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HOUSE BILL 1148

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State of Washington

64th Legislature

2015 Regular Session

By Representative Goodman

Read first time 01/14/15. Referred to Committee on Public Safety.

1 AN ACT Relating to determining sentences for multiple offenses  
2 and enhancements; and amending RCW 9.94A.533, 9.94A.535, and  
3 9.94A.589.

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

5 **Sec. 1.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to  
6 read as follows:

7 (1) The provisions of this section apply to the standard sentence  
8 ranges determined by RCW 9.94A.510 or 9.94A.517.

9 (2) For persons convicted of the anticipatory offenses of  
10 criminal attempt, solicitation, or conspiracy under chapter 9A.28  
11 RCW, the standard sentence range is determined by locating the  
12 sentencing grid sentence range defined by the appropriate offender  
13 score and the seriousness level of the completed crime, and  
14 multiplying the range by seventy-five percent.

15 (3) The following additional times shall be added to the standard  
16 sentence range for felony crimes committed after July 23, 1995, if  
17 the offender or an accomplice was armed with a firearm as defined in  
18 RCW 9.41.010 and the offender is being sentenced for one of the  
19 crimes listed in this subsection as eligible for any firearm  
20 enhancements based on the classification of the completed felony  
21 crime. If the offender is being sentenced for more than one offense,

1 the firearm enhancement or enhancements must be added to the total  
2 period of confinement for all offenses, regardless of which  
3 underlying offense is subject to a firearm enhancement. If the  
4 offender or an accomplice was armed with a firearm as defined in RCW  
5 9.41.010 and the offender is being sentenced for an anticipatory  
6 offense under chapter 9A.28 RCW to commit one of the crimes listed in  
7 this subsection as eligible for any firearm enhancements, the  
8 following additional times shall be added to the standard sentence  
9 range determined under subsection (2) of this section based on the  
10 felony crime of conviction as classified under RCW 9A.28.020:

11 (a) Five years for any felony defined under any law as a class A  
12 felony or with a statutory maximum sentence of at least twenty years,  
13 or both, and not covered under (f) of this subsection;

14 (b) Three years for any felony defined under any law as a class B  
15 felony or with a statutory maximum sentence of ten years, or both,  
16 and not covered under (f) of this subsection;

17 (c) Eighteen months for any felony defined under any law as a  
18 class C felony or with a statutory maximum sentence of five years, or  
19 both, and not covered under (f) of this subsection;

20 (d) If the offender is being sentenced for any firearm  
21 enhancements under (a), (b), and/or (c) of this subsection and the  
22 offender has previously been sentenced for any deadly weapon  
23 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
24 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
25 both, all firearm enhancements under this subsection shall be twice  
26 the amount of the enhancement listed;

27 (e) Notwithstanding any other provision of law, all firearm  
28 enhancements under this section are mandatory, shall be served in  
29 total confinement, and shall run consecutively to all other  
30 sentencing provisions, including other firearm or deadly weapon  
31 enhancements, for all offenses sentenced under this chapter. However,  
32 (~~whether or not a mandatory minimum term has expired~~) the court may  
33 grant an exceptional sentence pursuant to RCW 9.94A.535(1)(g), and an  
34 offender serving a sentence under this subsection may be granted an  
35 extraordinary medical placement when authorized under RCW  
36 9.94A.728(3) whether or not the mandatory minimum term has expired;

37 (f) The firearm enhancements in this section shall apply to all  
38 felony crimes except the following: Possession of a machine gun,  
39 possessing a stolen firearm, drive-by shooting, theft of a firearm,

1 unlawful possession of a firearm in the first and second degree, and  
2 use of a machine gun in a felony;

3 (g) If the standard sentence range under this section exceeds the  
4 statutory maximum sentence for the offense, the statutory maximum  
5 sentence shall be the presumptive sentence unless the offender is a  
6 persistent offender. If the addition of a firearm enhancement  
7 increases the sentence so that it would exceed the statutory maximum  
8 for the offense, the portion of the sentence representing the  
9 enhancement may not be reduced.

10 (4) The following additional times shall be added to the standard  
11 sentence range for felony crimes committed after July 23, 1995, if  
12 the offender or an accomplice was armed with a deadly weapon other  
13 than a firearm as defined in RCW 9.41.010 and the offender is being  
14 sentenced for one of the crimes listed in this subsection as eligible  
15 for any deadly weapon enhancements based on the classification of the  
16 completed felony crime. If the offender is being sentenced for more  
17 than one offense, the deadly weapon enhancement or enhancements must  
18 be added to the total period of confinement for all offenses,  
19 regardless of which underlying offense is subject to a deadly weapon  
20 enhancement. If the offender or an accomplice was armed with a deadly  
21 weapon other than a firearm as defined in RCW 9.41.010 and the  
22 offender is being sentenced for an anticipatory offense under chapter  
23 9A.28 RCW to commit one of the crimes listed in this subsection as  
24 eligible for any deadly weapon enhancements, the following additional  
25 times shall be added to the standard sentence range determined under  
26 subsection (2) of this section based on the felony crime of  
27 conviction as classified under RCW 9A.28.020:

28 (a) Two years for any felony defined under any law as a class A  
29 felony or with a statutory maximum sentence of at least twenty years,  
30 or both, and not covered under (f) of this subsection;

31 (b) One year for any felony defined under any law as a class B  
32 felony or with a statutory maximum sentence of ten years, or both,  
33 and not covered under (f) of this subsection;

34 (c) Six months for any felony defined under any law as a class C  
35 felony or with a statutory maximum sentence of five years, or both,  
36 and not covered under (f) of this subsection;

37 (d) If the offender is being sentenced under (a), (b), and/or (c)  
38 of this subsection for any deadly weapon enhancements and the  
39 offender has previously been sentenced for any deadly weapon  
40 enhancements after July 23, 1995, under (a), (b), and/or (c) of this

1 subsection or subsection (3)(a), (b), and/or (c) of this section, or  
2 both, all deadly weapon enhancements under this subsection shall be  
3 twice the amount of the enhancement listed;

4 (e) Notwithstanding any other provision of law, all deadly weapon  
5 enhancements under this section are mandatory, shall be served in  
6 total confinement, and shall run consecutively to all other  
7 sentencing provisions, including other firearm or deadly weapon  
8 enhancements, for all offenses sentenced under this chapter. However,  
9 (~~whether or not a mandatory minimum term has expired~~) the court may  
10 grant an exceptional sentence pursuant to RCW 9.94A.535(1)(g), and an  
11 offender serving a sentence under this subsection may be granted an  
12 extraordinary medical placement when authorized under RCW  
13 9.94A.728(3) whether or not the mandatory minimum term has expired;

14 (f) The deadly weapon enhancements in this section shall apply to  
15 all felony crimes except the following: Possession of a machine gun,  
16 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
17 unlawful possession of a firearm in the first and second degree, and  
18 use of a machine gun in a felony;

19 (g) If the standard sentence range under this section exceeds the  
20 statutory maximum sentence for the offense, the statutory maximum  
21 sentence shall be the presumptive sentence unless the offender is a  
22 persistent offender. If the addition of a deadly weapon enhancement  
23 increases the sentence so that it would exceed the statutory maximum  
24 for the offense, the portion of the sentence representing the  
25 enhancement may not be reduced.

26 (5) The following additional times shall be added to the standard  
27 sentence range if the offender or an accomplice committed the offense  
28 while in a county jail or state correctional facility and the  
29 offender is being sentenced for one of the crimes listed in this  
30 subsection. If the offender or an accomplice committed one of the  
31 crimes listed in this subsection while in a county jail or state  
32 correctional facility, and the offender is being sentenced for an  
33 anticipatory offense under chapter 9A.28 RCW to commit one of the  
34 crimes listed in this subsection, the following additional times  
35 shall be added to the standard sentence range determined under  
36 subsection (2) of this section:

37 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
38 (a) or (b) or 69.50.410;

39 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
40 (c), (d), or (e);

1 (c) Twelve months for offenses committed under RCW 69.50.4013.

2 For the purposes of this subsection, all of the real property of  
3 a state correctional facility or county jail shall be deemed to be  
4 part of that facility or county jail.

5 (6) An additional twenty-four months shall be added to the  
6 standard sentence range for any ranked offense involving a violation  
7 of chapter 69.50 RCW if the offense was also a violation of RCW  
8 69.50.435 or 9.94A.827. All enhancements under this subsection shall  
9 run consecutively to all other sentencing provisions, for all  
10 offenses sentenced under this chapter.

11 (7) An additional two years shall be added to the standard  
12 sentence range for vehicular homicide committed while under the  
13 influence of intoxicating liquor or any drug as defined by RCW  
14 46.61.502 for each prior offense as defined in RCW 46.61.5055. All  
15 enhancements under this subsection shall be mandatory, shall be  
16 served in total confinement, and shall run consecutively to all other  
17 sentencing provisions.

18 (8)(a) The following additional times shall be added to the  
19 standard sentence range for felony crimes committed on or after July  
20 1, 2006, if the offense was committed with sexual motivation, as that  
21 term is defined in RCW 9.94A.030. If the offender is being sentenced  
22 for more than one offense, the sexual motivation enhancement must be  
23 added to the total period of total confinement for all offenses,  
24 regardless of which underlying offense is subject to a sexual  
25 motivation enhancement. If the offender committed the offense with  
26 sexual motivation and the offender is being sentenced for an  
27 anticipatory offense under chapter 9A.28 RCW, the following  
28 additional times shall be added to the standard sentence range  
29 determined under subsection (2) of this section based on the felony  
30 crime of conviction as classified under RCW 9A.28.020:

31 (i) Two years for any felony defined under the law as a class A  
32 felony or with a statutory maximum sentence of at least twenty years,  
33 or both;

34 (ii) Eighteen months for any felony defined under any law as a  
35 class B felony or with a statutory maximum sentence of ten years, or  
36 both;

37 (iii) One year for any felony defined under any law as a class C  
38 felony or with a statutory maximum sentence of five years, or both;

39 (iv) If the offender is being sentenced for any sexual motivation  
40 enhancements under (a)(i), (ii), and/or (iii) of this subsection and

1 the offender has previously been sentenced for any sexual motivation  
2 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or  
3 (iii) of this subsection, all sexual motivation enhancements under  
4 this subsection shall be twice the amount of the enhancement listed;

5 (b) Notwithstanding any other provision of law, all sexual  
6 motivation enhancements under this subsection are mandatory, shall be  
7 served in total confinement, and shall run consecutively to all other  
8 sentencing provisions, including other sexual motivation  
9 enhancements, for all offenses sentenced under this chapter. However,  
10 whether or not a mandatory minimum term has expired, an offender  
11 serving a sentence under this subsection may be granted an  
12 extraordinary medical placement when authorized under RCW  
13 9.94A.728(3);

14 (c) The sexual motivation enhancements in this subsection apply  
15 to all felony crimes;

16 (d) If the standard sentence range under this subsection exceeds  
17 the statutory maximum sentence for the offense, the statutory maximum  
18 sentence shall be the presumptive sentence unless the offender is a  
19 persistent offender. If the addition of a sexual motivation  
20 enhancement increases the sentence so that it would exceed the  
21 statutory maximum for the offense, the portion of the sentence  
22 representing the enhancement may not be reduced;

23 (e) The portion of the total confinement sentence which the  
24 offender must serve under this subsection shall be calculated before  
25 any earned early release time is credited to the offender;

26 (f) Nothing in this subsection prevents a sentencing court from  
27 imposing a sentence outside the standard sentence range pursuant to  
28 RCW 9.94A.535.

29 (9) An additional one-year enhancement shall be added to the  
30 standard sentence range for the felony crimes of RCW 9A.44.073,  
31 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
32 or after July 22, 2007, if the offender engaged, agreed, or offered  
33 to engage the victim in the sexual conduct in return for a fee. If  
34 the offender is being sentenced for more than one offense, the one-  
35 year enhancement must be added to the total period of total  
36 confinement for all offenses, regardless of which underlying offense  
37 is subject to the enhancement. If the offender is being sentenced for  
38 an anticipatory offense for the felony crimes of RCW 9A.44.073,  
39 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the  
40 offender attempted, solicited another, or conspired to engage, agree,

1 or offer to engage the victim in the sexual conduct in return for a  
2 fee, an additional one-year enhancement shall be added to the  
3 standard sentence range determined under subsection (2) of this  
4 section. For purposes of this subsection, "sexual conduct" means  
5 sexual intercourse or sexual contact, both as defined in chapter  
6 9A.44 RCW.

7 (10)(a) For a person age eighteen or older convicted of any  
8 criminal street gang-related felony offense for which the person  
9 compensated, threatened, or solicited a minor in order to involve the  
10 minor in the commission of the felony offense, the standard sentence  
11 range is determined by locating the sentencing grid sentence range  
12 defined by the appropriate offender score and the seriousness level  
13 of the completed crime, and multiplying the range by one hundred  
14 twenty-five percent. If the standard sentence range under this  
15 subsection exceeds the statutory maximum sentence for the offense,  
16 the statutory maximum sentence is the presumptive sentence unless the  
17 offender is a persistent offender.

18 (b) This subsection does not apply to any criminal street gang-  
19 related felony offense for which involving a minor in the commission  
20 of the felony offense is an element of the offense.

21 (c) The increased penalty specified in (a) of this subsection is  
22 unavailable in the event that the prosecution gives notice that it  
23 will seek an exceptional sentence based on an aggravating factor  
24 under RCW 9.94A.535.

25 (11) An additional twelve months and one day shall be added to  
26 the standard sentence range for a conviction of attempting to elude a  
27 police vehicle as defined by RCW 46.61.024, if the conviction  
28 included a finding by special allegation of endangering one or more  
29 persons under RCW 9.94A.834.

30 (12) An additional twelve months shall be added to the standard  
31 sentence range for an offense that is also a violation of RCW  
32 9.94A.831.

33 (13) An additional twelve months shall be added to the standard  
34 sentence range for vehicular homicide committed while under the  
35 influence of intoxicating liquor or any drug as defined by RCW  
36 46.61.520 or for vehicular assault committed while under the  
37 influence of intoxicating liquor or any drug as defined by RCW  
38 46.61.522, or for any felony driving under the influence (RCW  
39 46.61.502(6)) or felony physical control under the influence (RCW  
40 46.61.504(6)) for each child passenger under the age of sixteen who

1 is an occupant in the defendant's vehicle. These enhancements shall  
2 be mandatory, shall be served in total confinement, and shall run  
3 consecutively to all other sentencing provisions. If the addition of  
4 a minor child enhancement increases the sentence so that it would  
5 exceed the statutory maximum for the offense, the portion of the  
6 sentence representing the enhancement may not be reduced.

7 (14) An additional twelve months shall be added to the standard  
8 sentence range for an offense that is also a violation of RCW  
9 9.94A.832.

10 **Sec. 2.** RCW 9.94A.535 and 2013 2nd sp.s. c 35 s 37 are each  
11 amended to read as follows:

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

18 Whenever a sentence outside the standard sentence range is  
19 imposed, the court shall set forth the reasons for its decision in  
20 written findings of fact and conclusions of law. A sentence outside  
21 the standard sentence range shall be a determinate sentence.

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

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

30 (1) Mitigating Circumstances - Court to Consider

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

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



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

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

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

9 (e) The defendant's capacity to appreciate the wrongfulness of  
10 his or her conduct, or to conform his or her conduct to the  
11 requirements of the law, was significantly impaired. Voluntary use of  
12 drugs or alcohol is excluded.

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

16 (g) The operation of the (~~multiple offense~~) consecutive or  
17 concurrent sentence policy of RCW 9.94A.589(1) or 9.94A.533 (3) or  
18 (4) results in a presumptive sentence that is clearly excessive ((in  
19 light of the purpose of this chapter, as expressed in RCW  
20 9.94A.010)). A sentence based on this factor must include a period of  
21 confinement that equals or exceeds the minimum presumptive sentence  
22 for the most serious current offense. For purposes of this subsection  
23 (1)(g):

24 (i) The "most serious current offense" is determined by comparing  
25 the bottom of the presumptive sentence ranges for each offense,  
26 including any enhancements applicable to that offense, using an  
27 offender score based on prior offenses and other current offenses  
28 that are not the same criminal conduct as defined in RCW  
29 9.94A.589(1)(a).

30 (ii) A sentence is "clearly excessive" if the presumptive  
31 sentence does not accurately reflect the offender's culpability  
32 because of one or more of the following factors:

33 (A) The difference between the effects of one criminal act and  
34 the cumulative effects of all the criminal acts is nonexistent,  
35 trivial, or trifling; and

36 (B) The offender was convicted of multiple offenses against a  
37 single victim, arising from a single act, or arising from a series of  
38 acts within a short time.

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

4 (i) The defendant was making a good faith effort to obtain or  
5 provide medical assistance for someone who is experiencing a drug-  
6 related overdose.

7 (j) The current offense involved domestic violence, as defined in  
8 RCW 10.99.020, and the defendant suffered a continuing pattern of  
9 coercion, control, or abuse by the victim of the offense and the  
10 offense is a response to that coercion, control, or abuse.

11 (2) Aggravating Circumstances - Considered and Imposed by the  
12 Court

13 The trial court may impose an aggravated exceptional sentence  
14 without a finding of fact by a jury under the following  
15 circumstances:

16 (a) The defendant and the state both stipulate that justice is  
17 best served by the imposition of an exceptional sentence outside the  
18 standard range, and the court finds the exceptional sentence to be  
19 consistent with and in furtherance of the interests of justice and  
20 the purposes of the sentencing reform act.

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

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

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

32 (3) Aggravating Circumstances - Considered by a Jury - Imposed by  
33 the Court

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

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

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

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

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

9 (i) The current offense involved multiple victims or multiple  
10 incidents per victim;

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

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

16 (iv) The defendant used his or her position of trust, confidence,  
17 or fiduciary responsibility to facilitate the commission of the  
18 current offense.

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

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

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

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

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

34 (v) The current offense involved a high degree of sophistication  
35 or planning, occurred over a lengthy period of time, or involved a  
36 broad geographic area of disbursement; or

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

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

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

6 (h) The current offense involved domestic violence, as defined in  
7 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or  
8 more of the following was present:

9 (i) The offense was part of an ongoing pattern of psychological,  
10 physical, or sexual abuse of a victim or multiple victims manifested  
11 by multiple incidents over a prolonged period of time;

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

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

16 (i) The offense resulted in the pregnancy of a child victim of  
17 rape.

18 (j) The defendant knew that the victim of the current offense was  
19 a youth who was not residing with a legal custodian and the defendant  
20 established or promoted the relationship for the primary purpose of  
21 victimization.

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

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

28 (m) The offense involved a high degree of sophistication or  
29 planning.

30 (n) The defendant used his or her position of trust, confidence,  
31 or fiduciary responsibility to facilitate the commission of the  
32 current offense.

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

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

36 (q) The defendant demonstrated or displayed an egregious lack of  
37 remorse.

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

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

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

6 (u) The current offense is a burglary and the victim of the  
7 burglary was present in the building or residence when the crime was  
8 committed.

9 (v) The offense was committed against a law enforcement officer  
10 who was performing his or her official duties at the time of the  
11 offense, the offender knew that the victim was a law enforcement  
12 officer, and the victim's status as a law enforcement officer is not  
13 an element of the offense.

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

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

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

22 (z)(i)(A) The current offense is theft in the first degree, theft  
23 in the second degree, possession of stolen property in the first  
24 degree, or possession of stolen property in the second degree; (B)  
25 the stolen property involved is metal property; and (C) the property  
26 damage to the victim caused in the course of the theft of metal  
27 property is more than three times the value of the stolen metal  
28 property, or the theft of the metal property creates a public hazard.

29 (ii) For purposes of this subsection, "metal property" means  
30 commercial metal property, private metal property, or nonferrous  
31 metal property, as defined in RCW 19.290.010.

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

36 (bb) The current offense involved paying to view, over the  
37 internet in violation of RCW 9.68A.075, depictions of a minor engaged  
38 in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)

39 (a) through (g).

1 (cc) The offense was intentionally committed because the  
2 defendant perceived the victim to be homeless, as defined in RCW  
3 9.94A.030.

4 (dd) The current offense involved a felony crime against persons,  
5 except for assault in the third degree pursuant to RCW  
6 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's  
7 chamber, or any waiting area or corridor immediately adjacent to a  
8 courtroom, jury room, or judge's chamber. This subsection shall apply  
9 only: (i) During the times when a courtroom, jury room, or judge's  
10 chamber is being used for judicial purposes during court proceedings;  
11 and (ii) if signage was posted in compliance with RCW 2.28.200 at the  
12 time of the offense.

13 (ee) During the commission of the current offense, the defendant  
14 was driving in the opposite direction of the normal flow of traffic  
15 on a multiple lane highway, as defined by RCW 46.04.350, with a  
16 posted speed limit of forty-five miles per hour or greater.

17 **Sec. 3.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to  
18 read as follows:

19 (1)(a) Except as provided in (b) or (c) of this subsection,  
20 whenever a person is to be sentenced for two or more current  
21 offenses, the sentence range for each current offense shall be  
22 determined by using all other current and prior convictions as if  
23 they were prior convictions for the purpose of the offender score:  
24 PROVIDED, That if the court enters a finding that some or all of the  
25 current offenses encompass the same criminal conduct then those  
26 current offenses shall be counted as one crime. Sentences imposed  
27 under this subsection shall be served concurrently. Consecutive  
28 sentences may only be imposed under the exceptional sentence  
29 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this  
30 subsection, means two or more crimes that require the same criminal  
31 intent, are committed at the same time and place, and involve the  
32 same victim. This definition applies in cases involving vehicular  
33 assault or vehicular homicide even if the victims occupied the same  
34 vehicle.

35 (b) Whenever a person is convicted of two or more serious violent  
36 offenses arising from separate and distinct criminal conduct, the  
37 standard sentence range for the most severe offense (~~(with the~~  
38 ~~highest seriousness level under RCW 9.94A.515))~~ shall be determined  
39 using the offender's prior convictions and other current convictions

1 that are not serious violent offenses in the offender score and the  
2 standard sentence range for other serious violent offenses shall be  
3 determined by using an offender score of zero. The standard sentence  
4 range for any offenses that are not serious violent offenses shall be  
5 determined according to (a) of this subsection. All sentences imposed  
6 under (b) of this subsection shall be served consecutively to each  
7 other and concurrently with sentences imposed under (a) of this  
8 subsection. For purposes of this subsection (1)(b), the "most severe  
9 offense" is the serious violent offense that has the highest sentence  
10 range for an offender score computed using the offender's prior  
11 convictions and current convictions that are not serious violent  
12 offenses.

13 (c) If an offender is convicted under RCW 9.41.040 for unlawful  
14 possession of a firearm in the first or second degree and for the  
15 felony crimes of theft of a firearm or possession of a stolen  
16 firearm, or both, the standard sentence range for each of these  
17 current offenses shall be determined by using all other current and  
18 prior convictions, except other current convictions for the felony  
19 crimes listed in this subsection (1)(c), as if they were prior  
20 convictions. The offender shall serve consecutive sentences for each  
21 conviction of the felony crimes listed in this subsection (1)(c), and  
22 for each firearm unlawfully possessed.

23 (2)(a) Except as provided in (b) of this subsection, whenever a  
24 person while under sentence for conviction of a felony commits  
25 another felony and is sentenced to another term of confinement, the  
26 latter term shall not begin until expiration of all prior terms.

27 (b) Whenever a second or later felony conviction results in  
28 community supervision with conditions not currently in effect, under  
29 the prior sentence or sentences of community supervision the court  
30 may require that the conditions of community supervision contained in  
31 the second or later sentence begin during the immediate term of  
32 community supervision and continue throughout the duration of the  
33 consecutive term of community supervision.

34 (3) Subject to subsections (1) and (2) of this section, whenever  
35 a person is sentenced for a felony that was committed while the  
36 person was not under sentence for conviction of a felony, the  
37 sentence shall run concurrently with any felony sentence which has  
38 been imposed by any court in this or another state or by a federal  
39 court subsequent to the commission of the crime being sentenced

1 unless the court pronouncing the current sentence expressly orders  
2 that they be served consecutively.

3 (4) Whenever any person granted probation under RCW 9.95.210 or  
4 9.92.060, or both, has the probationary sentence revoked and a prison  
5 sentence imposed, that sentence shall run consecutively to any  
6 sentence imposed pursuant to this chapter, unless the court  
7 pronouncing the subsequent sentence expressly orders that they be  
8 served concurrently.

9 (5) In the case of consecutive sentences, all periods of total  
10 confinement shall be served before any partial confinement, community  
11 restitution, community supervision, or any other requirement or  
12 conditions of any of the sentences. Except for exceptional sentences  
13 as authorized under RCW 9.94A.535, if two or more sentences that run  
14 consecutively include periods of community supervision, the aggregate  
15 of the community supervision period shall not exceed twenty-four  
16 months.

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