or

24 (ix) An attempt, criminal solicitation, or criminal conspiracy to
25 commit one of these felonies; or

26 (b) Any federal or out-of-state conviction for an offense that
27 under the laws of this state would be a felony classified as a serious
28 violent offense under (a) of this subsection.

29 ~~((42))~~ (44) "Sex offense" means:

30 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
31 RCW 9A.44.130(12);

32 (ii) A violation of RCW 9A.64.020;

33 (iii) A felony that is a violation of chapter 9.68A RCW other than
34 RCW 9.68A.080; or

35 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
36 criminal solicitation, or criminal conspiracy to commit such crimes;

37 (b) Any conviction for a felony offense in effect at any time prior

1 to July 1, 1976, that is comparable to a felony classified as a sex
2 offense in (a) of this subsection;

3 (c) A felony with a finding of sexual motivation under RCW
4 9.94A.835 or 13.40.135; or

5 (d) Any federal or out-of-state conviction for an offense that
6 under the laws of this state would be a felony classified as a sex
7 offense under (a) of this subsection.

8 ~~((43))~~ (45) "Sexual motivation" means that one of the purposes
9 for which the defendant committed the crime was for the purpose of his
10 or her sexual gratification.

11 ~~((44))~~ (46) "Standard sentence range" means the sentencing
12 court's discretionary range in imposing a nonappealable sentence.

13 ~~((45))~~ (47) "Statutory maximum sentence" means the maximum length
14 of time for which an offender may be confined as punishment for a crime
15 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
16 the crime, or other statute defining the maximum penalty for a crime.

17 ~~((46))~~ (48) "Stranger" means that the victim did not know the
18 offender twenty-four hours before the offense.

19 ~~((47))~~ (49) "Total confinement" means confinement inside the
20 physical boundaries of a facility or institution operated or utilized
21 under contract by the state or any other unit of government for twenty-
22 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

23 ~~((48))~~ (50) "Transition training" means written and verbal
24 instructions and assistance provided by the department to the offender
25 during the two weeks prior to the offender's successful completion of
26 the work ethic camp program. The transition training shall include
27 instructions in the offender's requirements and obligations during the
28 offender's period of community custody.

29 ~~((49))~~ (51) "Victim" means any person who has sustained
30 emotional, psychological, physical, or financial injury to person or
31 property as a direct result of the crime charged.

32 ~~((50))~~ (52) "Violent offense" means:

33 (a) Any of the following felonies:

34 (i) Any felony defined under any law as a class A felony or an
35 attempt to commit a class A felony;

36 (ii) Criminal solicitation of or criminal conspiracy to commit a
37 class A felony;

38 (iii) Manslaughter in the first degree;

1 (iv) Manslaughter in the second degree;
2 (v) Indecent liberties if committed by forcible compulsion;
3 (vi) Kidnapping in the second degree;
4 (vii) Arson in the second degree;
5 (viii) Assault in the second degree;
6 (ix) Assault of a child in the second degree;
7 (x) Extortion in the first degree;
8 (xi) Robbery in the second degree;
9 (xii) Drive-by shooting;
10 (xiii) Vehicular assault, when caused by the operation or driving
11 of a vehicle by a person while under the influence of intoxicating
12 liquor or any drug or by the operation or driving of a vehicle in a
13 reckless manner; and
14 (xiv) Vehicular homicide, when proximately caused by the driving of
15 any vehicle by any person while under the influence of intoxicating
16 liquor or any drug as defined by RCW 46.61.502, or by the operation of
17 any vehicle in a reckless manner;
18 (b) Any conviction for a felony offense in effect at any time prior
19 to July 1, 1976, that is comparable to a felony classified as a violent
20 offense in (a) of this subsection; and
21 (c) Any federal or out-of-state conviction for an offense that
22 under the laws of this state would be a felony classified as a violent
23 offense under (a) or (b) of this subsection.
24 ~~((+51+))~~ (53) "Work crew" means a program of partial confinement
25 consisting of civic improvement tasks for the benefit of the community
26 that complies with RCW 9.94A.725.
27 ~~((+52+))~~ (54) "Work ethic camp" means an alternative incarceration
28 program as provided in RCW 9.94A.690 designed to reduce recidivism and
29 lower the cost of corrections by requiring offenders to complete a
30 comprehensive array of real-world job and vocational experiences,
31 character-building work ethics training, life management skills
32 development, substance abuse rehabilitation, counseling, literacy
33 training, and basic adult education.
34 ~~((+53+))~~ (55) "Work release" means a program of partial confinement
35 available to offenders who are employed or engaged as a student in a
36 regular course of study at school.

1 **Sec. 3.** RCW 9.94A.525 and 2008 c 231 s 3 are each amended to read
2 as follows:

3 The offender score is measured on the horizontal axis of the
4 sentencing grid. The offender score rules are as follows:

5 The offender score is the sum of points accrued under this section
6 rounded down to the nearest whole number.

7 (1) A prior conviction is a conviction which exists before the date
8 of sentencing for the offense for which the offender score is being
9 computed. Convictions entered or sentenced on the same date as the
10 conviction for which the offender score is being computed shall be
11 deemed "other current offenses" within the meaning of RCW 9.94A.589.

12 (2)(a) Class A and sex prior felony convictions shall always be
13 included in the offender score.

14 (b) Class B prior felony convictions other than sex offenses shall
15 not be included in the offender score, if since the last date of
16 release from confinement (including full-time residential treatment)
17 pursuant to a felony conviction, if any, or entry of judgment and
18 sentence, the offender had spent ten consecutive years in the community
19 without committing any crime that subsequently results in a conviction.

20 (c) Except as provided in (e) of this subsection, class C prior
21 felony convictions other than sex offenses shall not be included in the
22 offender score if, since the last date of release from confinement
23 (including full-time residential treatment) pursuant to a felony
24 conviction, if any, or entry of judgment and sentence, the offender had
25 spent five consecutive years in the community without committing any
26 crime that subsequently results in a conviction.

27 (d) Except as provided in (e) of this subsection, serious traffic
28 convictions shall not be included in the offender score if, since the
29 last date of release from confinement (including full-time residential
30 treatment) pursuant to a felony conviction, if any, or entry of
31 judgment and sentence, the offender spent five years in the community
32 without committing any crime that subsequently results in a conviction.

33 (e) If the present conviction is felony driving while under the
34 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
35 felony physical control of a vehicle while under the influence of
36 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
37 of felony driving while under the influence of intoxicating liquor or
38 any drug, felony physical control of a vehicle while under the

1 influence of intoxicating liquor or any drug, and serious traffic
2 offenses shall be included in the offender score if: (i) The prior
3 convictions were committed within five years since the last date of
4 release from confinement (including full-time residential treatment) or
5 entry of judgment and sentence; or (ii) the prior convictions would be
6 considered "prior offenses within ten years" as defined in RCW
7 46.61.5055.

8 (f) Serious domestic violence convictions shall not be included in
9 the offender score if, since the last date of release from confinement
10 or entry of judgment and sentence, the offender spent ten years in the
11 community without committing any crime that subsequently results in a
12 conviction.

13 (g) This subsection applies to both adult and juvenile prior
14 convictions.

15 (3) Out-of-state convictions for offenses shall be classified
16 according to the comparable offense definitions and sentences provided
17 by Washington law. Federal convictions for offenses shall be
18 classified according to the comparable offense definitions and
19 sentences provided by Washington law. If there is no clearly
20 comparable offense under Washington law or the offense is one that is
21 usually considered subject to exclusive federal jurisdiction, the
22 offense shall be scored as a class C felony equivalent if it was a
23 felony under the relevant federal statute.

24 (4) Score prior convictions for felony anticipatory offenses
25 (attempts, criminal solicitations, and criminal conspiracies) the same
26 as if they were convictions for completed offenses.

27 (5)(a) In the case of multiple prior convictions, for the purpose
28 of computing the offender score, count all convictions separately,
29 except:

30 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
31 encompass the same criminal conduct, shall be counted as one offense,
32 the offense that yields the highest offender score. The current
33 sentencing court shall determine with respect to other prior adult
34 offenses for which sentences were served concurrently or prior juvenile
35 offenses for which sentences were served consecutively, whether those
36 offenses shall be counted as one offense or as separate offenses using
37 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
38 if the court finds that they shall be counted as one offense, then the

1 offense that yields the highest offender score shall be used. The
2 current sentencing court may presume that such other prior offenses
3 were not the same criminal conduct from sentences imposed on separate
4 dates, or in separate counties or jurisdictions, or in separate
5 complaints, indictments, or informations;

6 (ii) In the case of multiple prior convictions for offenses
7 committed before July 1, 1986, for the purpose of computing the
8 offender score, count all adult convictions served concurrently as one
9 offense, and count all juvenile convictions entered on the same date as
10 one offense. Use the conviction for the offense that yields the
11 highest offender score.

12 (b) As used in this subsection (5), "served concurrently" means
13 that: (i) The latter sentence was imposed with specific reference to
14 the former; (ii) the concurrent relationship of the sentences was
15 judicially imposed; and (iii) the concurrent timing of the sentences
16 was not the result of a probation or parole revocation on the former
17 offense.

18 (6) If the present conviction is one of the anticipatory offenses
19 of criminal attempt, solicitation, or conspiracy, count each prior
20 conviction as if the present conviction were for a completed offense.
21 When these convictions are used as criminal history, score them the
22 same as a completed crime.

23 (7) If the present conviction is for a nonviolent offense and not
24 covered by subsection (11), (~~((12), or))~~ (13), or (14) of this section,
25 count one point for each adult prior felony conviction and one point
26 for each juvenile prior violent felony conviction and 1/2 point for
27 each juvenile prior nonviolent felony conviction.

28 (8) If the present conviction is for a violent offense and not
29 covered in subsection (9), (10), (11), (~~((12), or))~~ (13), or (14) of
30 this section, count two points for each prior adult and juvenile
31 violent felony conviction, one point for each prior adult nonviolent
32 felony conviction, and 1/2 point for each prior juvenile nonviolent
33 felony conviction.

34 (9) If the present conviction is for a serious violent offense,
35 count three points for prior adult and juvenile convictions for crimes
36 in this category, two points for each prior adult and juvenile violent
37 conviction (not already counted), one point for each prior adult

1 nonviolent felony conviction, and 1/2 point for each prior juvenile
2 nonviolent felony conviction.

3 (10) If the present conviction is for Burglary 1, count prior
4 convictions as in subsection (8) of this section; however count two
5 points for each prior adult Burglary 2 or residential burglary
6 conviction, and one point for each prior juvenile Burglary 2 or
7 residential burglary conviction.

8 (11) If the present conviction is for a felony traffic offense
9 count two points for each adult or juvenile prior conviction for
10 Vehicular Homicide or Vehicular Assault; for each felony offense count
11 one point for each adult and 1/2 point for each juvenile prior
12 conviction; for each serious traffic offense, other than those used for
13 an enhancement pursuant to RCW 46.61.520(2), count one point for each
14 adult and 1/2 point for each juvenile prior conviction; count one point
15 for each adult and 1/2 point for each juvenile prior conviction for
16 operation of a vessel while under the influence of intoxicating liquor
17 or any drug.

18 (12) If the present conviction is for a felony domestic violence
19 offense where domestic violence as defined in RCW 9.94A.030 was plead
20 and proven, count priors as in subsections (7) through (11) and (13)
21 through (18) of this section; however, count two points for each adult
22 and juvenile prior conviction for felony violation of a no contact
23 order/protection order (assault 1 or 2), felony harassment domestic
24 violence, felony stalking domestic violence, Burglary 1 domestic
25 violence, Kidnapping 1 and 2 domestic violence, unlawful imprisonment
26 domestic violence, Robbery 1 and 2 domestic violence, Assault 2 and 3
27 domestic violence, or Arson 1 and 2 domestic violence; count one point
28 for felony violation of a no contact order (two prior misdemeanor
29 offenses), residential burglary domestic violence; count one point for
30 each serious domestic violence offense where serious domestic violence
31 as defined in RCW 9.94A.030 was plead and proven, other than those
32 convictions that are an element of the offense being scored.

33 (13) If the present conviction is for homicide by watercraft or
34 assault by watercraft count two points for each adult or juvenile prior
35 conviction for homicide by watercraft or assault by watercraft; for
36 each felony offense count one point for each adult and 1/2 point for
37 each juvenile prior conviction; count one point for each adult and 1/2
38 point for each juvenile prior conviction for driving under the

1 influence of intoxicating liquor or any drug, actual physical control
2 of a motor vehicle while under the influence of intoxicating liquor or
3 any drug, or operation of a vessel while under the influence of
4 intoxicating liquor or any drug.

5 ~~((+13+))~~ (14) If the present conviction is for manufacture of
6 methamphetamine count three points for each adult prior manufacture of
7 methamphetamine conviction and two points for each juvenile manufacture
8 of methamphetamine offense. If the present conviction is for a drug
9 offense and the offender has a criminal history that includes a sex
10 offense or serious violent offense, count three points for each adult
11 prior felony drug offense conviction and two points for each juvenile
12 drug offense. All other adult and juvenile felonies are scored as in
13 subsection (8) of this section if the current drug offense is violent,
14 or as in subsection (7) of this section if the current drug offense is
15 nonviolent.

16 ~~((+14+))~~ (15) If the present conviction is for Escape from
17 Community Custody, RCW 72.09.310, count only prior escape convictions
18 in the offender score. Count adult prior escape convictions as one
19 point and juvenile prior escape convictions as 1/2 point.

20 ~~((+15+))~~ (16) If the present conviction is for Escape 1, RCW
21 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as
22 one point and juvenile prior convictions as 1/2 point.

23 ~~((+16+))~~ (17) If the present conviction is for Burglary 2 or
24 residential burglary, count priors as in subsection (7) of this
25 section; however, count two points for each adult and juvenile prior
26 Burglary 1 conviction, two points for each adult prior Burglary 2 or
27 residential burglary conviction, and one point for each juvenile prior
28 Burglary 2 or residential burglary conviction.

29 ~~((+17+))~~ (18) If the present conviction is for a sex offense, count
30 priors as in subsections (7) through (11) and ~~((+13+))~~ (14) through
31 ~~((+16+))~~ (17) of this section; however count three points for each
32 adult and juvenile prior sex offense conviction.

33 ~~((+18+))~~ (19) If the present conviction is for failure to register
34 as a sex offender under RCW 9A.44.130(11), count priors as in
35 subsections (7) through (11) and ~~((+13+))~~ (14) through ~~((+16+))~~ (17) of
36 this section; however count three points for each adult and juvenile
37 prior sex offense conviction, excluding prior convictions for failure

1 to register as a sex offender under RCW 9A.44.130(11), which shall
2 count as one point.

3 ~~((+19))~~ (20) If the present conviction is for an offense committed
4 while the offender was under community custody, add one point. For
5 purposes of this subsection, community custody includes community
6 placement or postrelease supervision, as defined in chapter 9.94B RCW.

7 ~~((+20))~~ (21) If the present conviction is for Theft of a Motor
8 Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
9 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
10 priors as in subsections (7) through ~~((+18))~~ (11) and (13) through
11 (19) of this section; however count one point for prior convictions of
12 Vehicle Prowling 2, and three points for each adult and juvenile prior
13 Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession
14 of Stolen Property 1 (of a motor vehicle), Possession of Stolen
15 Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession
16 of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or
17 Taking a Motor Vehicle Without Permission 2 conviction.

18 ~~((+21))~~ (22) The fact that a prior conviction was not included in
19 an offender's offender score or criminal history at a previous
20 sentencing shall have no bearing on whether it is included in the
21 criminal history or offender score for the current offense. Prior
22 convictions that were not counted in the offender score or included in
23 criminal history under repealed or previous versions of the sentencing
24 reform act shall be included in criminal history and shall count in the
25 offender score if the current version of the sentencing reform act
26 requires including or counting those convictions. Prior convictions
27 that were not included in criminal history or in the offender score
28 shall be included upon any resentencing to ensure imposition of an
29 accurate sentence.

30 **Sec. 4.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
31 each reenacted and amended to read as follows:

32 The court may impose a sentence outside the standard sentence range
33 for an offense if it finds, considering the purpose of this chapter,
34 that there are substantial and compelling reasons justifying an
35 exceptional sentence. Facts supporting aggravated sentences, other
36 than the fact of a prior conviction, shall be determined pursuant to
37 the provisions of RCW 9.94A.537.

1 Whenever a sentence outside the standard sentence range is imposed,
2 the court shall set forth the reasons for its decision in written
3 findings of fact and conclusions of law. A sentence outside the
4 standard sentence range shall be a determinate sentence.

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

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

13 (1) Mitigating Circumstances - Court to Consider

14 The court may impose an exceptional sentence below the standard
15 range if it finds that mitigating circumstances are established by a
16 preponderance of the evidence. The following are illustrative only and
17 are not intended to be exclusive reasons for exceptional sentences.

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.589
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 - Considered and Imposed by the Court
5 The trial court may impose an aggravated exceptional sentence
6 without a finding of fact by a jury under the following circumstances:

7 (a) The defendant and the state both stipulate that justice is best
8 served by the imposition of an exceptional sentence outside the
9 standard range, and the court finds the exceptional sentence to be
10 consistent with and in furtherance of the interests of justice and the
11 purposes of the sentencing reform act.

12 (b) The defendant's prior unscored misdemeanor or prior unscored
13 foreign criminal history results in a presumptive sentence that is
14 clearly too lenient in light of the purpose of this chapter, as
15 expressed in RCW 9.94A.010.

16 (c) The defendant has committed multiple current offenses and the
17 defendant's high offender score results in some of the current offenses
18 going unpunished.

19 (d) The failure to consider the defendant's prior criminal history
20 which was omitted from the offender score calculation pursuant to RCW
21 9.94A.525 results in a presumptive sentence that is clearly too
22 lenient.

23 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
24 the Court

25 Except for circumstances listed in subsection (2) of this section,
26 the following circumstances are an exclusive list of factors that can
27 support a sentence above the standard range. Such facts should be
28 determined by procedures specified in RCW 9.94A.537.

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

31 (b) The defendant knew or should have known that the victim of the
32 current offense was particularly vulnerable or incapable of resistance.

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

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

- 1 (i) The current offense involved multiple victims or multiple
2 incidents per victim;
- 3 (ii) The current offense involved attempted or actual monetary loss
4 substantially greater than typical for the offense;
- 5 (iii) The current offense involved a high degree of sophistication
6 or planning or occurred over a lengthy period of time; or
- 7 (iv) The defendant used his or her position of trust, confidence,
8 or fiduciary responsibility to facilitate the commission of the current
9 offense.
- 10 (e) The current offense was a major violation of the Uniform
11 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
12 trafficking in controlled substances, which was more onerous than the
13 typical offense of its statutory definition: The presence of ANY of
14 the following may identify a current offense as a major VUCSA:
- 15 (i) The current offense involved at least three separate
16 transactions in which controlled substances were sold, transferred, or
17 possessed with intent to do so;
- 18 (ii) The current offense involved an attempted or actual sale or
19 transfer of controlled substances in quantities substantially larger
20 than for personal use;
- 21 (iii) The current offense involved the manufacture of controlled
22 substances for use by other parties;
- 23 (iv) The circumstances of the current offense reveal the offender
24 to have occupied a high position in the drug distribution hierarchy;
- 25 (v) The current offense involved a high degree of sophistication or
26 planning, occurred over a lengthy period of time, or involved a broad
27 geographic area of disbursement; or
- 28 (vi) The offender used his or her position or status to facilitate
29 the commission of the current offense, including positions of trust,
30 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
31 other medical professional).
- 32 (f) The current offense included a finding of sexual motivation
33 pursuant to RCW 9.94A.835.
- 34 (g) The offense was part of an ongoing pattern of sexual abuse of
35 the same victim under the age of eighteen years manifested by multiple
36 incidents over a prolonged period of time.
- 37 (h) The current offense involved domestic violence, as defined in
38 RCW 10.99.020, and one or more of the following was present:

1 (i) The offense was part of an ongoing pattern of psychological,
2 physical, or sexual abuse of ~~((the))~~ a victim or multiple victims
3 manifested by multiple incidents over a prolonged period of time;

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

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

8 (i) The offense resulted in the pregnancy of a child victim of
9 rape.

10 (j) The defendant knew that the victim of the current offense was
11 a youth who was not residing with a legal custodian and the defendant
12 established or promoted the relationship for the primary purpose of
13 victimization.

14 (k) The offense was committed with the intent to obstruct or impair
15 human or animal health care or agricultural or forestry research or
16 commercial production.

17 (l) The current offense is trafficking in the first degree or
18 trafficking in the second degree and any victim was a minor at the time
19 of the offense.

20 (m) The offense involved a high degree of sophistication or
21 planning.

22 (n) The defendant used his or her position of trust, confidence, or
23 fiduciary responsibility to facilitate the commission of the current
24 offense.

25 (o) The defendant committed a current sex offense, has a history of
26 sex offenses, and is not amenable to treatment.

27 (p) The offense involved an invasion of the victim's privacy.

28 (q) The defendant demonstrated or displayed an egregious lack of
29 remorse.

30 (r) The offense involved a destructive and foreseeable impact on
31 persons other than the victim.

32 (s) The defendant committed the offense to obtain or maintain his
33 or her membership or to advance his or her position in the hierarchy of
34 an organization, association, or identifiable group.

35 (t) The defendant committed the current offense shortly after being
36 released from incarceration.

37 (u) The current offense is a burglary and the victim of the

1 burglary was present in the building or residence when the crime was
2 committed.

3 (v) The offense was committed against a law enforcement officer who
4 was performing his or her official duties at the time of the offense,
5 the offender knew that the victim was a law enforcement officer, and
6 the victim's status as a law enforcement officer is not an element of
7 the offense.

8 (w) The defendant committed the offense against a victim who was
9 acting as a good samaritan.

10 (x) The defendant committed the offense against a public official
11 or officer of the court in retaliation of the public official's
12 performance of his or her duty to the criminal justice system.

13 (y) The victim's injuries substantially exceed the level of bodily
14 harm necessary to satisfy the elements of the offense. This aggravator
15 is not an exception to RCW 9.94A.530(2).

16 (z)(i)(A) The current offense is theft in the first degree, theft
17 in the second degree, possession of stolen property in the first
18 degree, or possession of stolen property in the second degree; (B) the
19 stolen property involved is metal property; and (C) the property damage
20 to the victim caused in the course of the theft of metal property is
21 more than three times the value of the stolen metal property, or the
22 theft of the metal property creates a public hazard.

23 (ii) For purposes of this subsection, "metal property" means
24 commercial metal property, private metal property, or nonferrous metal
25 property, as defined in RCW 19.290.010.

26 (aa) The defendant committed the offense with the intent to
27 directly or indirectly cause any benefit, aggrandizement, gain, profit,
28 or other advantage to or for a criminal street gang as defined in RCW
29 9.94A.030, its reputation, influence, or membership.

30 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2011.

--- END ---