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**SENATE BILL 5269**

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**State of Washington**

**69th Legislature**

**2025 Regular Session**

**By** Senators Frame, Lovick, Valdez, Wellman, Hasegawa, Trudeau, Saldaña, Nobles, and C. Wilson

Read first time 01/14/25. Referred to Committee on Law & Justice.

1 AN ACT Relating to providing judicial discretion to modify  
2 sentences in the interest of justice; amending RCW 10.73.100 and  
3 9.94A.535; adding a new section to chapter 9.94A RCW; adding a new  
4 section to chapter 2.70 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** This act shall be known and may be cited  
7 as the judicial discretion act.

8 NEW SECTION. **Sec. 2.** (1) The legislature finds that long-term  
9 incarceration disproportionately impacts low-income communities and  
10 communities of color. The legislature further finds that an expansive  
11 body of research demonstrates that persons who are granted early  
12 release before finishing lengthy sentences are less likely to  
13 recidivate. The legislature further finds that establishing an  
14 opportunity to modify a sentence encourages incarcerated individuals  
15 to engage in desirable behavior and to take advantage of  
16 rehabilitative programming. The legislature further finds that  
17 because the cost of long-term incarceration is substantial and the  
18 state must use its resources responsibly, providing judges the  
19 opportunity to modify lengthy sentences in the interests of justice  
20 will result in significant cost savings to the state.

1 (2) Therefore, the legislature intends to authorize sentencing  
2 courts to review lengthy sentences upon a showing that a person's  
3 original sentence no longer serves the interests of justice.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A  
5 RCW to read as follows:

6 (1) Except as provided in subsection (17) of this section, and  
7 notwithstanding any other provision of this chapter, any person under  
8 a term of total confinement for a felony conviction may petition the  
9 sentencing court or the sentencing court's successor for a  
10 modification of sentence if the original sentence no longer serves  
11 the interests of justice and the person meets any of the following  
12 criteria:

13 (a) Beginning July 1, 2026, the person may petition the court if:

14 (i) The person has served at least seven years of their sentence  
15 for an offense committed at age 17 or younger; or

16 (ii) The person is terminally ill or experiences a permanent or  
17 degenerative medical condition to such a degree that the person does  
18 not presently and likely will not in the future pose a threat to  
19 public safety.

20 (b) Beginning July 1, 2027, the person may petition the court if  
21 the person meets any of the criteria in (a)(i) or (ii) of this  
22 subsection, or if the person has served at least 20 years of their  
23 sentence for an offense committed when the person was at least 18  
24 years old but less than 25 years old.

25 (c) Beginning July 1, 2028, the person may petition the court if  
26 the person meets any of the criteria in (a)(i) or (ii) of this  
27 subsection, or if the person served at least 13 years of their  
28 sentence for an offense committed when the person was at least 18  
29 years old but less than 25 years old.

30 (d) Beginning July 1, 2029, the person may petition the court if  
31 the person meets any of the criteria in (a)(i) or (ii) of this  
32 subsection, or if:

33 (i) The person has served at least 13 years of their sentence for  
34 an offense committed when the person was at least 18 years old but  
35 less than 25 years old; or

36 (ii) The person has served at least 20 years of their sentence  
37 for an offense committed at age 25 or older.

1 (e) Beginning July 1, 2030, the person may petition the court if  
2 the person meets any of the criteria in (a)(i) or (ii) of this  
3 subsection, or if:

4 (i) The person has served at least 10 years of their sentence for  
5 an offense committed when the person was at least 18 years old but  
6 less than 25 years old; or

7 (ii) The person has served at least 17 years of their sentence  
8 for an offense committed at age 25 or older.

9 (f) Beginning July 1, 2031, the person may petition the court if  
10 the person meets any of the criteria in (a)(i) or (ii) of this  
11 subsection, or if:

12 (i) The person has served at least 10 years of their sentence for  
13 an offense committed when the person was at least 18 years old but  
14 less than 25 years old; or

15 (ii) The person has served at least 13 years of their sentence  
16 for an offense committed at age 25 or older.

17 (g) Beginning July 1, 2032, the person may petition the court if  
18 the person meets any of the criteria in (a)(i) or (ii) of this  
19 subsection, or if the person has served at least 10 years of their  
20 sentence for an offense committed at age 18 or older.

21 (h) If the person does not meet any of the criteria under (a)  
22 through (g) of this subsection, the person may petition the court at  
23 any time with the consent of the prosecuting attorney.

24 (2) The petitioner must file the petition in writing with the  
25 sentencing court in the judicial district in which the original  
26 sentence was imposed and serve the prosecuting attorney. The petition  
27 may include affidavits, declarations, letters, prison records, or  
28 other written or electronic materials. The petition must include a  
29 statement by the petitioner and supporting documentation  
30 demonstrating that they meet one or more of the following  
31 requirements for a hearing:

32 (a) The petitioner has demonstrated positive, engaged, and  
33 productive behavior while in the custody of the department that  
34 indicates substantial rehabilitation; or

35 (b) The petitioner has otherwise demonstrated a minimal risk of  
36 reoffense, which may include, but is not limited to, a demonstration  
37 of medical frailty.

38 (3) Upon request by the petitioner or the petitioner's counsel,  
39 the department shall assist the petitioner or the petitioner's

1 counsel in compiling the petitioner's disciplinary record and record  
2 of rehabilitation at no cost to the petitioner.

3 (4) The court may decline to accept a petition that does not meet  
4 one or more of the eligibility criteria pursuant to subsection (1) of  
5 this section. If the court accepts the petition and determines by a  
6 preponderance of the evidence that the petitioner meets one or more  
7 of the criteria under subsection (1) of this section, the court shall  
8 grant a hearing to consider the petition, which must be heard within  
9 120 days. The hearing may be continued for good cause upon motion by  
10 the petitioner or the prosecuting attorney.

11 (5) (a) At the hearing to consider the petition, the petitioner is  
12 entitled to de novo review of the petitioner's original sentence. The  
13 court may grant the petition and modify the petitioner's original  
14 sentence if the court finds that the sentence no longer advances the  
15 interests of justice, provided that any new sentence imposed shall  
16 not be greater than the original sentence, and provided that any new  
17 sentence imposed shall be subject to the following restrictions:

18 (i) If the petitioner's original sentence is an indeterminate  
19 sentence imposed under RCW 9.94A.507, the court may modify the  
20 minimum term of the sentence but may not modify the maximum term of  
21 the sentence or order the petitioner's release from custody;

22 (ii) If the petitioner's original sentence includes a mandatory  
23 minimum term imposed pursuant to RCW 9.94A.540, the court may not  
24 modify the sentence below the mandatory minimum term required by law;  
25 and

26 (iii) The soonest allowable release date from total confinement  
27 for any petitioner resentenced pursuant to this section may be no  
28 sooner than six months after the date of the hearing to consider the  
29 petition.

30 (b) In addition to the mitigating factors provided under RCW  
31 9.94A.535(1), the court may consider the following nonexhaustive list  
32 of factors when determining whether to modify the petitioner's  
33 sentence:

34 (i) The petitioner's disciplinary record and record of  
35 rehabilitation while incarcerated;

36 (ii) Evidence that reflects whether age, time served, and  
37 diminished physical condition, if any, have reduced the petitioner's  
38 risk for future recidivism;

39 (iii) Evidence regarding the petitioner's level of culpability  
40 for the offense;

1 (iv) Evidence that reflects changed circumstances since imposing  
2 the petitioner's original sentence such that the sentence no longer  
3 serves the interests of justice;

4 (v) Demonstration of an extraordinary adverse impact of the  
5 petitioner's release on the victim or survivors of the victim of the  
6 crime for which the petitioner is presently incarcerated, with  
7 special consideration given to the impact of release on any victims  
8 of sex offenses or domestic violence offenses committed by the  
9 petitioner against an intimate partner.

10 (6) When modifying a sentence pursuant to this section:

11 (a) The court may impose an exceptional sentence below the  
12 standard range based on evidence of significant rehabilitation since  
13 the offense or any other applicable factors; and

14 (b) If the petitioner's original sentence included one or more  
15 mandatory enhancements that were imposed under RCW 9.94A.533, the  
16 court may impose a sentence below the mandatory minimum enhancement  
17 term.

18 (7) If the court denies a petition filed pursuant to this section  
19 and declines to set a hearing, or grants a hearing but declines to  
20 modify the petitioner's sentence at the hearing, the petitioner may,  
21 upon a showing of a change in circumstances, file a new petition no  
22 earlier than three years after the date the court denied the previous  
23 petition or declined to modify the petitioner's sentence, unless the  
24 court authorizes the petitioner to file a new petition at an earlier  
25 date. If the court denies the petition or declines to modify the  
26 petitioner's sentence, the court shall state the basis for its  
27 decision on the record and provide an explanation for its decision in  
28 a written order. The petitioner may appeal the denial of a hearing or  
29 an order entered pursuant to a resentencing hearing, provided,  
30 however, that denying a petition filed pursuant to this section shall  
31 not reopen the petitioner's conviction or sentence to any other  
32 challenges that would otherwise be barred.

33 (8) (a) The prosecuting attorney shall make reasonable efforts to  
34 notify victims and survivors of victims of any hearing on a petition  
35 for modification of sentence filed pursuant to this section,  
36 including by providing the date of such hearing.

37 (b) For purposes of (a) of this subsection, the prosecuting  
38 attorney shall make reasonable efforts to notify victims and  
39 survivors of victims of any offense for which the petitioner is  
40 seeking a modification of sentence, and victims of any sex offense or

1 domestic violence offense committed against an intimate partner  
2 victim for which the petitioner was previously convicted.

3 (9) (a) The office of crime victims advocacy shall create a  
4 flexible fund to serve victims and survivors of victims impacted by  
5 this act. The office may contract for administration of this fund.  
6 The flexible fund may be used for purposes including, but not limited  
7 to:

8 (i) Relocation assistance related to a change in safety planning  
9 associated with the petitioner's resentencing;

10 (ii) Traveling to and from court for resentencing hearings; and

11 (iii) Out-of-pocket expenses for psychotherapy associated with  
12 the committed offense or resentencing.

13 (b) The office of crime victims advocacy shall contract with  
14 prosecuting attorney's offices to offer victim advocacy services for  
15 victims impacted by this act. Such victim advocacy services must  
16 include:

17 (i) Legal advocacy to understand the resentencing process and how  
18 a victim can exercise their rights;

19 (ii) Safety planning;

20 (iii) Options to participate in a restorative justice program  
21 with the petitioner; and

22 (iv) Case management to address needs that may arise as a result  
23 of resentencing.

24 (c) The office of crime victims advocacy may contract with an  
25 entity with expertise in victim services to provide training for  
26 victim advocates embedded within prosecutor's offices regarding  
27 safety planning and other case management services that victims  
28 impacted by this act may require.

29 (10) The court shall provide an opportunity for victims and  
30 survivors of victims of any crimes for which the petitioner has been  
31 convicted to present a statement personally or by representation at  
32 the hearing. The prosecuting attorney and the court shall comply with  
33 the requirements set forth in chapter 7.69 RCW.

34 (11) The court shall not permit any person to waive the right to  
35 petition pursuant to this section. Any agreement to waive the right  
36 to petition pursuant to this section shall be void.

37 (12) The time limit for collateral attacks established under RCW  
38 10.73.090 does not apply to any petition filed pursuant to this  
39 section.

1 (13) Any incarcerated individual who is eligible to file a  
2 petition pursuant to this section and is unable to afford counsel  
3 shall be entitled to have counsel appointed pursuant to section 4 of  
4 this act. Counsel shall be appointed at no cost to the individual, to  
5 represent the individual for the petition and proceedings under this  
6 section, unless the individual expressly waives the right to counsel  
7 after being fully advised of this right by the court.

8 (14) Any person who files a pro se petition and subsequently  
9 retains or is appointed counsel shall be entitled to amend such  
10 petition at least once as of right with the assistance of counsel.  
11 Subsequent amendments may be permitted by leave of court.

12 (15) The department shall provide written notice of this section  
13 to any incarcerated individual sentenced to a term of confinement of  
14 more than 10 years, and the applicable sentencing court, prosecuting  
15 attorney, and public defense agency for the judicial district in  
16 which the individual was sentenced, within the following time frames:

17 (a) For any incarcerated individual serving an applicable  
18 sentence for a felony offense committed at 18 years of age or older,  
19 the department shall provide written notice of this section no later  
20 than 180 days before the date on which the person's 10th year of  
21 confinement begins; and

22 (b) For any incarcerated individual serving an applicable  
23 sentence for a felony offense committed at 17 years of age or  
24 younger, the department shall provide written notice of this section  
25 no later than 180 days before the date on which the person's seventh  
26 year of confinement begins.

27 (16) When any person granted a modified sentence pursuant to this  
28 section is within six months of his or her expected release date from  
29 total confinement, the department must prepare and make available an  
30 individual reentry plan under chapter 72.09 RCW and the resources  
31 necessary for the person to complete the plan.

32 (17) A person may not petition for a modification of sentence  
33 pursuant to this section if the person's original sentence was  
34 imposed under RCW 9.94A.570 or 10.95.030.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 2.70 RCW  
36 to read as follows:

37 Within available resources, the office of public defense shall  
38 provide representation for persons who are eligible to file a  
39 petition pursuant to section 3 of this act. The office will

1 prioritize representation based on the eligibility criteria and  
2 timelines established in section 3(1) of this act.

3 **Sec. 5.** RCW 10.73.100 and 2024 c 118 s 8 are each amended to  
4 read as follows:

5 The time limit specified in RCW 10.73.090 does not apply to a  
6 petition or motion that is based solely on one or more of the  
7 following grounds:

8 (1) Newly discovered evidence, if the defendant acted with  
9 reasonable diligence in discovering the evidence and filing the  
10 petition or motion;

11 (2) The statute that the defendant was convicted of violating was  
12 unconstitutional on its face or as applied to the defendant's  
13 conduct;

14 (3) The conviction was barred by double jeopardy under Amendment  
15 V of the United States Constitution or Article I, section 9 of the  
16 state Constitution;

17 (4) The defendant pleaded not guilty and the evidence introduced  
18 at trial was insufficient to support the conviction;

19 (5) The sentence imposed was in excess of the court's  
20 jurisdiction;

21 (6) A petition for a modification of sentence pursuant to section  
22 3 of this act;

23 (7) A motion for a modification of conditions of community  
24 custody pursuant to RCW 9.94A.703 and 9.94A.709; or

25 ~~((+7))~~ (8) There has been a significant change in the law,  
26 whether substantive or procedural, which is material to the  
27 conviction, sentence, or other order entered in a criminal or civil  
28 proceeding instituted by the state or local government, and either  
29 the legislature has expressly provided that the change in the law is  
30 to be applied retroactively, or a court, in interpreting a change in  
31 the law that lacks express legislative intent regarding retroactive  
32 application, determines that sufficient reasons exist to require  
33 retroactive application of the changed legal standard.

34 **Sec. 6.** RCW 9.94A.535 and 2019 c 219 s 1 are each amended to  
35 read as follows:

36 The court may impose a sentence outside the standard sentence  
37 range for an offense if it finds, considering the purpose of this  
38 chapter, that there are substantial and compelling reasons justifying

1 an exceptional sentence. Facts supporting aggravated sentences, other  
2 than the fact of a prior conviction, shall be determined pursuant to  
3 the provisions of RCW 9.94A.537.

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

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

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

16 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

19 (l) The defendant petitions the court for modification of  
20 sentence pursuant to section 3 of this act, and the court considers  
21 the nonexhaustive list of additional factors provided under section  
22 3(5)(b) of this act at a hearing on the petition.

23 (2) Aggravating Circumstances - Considered and Imposed by the  
24 Court

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

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

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

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

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

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

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

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

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

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

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

21 (i) The current offense involved multiple victims or multiple  
22 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

17 (g) The offense was part of an ongoing pattern of sexual abuse of  
18 the same victim under the age of (~~eighteen~~) 18 years manifested by  
19 multiple incidents over a prolonged period of time.

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

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

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

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

30 (i) The offense resulted in the pregnancy of a child victim of  
31 rape.

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

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

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

4 (m) The offense involved a high degree of sophistication or  
5 planning.

6 (n) The defendant used his or her position of trust, confidence,  
7 or fiduciary responsibility to facilitate the commission of the  
8 current offense.

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

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

12 (q) The defendant demonstrated or displayed an egregious lack of  
13 remorse.

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

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

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

21 (u) The current offense is a burglary and the victim of the  
22 burglary was present in the building or residence when the crime was  
23 committed.

24 (v) The offense was committed against a law enforcement officer  
25 who was performing his or her official duties at the time of the  
26 offense, the offender knew that the victim was a law enforcement  
27 officer, and the victim's status as a law enforcement officer is not  
28 an element of the offense.

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

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

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

37 (z) (i) (A) The current offense is theft in the first degree, theft  
38 in the second degree, possession of stolen property in the first  
39 degree, or possession of stolen property in the second degree; (B)  
40 the stolen property involved is metal property; and (C) the property

1 damage to the victim caused in the course of the theft of metal  
2 property is more than three times the value of the stolen metal  
3 property, or the theft of the metal property creates a public hazard.

4 (ii) For purposes of this subsection, "metal property" means  
5 commercial metal property, private metal property, or nonferrous  
6 metal property, as defined in RCW 19.290.010.

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

11 (bb) The current offense involved paying to view, over the  
12 internet in violation of RCW 9.68A.075, depictions of a minor engaged  
13 in an act of sexually explicit conduct as defined in RCW  
14 9.68A.011(~~(4)~~)(7) (a) through (g).

15 (cc) The offense was intentionally committed because the  
16 defendant perceived the victim to be homeless, as defined in RCW  
17 9.94A.030.

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

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

31 (ff) The current offense involved the assault of a utility  
32 employee of any publicly or privately owned utility company or  
33 agency, who is at the time of the act engaged in official duties,  
34 including: (i) The maintenance or repair of utility poles, lines,  
35 conduits, pipes, or other infrastructure; or (ii) connecting,  
36 disconnecting, or recording utility meters.

--- END ---