
SUBSTITUTE SENATE BILL 5488

State of Washington

66th Legislature

2019 Regular Session

By Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Saldaña, Wilson, C., Keiser, and Nguyen)

READ FIRST TIME 02/07/19.

1 AN ACT Relating to the sentencing of persons under the age of
2 twenty-one years at the time of the commission of a crime; and
3 amending RCW 9.94A.533 and 9.94A.535.

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

5 **Sec. 1.** RCW 9.94A.533 and 2018 c 7 s 8 are each amended to read
6 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, except as provided in subsection (15) of this
30 section, shall run consecutively to all other sentencing provisions,
31 including other firearm or deadly weapon enhancements, for all
32 offenses sentenced under this chapter. However, whether or not a
33 mandatory minimum term has expired, an offender serving a sentence
34 under this subsection may be:

35 (i) Granted an extraordinary medical placement when authorized
36 under RCW 9.94A.728(1)(c); or

37 (ii) Released under the provisions of RCW 9.94A.730;

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

1 theft of a firearm, unlawful possession of a firearm in the first and
2 second degree, and use of a machine gun or bump-fire stock in a
3 felony;

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

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

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

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

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

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

1 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
2 subsection or subsection (3)(a), (b), and/or (c) of this section, or
3 both, all deadly weapon enhancements under this subsection shall be
4 twice the amount of the enhancement listed;

5 (e) (~~Notwithstanding any other provision of law,~~) All deadly
6 weapon enhancements under this section are mandatory, shall be served
7 in total confinement, and, except as provided in subsection (15) of
8 this section, shall run consecutively to all other sentencing
9 provisions, including other firearm or deadly weapon enhancements,
10 for all offenses sentenced under this chapter. However, whether or
11 not a mandatory minimum term has expired, an offender serving a
12 sentence under this subsection may be:

13 (i) Granted an extraordinary medical placement when authorized
14 under RCW 9.94A.728(1)(c); or

15 (ii) Released under the provisions of RCW 9.94A.730;

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

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

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

- 1 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
2 (a) or (b) or 69.50.410;
3 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
4 (c), (d), or (e);
5 (c) Twelve months for offenses committed under RCW 69.50.4013.

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

9 (6) An additional twenty-four months shall be added to the
10 standard sentence range for any ranked offense involving a violation
11 of chapter 69.50 RCW if the offense was also a violation of RCW
12 69.50.435 or 9.94A.827. All enhancements under this subsection shall
13 run consecutively to all other sentencing provisions, for all
14 offenses sentenced under this chapter, except as provided in
15 subsection (15) of this section.

16 (7) An additional two years shall be added to the standard
17 sentence range for vehicular homicide committed while under the
18 influence of intoxicating liquor or any drug as defined by RCW
19 46.61.502 for each prior offense as defined in RCW 46.61.5055.

20 (~~Notwithstanding any other provision of law,~~) All impaired
21 driving enhancements under this subsection are mandatory, shall be
22 served in total confinement, and, except as provided in subsection
23 (15) of this section, shall run consecutively to all other sentencing
24 provisions, including other impaired driving enhancements, for all
25 offenses sentenced under this chapter.

26 An offender serving a sentence under this subsection may be
27 granted an extraordinary medical placement when authorized under RCW
28 9.94A.728(1)(c).

29 (8)(a) The following additional times shall be added to the
30 standard sentence range for felony crimes committed on or after July
31 1, 2006, if the offense was committed with sexual motivation, as that
32 term is defined in RCW 9.94A.030. If the offender is being sentenced
33 for more than one offense, the sexual motivation enhancement must be
34 added to the total period of total confinement for all offenses,
35 regardless of which underlying offense is subject to a sexual
36 motivation enhancement. If the offender committed the offense with
37 sexual motivation and the offender is being sentenced for an
38 anticipatory offense under chapter 9A.28 RCW, the following
39 additional times shall be added to the standard sentence range

1 determined under subsection (2) of this section based on the felony
2 crime of conviction as classified under RCW 9A.28.020:

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

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

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

11 (iv) If the offender is being sentenced for any sexual motivation
12 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
13 the offender has previously been sentenced for any sexual motivation
14 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
15 (iii) of this subsection, all sexual motivation enhancements under
16 this subsection shall be twice the amount of the enhancement listed;

17 (b) (~~Notwithstanding any other provision of law,~~) All sexual
18 motivation enhancements under this subsection are mandatory, shall be
19 served in total confinement, and, except as provided in subsection
20 (15) of this section, shall run consecutively to all other sentencing
21 provisions, including other sexual motivation enhancements, for all
22 offenses sentenced under this chapter. However, whether or not a
23 mandatory minimum term has expired, an offender serving a sentence
24 under this subsection may be:

25 (i) Granted an extraordinary medical placement when authorized
26 under RCW 9.94A.728(1)(c); or

27 (ii) Released under the provisions of RCW 9.94A.730;

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

30 (d) If the standard sentence range under this subsection exceeds
31 the statutory maximum sentence for the offense, the statutory maximum
32 sentence shall be the presumptive sentence unless the offender is a
33 persistent offender. If the addition of a sexual motivation
34 enhancement increases the sentence so that it would exceed the
35 statutory maximum for the offense, the portion of the sentence
36 representing the enhancement may not be reduced;

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

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

4 (9) An additional one-year enhancement shall be added to the
5 standard sentence range for the felony crimes of RCW 9A.44.073,
6 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
7 or after July 22, 2007, if the offender engaged, agreed, or offered
8 to engage the victim in the sexual conduct in return for a fee. If
9 the offender is being sentenced for more than one offense, the
10 one-year enhancement must be added to the total period of total
11 confinement for all offenses, regardless of which underlying offense
12 is subject to the enhancement. If the offender is being sentenced for
13 an anticipatory offense for the felony crimes of RCW 9A.44.073,
14 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
15 offender attempted, solicited another, or conspired to engage, agree,
16 or offer to engage the victim in the sexual conduct in return for a
17 fee, an additional one-year enhancement shall be added to the
18 standard sentence range determined under subsection (2) of this
19 section. For purposes of this subsection, "sexual conduct" means
20 sexual intercourse or sexual contact, both as defined in chapter
21 9A.44 RCW.

22 (10)(a) For a person age eighteen or older convicted of any
23 criminal street gang-related felony offense for which the person
24 compensated, threatened, or solicited a minor in order to involve the
25 minor in the commission of the felony offense, the standard sentence
26 range is determined by locating the sentencing grid sentence range
27 defined by the appropriate offender score and the seriousness level
28 of the completed crime, and multiplying the range by one hundred
29 twenty-five percent. If the standard sentence range under this
30 subsection exceeds the statutory maximum sentence for the offense,
31 the statutory maximum sentence is the presumptive sentence unless the
32 offender is a persistent offender.

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

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

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

6 (12) An additional twelve months shall be added to the standard
7 sentence range for an offense that is also a violation of RCW
8 9.94A.831.

9 (13) An additional twelve months shall be added to the standard
10 sentence range for vehicular homicide committed while under the
11 influence of intoxicating liquor or any drug as defined by RCW
12 46.61.520 or for vehicular assault committed while under the
13 influence of intoxicating liquor or any drug as defined by RCW
14 46.61.522, or for any felony driving under the influence (RCW
15 46.61.502(6)) or felony physical control under the influence (RCW
16 46.61.504(6)) for each child passenger under the age of sixteen who
17 is an occupant in the defendant's vehicle. These enhancements shall
18 be mandatory, shall be served in total confinement, and, except as
19 provided in subsection (15) of this section, shall run consecutively
20 to all other sentencing provisions. If the addition of a minor child
21 enhancement increases the sentence so that it would exceed the
22 statutory maximum for the offense, the portion of the sentence
23 representing the enhancement may not be reduced.

24 (14) An additional twelve months shall be added to the standard
25 sentence range for an offense that is also a violation of RCW
26 9.94A.832.

27 (15) If a person is being sentenced in adult court for a crime
28 committed as a minor, the court has full discretion to depart from
29 mandatory sentencing enhancements and to take the particular
30 circumstances surrounding the defendant's youth into account.

31 **Sec. 2.** RCW 9.94A.535 and 2016 c 6 s 2 are each amended to read
32 as follows:

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

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

5 If the sentencing court finds that an exceptional sentence
6 outside the standard sentence range should be imposed, the sentence
7 is subject 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
17 and are not intended to be exclusive reasons for exceptional
18 sentences.

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

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

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

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

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

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

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

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 (k) The defendant was convicted of vehicular homicide, by the
12 operation of a vehicle in a reckless manner and has committed no
13 other previous serious traffic offenses as defined in RCW 9.94A.030,
14 and the sentence is clearly excessive in light of the purpose of this
15 chapter, as expressed in RCW 9.94A.010.

16 (l) The defendant's age, lack of sophistication, susceptibility
17 to peer pressure, or other factors relating to the defendant's
18 youthfulness at the time of the offense render the defendant less
19 culpable than if the offense had been committed by a fully developed
20 adult.

21 (2) Aggravating Circumstances - Considered and Imposed by the
22 Court

23 The trial court may impose an aggravated exceptional sentence
24 without a finding of fact by a jury under the following
25 circumstances:

26 (a) The defendant and the state both stipulate that justice is
27 best served by the imposition of an exceptional sentence outside the
28 standard range, and the court finds the exceptional sentence to be
29 consistent with and in furtherance of the interests of justice and
30 the purposes of the sentencing reform act.

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

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

38 (d) The failure to consider the defendant's prior criminal
39 history which was omitted from the offender score calculation

1 pursuant to RCW 9.94A.525 results in a presumptive sentence that is
2 clearly too lenient.

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

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

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

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

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

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

19 (i) The current offense involved multiple victims or multiple
20 incidents per victim;

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

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

26 (iv) The defendant used his or her position of trust, confidence,
27 or fiduciary responsibility to facilitate the commission of the
28 current offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) The offense resulted in the pregnancy of a child victim of
28 rape.

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

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

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

39 (m) The offense involved a high degree of sophistication or
40 planning.

1 (n) The defendant used his or her position of trust, confidence,
2 or fiduciary responsibility to facilitate the commission of the
3 current offense.

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

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

7 (q) The defendant demonstrated or displayed an egregious lack of
8 remorse.

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

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

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

16 (u) The current offense is a burglary and the victim of the
17 burglary was present in the building or residence when the crime was
18 committed.

19 (v) The offense was committed against a law enforcement officer
20 who was performing his or her official duties at the time of the
21 offense, the offender knew that the victim was a law enforcement
22 officer, and the victim's status as a law enforcement officer is not
23 an element of the offense.

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

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

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

32 (z) (i) (A) The current offense is theft in the first degree, theft
33 in the second degree, possession of stolen property in the first
34 degree, or possession of stolen property in the second degree; (B)
35 the stolen property involved is metal property; and (C) the property
36 damage to the victim caused in the course of the theft of metal
37 property is more than three times the value of the stolen metal
38 property, or the theft of the metal property creates a public hazard.

1 (ii) For purposes of this subsection, "metal property" means
2 commercial metal property, private metal property, or nonferrous
3 metal property, as defined in RCW 19.290.010.

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

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

11 (a) through (g).

12 (cc) The offense was intentionally committed because the
13 defendant perceived the victim to be homeless, as defined in RCW
14 9.94A.030.

15 (dd) The current offense involved a felony crime against persons,
16 except for assault in the third degree pursuant to RCW
17 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's
18 chamber, or any waiting area or corridor immediately adjacent to a
19 courtroom, jury room, or judge's chamber. This subsection shall apply
20 only: (i) During the times when a courtroom, jury room, or judge's
21 chamber is being used for judicial purposes during court proceedings;
22 and (ii) if signage was posted in compliance with RCW 2.28.200 at the
23 time of the offense.

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

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