

SHB 2427 - H AMD 1111

By Representative Pearson

ADOPTED 02/12/2010

1 Strike everything after the enacting clause and insert the  
2 following:

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

13 **Sec. 2.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read  
14 as follows:

15 Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter.

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

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

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

28 (4) "Community corrections officer" means an employee of the

1 department who is responsible for carrying out specific duties in  
2 supervision of sentenced offenders and monitoring of sentence  
3 conditions.

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

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

12 (7) "Community restitution" means compulsory service, without  
13 compensation, performed for the benefit of the community by the  
14 offender.

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

16 (9) "Conviction" means an adjudication of guilt pursuant to Title  
17 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
18 acceptance of a plea of guilty.

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

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

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

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

37 (c) The determination of a defendant's criminal history is distinct  
38 from the determination of an offender score. A prior conviction that

1 was not included in an offender score calculated pursuant to a former  
2 version of the sentencing reform act remains part of the defendant's  
3 criminal history.

4 (12) "Criminal street gang" means any ongoing organization,  
5 association, or group of three or more persons, whether formal or  
6 informal, having a common name or common identifying sign or symbol,  
7 having as one of its primary activities the commission of criminal  
8 acts, and whose members or associates individually or collectively  
9 engage in or have engaged in a pattern of criminal street gang  
10 activity. This definition does not apply to employees engaged in  
11 concerted activities for their mutual aid and protection, or to the  
12 activities of labor and bona fide nonprofit organizations or their  
13 members or agents.

14 (13) "Criminal street gang associate or member" means any person  
15 who actively participates in any criminal street gang and who  
16 intentionally promotes, furthers, or assists in any criminal act by the  
17 criminal street gang.

18 (14) "Criminal street gang-related offense" means any felony or  
19 misdemeanor offense, whether in this state or elsewhere, that is  
20 committed for the benefit of, at the direction of, or in association  
21 with any criminal street gang, or is committed with the intent to  
22 promote, further, or assist in any criminal conduct by the gang, or is  
23 committed for one or more of the following reasons:

- 24 (a) To gain admission, prestige, or promotion within the gang;
- 25 (b) To increase or maintain the gang's size, membership, prestige,  
26 dominance, or control in any geographical area;
- 27 (c) To exact revenge or retribution for the gang or any member of  
28 the gang;
- 29 (d) To obstruct justice, or intimidate or eliminate any witness  
30 against the gang or any member of the gang;
- 31 (e) To directly or indirectly cause any benefit, aggrandizement,  
32 gain, profit, or other advantage for the gang, its reputation,  
33 influence, or membership; or
- 34 (f) To provide the gang with any advantage in, or any control or  
35 dominance over any criminal market sector, including, but not limited  
36 to, manufacturing, delivering, or selling any controlled substance  
37 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen

1 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
2 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
3 (chapter 9.68 RCW).

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

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

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

14 (18) "Determinate sentence" means a sentence that states with  
15 exactitude the number of actual years, months, or days of total  
16 confinement, of partial confinement, of community custody, the number  
17 of actual hours or days of community restitution work, or dollars or  
18 terms of a legal financial obligation. The fact that an offender  
19 through earned release can reduce the actual period of confinement  
20 shall not affect the classification of the sentence as a determinate  
21 sentence.

22 (19) "Disposable earnings" means that part of the earnings of an  
23 offender remaining after the deduction from those earnings of any  
24 amount required by law to be withheld. For the purposes of this  
25 definition, "earnings" means compensation paid or payable for personal  
26 services, whether denominated as wages, salary, commission, bonuses, or  
27 otherwise, and, notwithstanding any other provision of law making the  
28 payments exempt from garnishment, attachment, or other process to  
29 satisfy a court-ordered legal financial obligation, specifically  
30 includes periodic payments pursuant to pension or retirement programs,  
31 or insurance policies of any type, but does not include payments made  
32 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
33 or Title 74 RCW.

34 (20) "Domestic violence" has the same meaning as defined in RCW  
35 10.99.020 and 26.50.010.

36 (21) "Drug offender sentencing alternative" is a sentencing option  
37 available to persons convicted of a felony offense other than a violent

1 offense or a sex offense and who are eligible for the option under RCW  
2 9.94A.660.

3 ~~((+21+))~~ (22) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of  
5 a controlled substance (RCW 69.50.4013) or forged prescription for a  
6 controlled substance (RCW 69.50.403);

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

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

13 ~~((+22+))~~ (23) "Earned release" means earned release from  
14 confinement as provided in RCW 9.94A.728.

15 ~~((+23+))~~ (24) "Escape" means:

16 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
17 first degree (RCW 9A.76.110), escape in the second degree (RCW  
18 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
19 willful failure to return from work release (RCW 72.65.070), or willful  
20 failure to be available for supervision by the department while in  
21 community custody (RCW 72.09.310); or

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

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

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
27 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
28 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
29 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
30 felony physical control of a vehicle while under the influence of  
31 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

35 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the  
36 sentencing court to be paid by the offender to the court over a  
37 specific period of time.

1        ~~((26))~~ (27) "First-time offender" means any person who has no  
2 prior convictions for a felony and is eligible for the first-time  
3 offender waiver under RCW 9.94A.650.

4        ~~((27))~~ (28) "Home detention" means a program of partial  
5 confinement available to offenders wherein the offender is confined in  
6 a private residence subject to electronic surveillance.

7        ~~((28))~~ (29) "Legal financial obligation" means a sum of money  
8 that is ordered by a superior court of the state of Washington for  
9 legal financial obligations which may include restitution to the  
10 victim, statutorily imposed crime victims' compensation fees as  
11 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
12 drug funds, court-appointed attorneys' fees, and costs of defense,  
13 fines, and any other financial obligation that is assessed to the  
14 offender as a result of a felony conviction. Upon conviction for  
15 vehicular assault while under the influence of intoxicating liquor or  
16 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
17 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
18 legal financial obligations may also include payment to a public agency  
19 of the expense of an emergency response to the incident resulting in  
20 the conviction, subject to RCW 38.52.430.

21        ~~((29))~~ (30) "Most serious offense" means any of the following  
22 felonies or a felony attempt to commit any of the following felonies:

23        (a) Any felony defined under any law as a class A felony or  
24 criminal solicitation of or criminal conspiracy to commit a class A  
25 felony;

26        (b) Assault in the second degree;

27        (c) Assault of a child in the second degree;

28        (d) Child molestation in the second degree;

29        (e) Controlled substance homicide;

30        (f) Extortion in the first degree;

31        (g) Incest when committed against a child under age fourteen;

32        (h) Indecent liberties;

33        (i) Kidnapping in the second degree;

34        (j) Leading organized crime;

35        (k) Manslaughter in the first degree;

36        (l) Manslaughter in the second degree;

37        (m) Promoting prostitution in the first degree;

38        (n) Rape in the third degree;

1 (o) Robbery in the second degree;  
2 (p) Sexual exploitation;  
3 (q) Vehicular assault, when caused by the operation or driving of  
4 a vehicle by a person while under the influence of intoxicating liquor  
5 or any drug or by the operation or driving of a vehicle in a reckless  
6 manner;  
7 (r) Vehicular homicide, when proximately caused by the driving of  
8 any vehicle by any person while under the influence of intoxicating  
9 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
10 any vehicle in a reckless manner;  
11 (s) Any other class B felony offense with a finding of sexual  
12 motivation;  
13 (t) Any other felony with a deadly weapon verdict under RCW  
14 9.94A.825;  
15 (u) Any felony offense in effect at any time prior to December 2,  
16 1993, that is comparable to a most serious offense under this  
17 subsection, or any federal or out-of-state conviction for an offense  
18 that under the laws of this state would be a felony classified as a  
19 most serious offense under this subsection;  
20 (v)(i) A prior conviction for indecent liberties under RCW  
21 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
22 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
23 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
24 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
25 (ii) A prior conviction for indecent liberties under RCW  
26 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
27 if: (A) The crime was committed against a child under the age of  
28 fourteen; or (B) the relationship between the victim and perpetrator is  
29 included in the definition of indecent liberties under RCW  
30 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
31 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
32 through July 27, 1997;  
33 (w) Any out-of-state conviction for a felony offense with a finding  
34 of sexual motivation if the minimum sentence imposed was ten years or  
35 more; provided that the out-of-state felony offense must be comparable  
36 to a felony offense under Title 9 or 9A RCW and the out-of-state  
37 definition of sexual motivation must be comparable to the definition of  
38 sexual motivation contained in this section.

1        ~~((+30+))~~ (31) "Nonviolent offense" means an offense which is not a  
2 violent offense.

3        ~~((+31+))~~ (32) "Offender" means a person who has committed a felony  
4 established by state law and is eighteen years of age or older or is  
5 less than eighteen years of age but whose case is under superior court  
6 jurisdiction under RCW 13.04.030 or has been transferred by the  
7 appropriate juvenile court to a criminal court pursuant to RCW  
8 13.40.110. In addition, for the purpose of community custody  
9 requirements under this chapter, "offender" also means a misdemeanor or  
10 gross misdemeanor probationer convicted of an offense included in RCW  
11 9.94A.501(1) and ordered by a superior court to probation under the  
12 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or  
13 9.95.210. Throughout this chapter, the terms "offender" and  
14 "defendant" are used interchangeably.

15        ~~((+32+))~~ (33) "Partial confinement" means confinement for no more  
16 than one year in a facility or institution operated or utilized under  
17 contract by the state or any other unit of government, or, if home  
18 detention or work crew has been ordered by the court, in an approved  
19 residence, for a substantial portion of each day with the balance of  
20 the day spent in the community. Partial confinement includes work  
21 release, home detention, work crew, and a combination of work crew and  
22 home detention.

23        ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:

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

27        (i) Any "serious violent" felony offense as defined in this  
28 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a  
29 Child 1 (RCW 9A.36.120);

30        (ii) Any "violent" offense as defined by this section, excluding  
31 Assault of a Child 2 (RCW 9A.36.130);

32        (iii) Deliver or Possession with Intent to Deliver a Controlled  
33 Substance (chapter 69.50 RCW);

34        (iv) Any violation of the firearms and dangerous weapon act  
35 (chapter 9.41 RCW);

36        (v) Theft of a Firearm (RCW 9A.56.300);

37        (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

38        (vii) Malicious Harassment (RCW 9A.36.080);



1 (viii) Harassment where a subsequent violation or deadly threat is  
2 made (RCW 9A.46.020(2)(b));  
3 (ix) Criminal Gang Intimidation (RCW 9A.46.120);  
4 (x) Any felony conviction by a person eighteen years of age or  
5 older with a special finding of involving a juvenile in a felony  
6 offense under RCW 9.94A.833;  
7 (xi) Residential Burglary (RCW 9A.52.025);  
8 (xii) Burglary 2 (RCW 9A.52.030);  
9 (xiii) Malicious Mischief 1 (RCW 9A.48.070);  
10 (xiv) Malicious Mischief 2 (RCW 9A.48.080);  
11 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);  
12 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
13 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);  
14 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
15 9A.56.075);  
16 (xix) Extortion 1 (RCW 9A.56.120);  
17 (xx) Extortion 2 (RCW 9A.56.130);  
18 (xxi) Intimidating a Witness (RCW 9A.72.110);  
19 (xxii) Tampering with a Witness (RCW 9A.72.120);  
20 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
21 (xxiv) Coercion (RCW 9A.36.070);  
22 (xxv) Harassment (RCW 9A.46.020); or  
23 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
24 (b) That at least one of the offenses listed in (a) of this  
25 subsection shall have occurred after July 1, 2008;  
26 (c) That the most recent committed offense listed in (a) of this  
27 subsection occurred within three years of a prior offense listed in (a)  
28 of this subsection; and  
29 (d) Of the offenses that were committed in (a) of this subsection,  
30 the offenses occurred on separate occasions or were committed by two or  
31 more persons.  
32 ((~~34~~)) (35) "Persistent offender" is an offender who:  
33 (a)(i) Has been convicted in this state of any felony considered a  
34 most serious offense; and  
35 (ii) Has, before the commission of the offense under (a) of this  
36 subsection, been convicted as an offender on at least two separate  
37 occasions, whether in this state or elsewhere, of felonies that under  
38 the laws of this state would be considered most serious offenses and

1 would be included in the offender score under RCW 9.94A.525; provided  
2 that of the two or more previous convictions, at least one conviction  
3 must have occurred before the commission of any of the other most  
4 serious offenses for which the offender was previously convicted; or

5 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
6 of a child in the first degree, child molestation in the first degree,  
7 rape in the second degree, rape of a child in the second degree, or  
8 indecent liberties by forcible compulsion; (B) any of the following  
9 offenses with a finding of sexual motivation: Murder in the first  
10 degree, murder in the second degree, homicide by abuse, kidnapping in  
11 the first degree, kidnapping in the second degree, assault in the first  
12 degree, assault in the second degree, assault of a child in the first  
13 degree, assault of a child in the second degree, or burglary in the  
14 first degree; or (C) an attempt to commit any crime listed in this  
15 subsection (~~((+34+))~~) (35)(b)(i); and

16 (ii) Has, before the commission of the offense under (b)(i) of this  
17 subsection, been convicted as an offender on at least one occasion,  
18 whether in this state or elsewhere, of an offense listed in (b)(i) of  
19 this subsection or any federal or out-of-state offense or offense under  
20 prior Washington law that is comparable to the offenses listed in  
21 (b)(i) of this subsection. A conviction for rape of a child in the  
22 first degree constitutes a conviction under (b)(i) of this subsection  
23 only when the offender was sixteen years of age or older when the  
24 offender committed the offense. A conviction for rape of a child in  
25 the second degree constitutes a conviction under (b)(i) of this  
26 subsection only when the offender was eighteen years of age or older  
27 when the offender committed the offense.

28 (~~((+35+))~~) (36) "Predatory" means: (a) The perpetrator of the crime  
29 was a stranger to the victim, as defined in this section; (b) the  
30 perpetrator established or promoted a relationship with the victim  
31 prior to the offense and the victimization of the victim was a  
32 significant reason the perpetrator established or promoted the  
33 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
34 volunteer, or other person in authority in any public or private school  
35 and the victim was a student of the school under his or her authority  
36 or supervision. For purposes of this subsection, "school" does not  
37 include home-based instruction as defined in RCW 28A.225.010; (ii) a  
38 coach, trainer, volunteer, or other person in authority in any

1 recreational activity and the victim was a participant in the activity  
2 under his or her authority or supervision; or (iii) a pastor, elder,  
3 volunteer, or other person in authority in any church or religious  
4 organization, and the victim was a member or participant of the  
5 organization under his or her authority.

6 ~~((+36+))~~ (37) "Private school" means a school regulated under  
7 chapter 28A.195 or 28A.205 RCW.

8 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW  
9 28A.150.010.

10 ~~((+38+))~~ (39) "Repetitive domestic violence offense" means any:  
11 (a)(i) Domestic violence assault that is not a felony offense under  
12 RCW 9A.36.041;

13 (ii) Domestic violence violation of a no contact order under  
14 chapter 10.99 RCW that is not a felony offense;

15 (iii) Domestic violence violation of a protection order under  
16 chapter 26.09, 26.10, 26.26, or 26.50 RCW, that is not a felony  
17 offense;

18 (iv) Domestic violence harassment offense under RCW 9A.46.020 that  
19 is not a felony offense; or

20 (v) Domestic violence stalking offense under RCW 9A.46.110 that is  
21 not a felony offense; or

22 (b) Any federal, out-of-state, tribal court, military, county, or  
23 municipal conviction for an offense that under the laws of this state  
24 would be classified as a repetitive domestic violence offense under (a)  
25 of this subsection.

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

30 ~~((+39+))~~ (41) "Risk assessment" means the application of the risk  
31 instrument recommended to the department by the Washington state  
32 institute for public policy as having the highest degree of predictive  
33 accuracy for assessing an offender's risk of reoffense.

34 ~~((+40+))~~ (42) "Serious traffic offense" means:

35 (a) Nonfelony driving while under the influence of intoxicating  
36 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
37 while under the influence of intoxicating liquor or any drug (RCW

1 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
2 attended vehicle (RCW 46.52.020(5)); or

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

6 (~~(41)~~) (43) "Serious violent offense" is a subcategory of violent  
7 offense and means:

- 8 (a)(i) Murder in the first degree;
- 9 (ii) Homicide by abuse;
- 10 (iii) Murder in the second degree;
- 11 (iv) Manslaughter in the first degree;
- 12 (v) Assault in the first degree;
- 13 (vi) Kidnapping in the first degree;
- 14 (vii) Rape in the first degree;
- 15 (viii) Assault of a child in the first degree; or
- 16 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
17 commit one of these felonies; or

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

21 (~~(42)~~) (44) "Sex offense" means:

- 22 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
23 RCW 9A.44.130(12);
- 24 (ii) A violation of RCW 9A.64.020;
- 25 (iii) A felony that is a violation of chapter 9.68A RCW other than  
26 RCW 9.68A.080; or
- 27 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
28 criminal solicitation, or criminal conspiracy to commit such crimes;

29 (b) Any conviction for a felony offense in effect at any time prior  
30 to July 1, 1976, that is comparable to a felony classified as a sex  
31 offense in (a) of this subsection;

32 (c) A felony with a finding of sexual motivation under RCW  
33 9.94A.835 or 13.40.135; or

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

37 (~~(43)~~) (45) "Sexual motivation" means that one of the purposes

1 for which the defendant committed the crime was for the purpose of his  
2 or her sexual gratification.

3 ~~((44))~~ (46) "Standard sentence range" means the sentencing  
4 court's discretionary range in imposing a nonappealable sentence.

5 ~~((45))~~ (47) "Statutory maximum sentence" means the maximum length  
6 of time for which an offender may be confined as punishment for a crime  
7 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
8 the crime, or other statute defining the maximum penalty for a crime.

9 ~~((46))~~ (48) "Stranger" means that the victim did not know the  
10 offender twenty-four hours before the offense.

11 ~~((47))~~ (49) "Total confinement" means confinement inside the  
12 physical boundaries of a facility or institution operated or utilized  
13 under contract by the state or any other unit of government for twenty-  
14 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 ~~((48))~~ (50) "Transition training" means written and verbal  
16 instructions and assistance provided by the department to the offender  
17 during the two weeks prior to the offender's successful completion of  
18 the work ethic camp program. The transition training shall include  
19 instructions in the offender's requirements and obligations during the  
20 offender's period of community custody.

21 ~~((49))~~ (51) "Victim" means any person who has sustained  
22 emotional, psychological, physical, or financial injury to person or  
23 property as a direct result of the crime charged.

24 ~~((50))~~ (52) "Violent offense" means:

25 (a) Any of the following felonies:

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

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

30 (iii) Manslaughter in the first degree;

31 (iv) Manslaughter in the second degree;

32 (v) Indecent liberties if committed by forcible compulsion;

33 (vi) Kidnapping in the second degree;

34 (vii) Arson in the second degree;

35 (viii) Assault in the second degree;

36 (ix) Assault of a child in the second degree;

37 (x) Extortion in the first degree;

38 (xi) Robbery in the second degree;

1 (xii) Drive-by shooting;

2 (xiii) Vehicular assault, when caused by the operation or driving  
3 of a vehicle by a person while under the influence of intoxicating  
4 liquor or any drug or by the operation or driving of a vehicle in a  
5 reckless manner; and

6 (xiv) Vehicular homicide, when proximately caused by the driving of  
7 any vehicle by any person while under the influence of intoxicating  
8 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
9 any vehicle in a reckless manner;

10 (b) Any conviction for a felony offense in effect at any time prior  
11 to July 1, 1976, that is comparable to a felony classified as a violent  
12 offense in (a) of this subsection; and

13 (c) Any federal or out-of-state conviction for an offense that  
14 under the laws of this state would be a felony classified as a violent  
15 offense under (a) or (b) of this subsection.

16 ~~((+51+))~~ (53) "Work crew" means a program of partial confinement  
17 consisting of civic improvement tasks for the benefit of the community  
18 that complies with RCW 9.94A.725.

19 ~~((+52+))~~ (54) "Work ethic camp" means an alternative incarceration  
20 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
21 lower the cost of corrections by requiring offenders to complete a  
22 comprehensive array of real-world job and vocational experiences,  
23 character-building work ethics training, life management skills  
24 development, substance abuse rehabilitation, counseling, literacy  
25 training, and basic adult education.

26 ~~((+53+))~~ (55) "Work release" means a program of partial confinement  
27 available to offenders who are employed or engaged as a student in a  
28 regular course of study at school.

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

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

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

35 (1) A prior conviction is a conviction which exists before the date  
36 of sentencing for the offense for which the offender score is being

1 computed. Convictions entered or sentenced on the same date as the  
2 conviction for which the offender score is being computed shall be  
3 deemed "other current offenses" within the meaning of RCW 9.94A.589.

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

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

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

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

25 (e) If the present conviction is felony driving while under the  
26 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
27 felony physical control of a vehicle while under the influence of  
28 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions  
29 of felony driving while under the influence of intoxicating liquor or  
30 any drug, felony physical control of a vehicle while under the  
31 influence of intoxicating liquor or any drug, and serious traffic  
32 offenses shall be included in the offender score if: (i) The prior  
33 convictions were committed within five years since the last date of  
34 release from confinement (including full-time residential treatment) or  
35 entry of judgment and sentence; or (ii) the prior convictions would be  
36 considered "prior offenses within ten years" as defined in RCW  
37 46.61.5055.

1       (f) Repetitive domestic violence convictions shall not be included  
2 in the offender score if, since the last date of release from  
3 confinement or entry of judgment and sentence, the offender spent ten  
4 years in the community without committing any crime that subsequently  
5 results in a conviction.

6       (g) This subsection applies to both adult and juvenile prior  
7 convictions.

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

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

20       (5)(a) In the case of multiple prior convictions, for the purpose  
21 of computing the offender score, count all convictions separately,  
22 except:

23       (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
24 encompass the same criminal conduct, shall be counted as one offense,  
25 the offense that yields the highest offender score. The current  
26 sentencing court shall determine with respect to other prior adult  
27 offenses for which sentences were served concurrently or prior juvenile  
28 offenses for which sentences were served consecutively, whether those  
29 offenses shall be counted as one offense or as separate offenses using  
30 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
31 if the court finds that they shall be counted as one offense, then the  
32 offense that yields the highest offender score shall be used. The  
33 current sentencing court may presume that such other prior offenses  
34 were not the same criminal conduct from sentences imposed on separate  
35 dates, or in separate counties or jurisdictions, or in separate  
36 complaints, indictments, or informations;

37       (ii) In the case of multiple prior convictions for offenses  
38 committed before July 1, 1986, for the purpose of computing the



1 offender score, count all adult convictions served concurrently as one  
2 offense, and count all juvenile convictions entered on the same date as  
3 one offense. Use the conviction for the offense that yields the  
4 highest offender score.

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

11 (6) If the present conviction is one of the anticipatory offenses  
12 of criminal attempt, solicitation, or conspiracy, count each prior  
13 conviction as if the present conviction were for a completed offense.  
14 When these convictions are used as criminal history, score them the  
15 same as a completed crime.

16 (7) If the present conviction is for a nonviolent offense and not  
17 covered by subsection (11), (12), or (13) of this section, count one  
18 point for each adult prior felony conviction and one point for each  
19 juvenile prior violent felony conviction and 1/2 point for each  
20 juvenile prior nonviolent felony conviction.

21 (8) If the present conviction is for a violent offense and not  
22 covered in subsection (9), (10), (11), (12), or (13) of this section,  
23 count two points for each prior adult and juvenile violent felony  
24 conviction, one point for each prior adult nonviolent felony  
25 conviction, and 1/2 point for each prior juvenile nonviolent felony  
26 conviction.

27 (9) If the present conviction is for a serious violent offense,  
28 count three points for prior adult and juvenile convictions for crimes  
29 in this category, two points for each prior adult and juvenile violent  
30 conviction (not already counted), one point for each prior adult  
31 nonviolent felony conviction, and 1/2 point for each prior juvenile  
32 nonviolent felony conviction.

33 (10) If the present conviction is for Burglary 1, count prior  
34 convictions as in subsection (8) of this section; however count two  
35 points for each prior adult Burglary 2 or residential burglary  
36 conviction, and one point for each prior juvenile Burglary 2 or  
37 residential burglary conviction.

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

11 (12) If the present conviction is for homicide by watercraft or  
12 assault by watercraft count two points for each adult or juvenile prior  
13 conviction for homicide by watercraft or assault by watercraft; for  
14 each felony offense count one point for each adult and 1/2 point for  
15 each juvenile prior conviction; count one point for each adult and 1/2  
16 point for each juvenile prior conviction for driving under the  
17 influence of intoxicating liquor or any drug, actual physical control  
18 of a motor vehicle while under the influence of intoxicating liquor or  
19 any drug, or operation of a vessel while under the influence of  
20 intoxicating liquor or any drug.

21 (13) If the present conviction is for manufacture of  
22 methamphetamine count three points for each adult prior manufacture of  
23 methamphetamine conviction and two points for each juvenile manufacture  
24 of methamphetamine offense. If the present conviction is for a drug  
25 offense and the offender has a criminal history that includes a sex  
26 offense or serious violent offense, count three points for each adult  
27 prior felony drug offense conviction and two points for each juvenile  
28 drug offense. All other adult and juvenile felonies are scored as in  
29 subsection (8) of this section if the current drug offense is violent,  
30 or as in subsection (7) of this section if the current drug offense is  
31 nonviolent.

32 (14) If the present conviction is for Escape from Community  
33 Custody, RCW 72.09.310, count only prior escape convictions in the  
34 offender score. Count adult prior escape convictions as one point and  
35 juvenile prior escape convictions as 1/2 point.

36 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or  
37 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
38 juvenile prior convictions as 1/2 point.

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

7 (17) If the present conviction is for a sex offense, count priors  
8 as in subsections (7) through (11) and (13) through (16) of this  
9 section; however count three points for each adult and juvenile prior  
10 sex offense conviction.

11 (18) If the present conviction is for failure to register as a sex  
12 offender under RCW 9A.44.130(11), count priors as in subsections (7)  
13 through (11) and (13) through (16) of this section; however count three  
14 points for each adult and juvenile prior sex offense conviction,  
15 excluding prior convictions for failure to register as a sex offender  
16 under RCW 9A.44.130(11), which shall count as one point.

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

21 (20) If the present conviction is for Theft of a Motor Vehicle,  
22 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
23 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
24 priors as in subsections (7) through (18) of this section; however  
25 count one point for prior convictions of Vehicle Prowling 2, and three  
26 points for each adult and juvenile prior Theft 1 (of a motor vehicle),  
27 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a  
28 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),  
29 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a  
30 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without  
31 Permission 2 conviction.

32 (21) If the present conviction is for a felony domestic violence  
33 offense where domestic violence as defined in RCW 9.94A.030 was plead  
34 and proven, count priors as in subsections (7) through (20) of this  
35 section; however, count points as follows:

36 (a) Count two points for each adult and juvenile prior conviction  
37 where domestic violence as defined in RCW 9.94A.030, was plead and  
38 proven after August 1, 2011, for the following offenses: A violation

1 of a no contact order that is a felony offense, a violation of a  
2 protection order that is a felony offense, a felony domestic violence  
3 harassment offense, a felony domestic violence stalking offense, a  
4 domestic violence Burglary 1 offense, a domestic violence Kidnapping 1  
5 offense, a domestic violence Kidnapping 2 offense, a domestic violence  
6 unlawful imprisonment offense, a domestic violence Robbery 1 offense,  
7 a domestic violence Robbery 2 offense, a domestic violence Assault 1  
8 offense, a domestic violence Assault 2 offense, a domestic violence  
9 Assault 3 offense, a domestic violence Arson 1 offense, or a domestic  
10 violence Arson 2 offense; and

11 (b) Count one point for each adult and juvenile prior conviction  
12 for a repetitive domestic violence offense as defined in RCW 9.94A.030,  
13 where domestic violence as defined in RCW 9.94A.030, was plead and  
14 proven after August 1, 2011.

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

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

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

34 Whenever a sentence outside the standard sentence range is imposed,  
35 the court shall set forth the reasons for its decision in written  
36 findings of fact and conclusions of law. A sentence outside the  
37 standard sentence range shall be a determinate sentence.

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

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

9 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

24 (e) The defendant's capacity to appreciate the wrongfulness of his  
25 or her conduct, or to conform his or her conduct to the requirements of  
26 the law, was significantly impaired. Voluntary use of drugs or alcohol  
27 is excluded.

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

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

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

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

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

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

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

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

15 (d) The failure to consider the defendant's prior criminal history  
16 which was omitted from the offender score calculation pursuant to RCW  
17 9.94A.525 results in a presumptive sentence that is clearly too  
18 lenient.

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

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

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

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

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

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

34 (i) The current offense involved multiple victims or multiple  
35 incidents per victim;

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

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

3 (iv) The defendant used his or her position of trust, confidence,  
4 or fiduciary responsibility to facilitate the commission of the current  
5 offense.

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

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

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

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

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

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

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

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

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

33 (h) The current offense involved domestic violence, as defined in  
34 RCW 10.99.020, and one or more of the following was present:

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

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

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

5 (i) The offense resulted in the pregnancy of a child victim of  
6 rape.

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

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

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

17 (m) The offense involved a high degree of sophistication or  
18 planning.

19 (n) The defendant used his or her position of trust, confidence, or  
20 fiduciary responsibility to facilitate the commission of the current  
21 offense.

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

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

25 (q) The defendant demonstrated or displayed an egregious lack of  
26 remorse.

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

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

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

34 (u) The current offense is a burglary and the victim of the  
35 burglary was present in the building or residence when the crime was  
36 committed.

37 (v) The offense was committed against a law enforcement officer who  
38 was performing his or her official duties at the time of the offense,



1 the offender knew that the victim was a law enforcement officer, and  
2 the victim's status as a law enforcement officer is not an element of  
3 the offense.

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

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

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

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

19 (ii) For purposes of this subsection, "metal property" means  
20 commercial metal property, private metal property, or nonferrous metal  
21 property, as defined in RCW 19.290.010.

22 (aa) The defendant committed the offense with the intent to  
23 directly or indirectly cause any benefit, aggrandizement, gain, profit,  
24 or other advantage to or for a criminal street gang as defined in RCW  
25 9.94A.030, its reputation, influence, or membership.

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

27 Correct the title.

EFFECT: Changes the term "Serious Domestic Violence Offense" to  
"Repetitive Domestic Violence Offense" (to be consistent with SHB  
2777). Makes other technical changes.

--- END ---