
HOUSE BILL 1796

State of Washington 63rd Legislature 2013 Regular Session

By Representative Goodman; by request of Sentencing Guidelines Commission

Read first time 02/11/13. Referred to Committee on Public Safety.

1 AN ACT Relating to sentencing guidelines for multiple mitigating
2 offenses; and amending RCW 9.94A.533, 9.94A.535, and 9.94A.589.

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

4 **Sec. 1.** RCW 9.94A.533 and 2012 c 42 s 3 are each amended to read
5 as follows:

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

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

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

1 offender is being sentenced for more than one offense, the firearm
2 enhancement or enhancements must be added to the total period of
3 confinement for all offenses, regardless of which underlying offense is
4 subject to a firearm enhancement. If the offender or an accomplice was
5 armed with a firearm as defined in RCW 9.41.010 and the offender is
6 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
7 commit one of the crimes listed in this subsection as eligible for any
8 firearm enhancements, the following additional times shall be added to
9 the standard sentence range determined under subsection (2) of this
10 section based on the felony crime of conviction as classified under RCW
11 9A.28.020:

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

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

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

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

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

1 (f) The firearm enhancements in this section shall apply to all
2 felony crimes except the following: Possession of a machine gun,
3 possessing a stolen firearm, drive-by shooting, theft of a firearm,
4 unlawful possession of a firearm in the first and second degree, and
5 use of a machine gun in a felony;

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

13 (4) The following additional times shall be added to the standard
14 sentence range for felony crimes committed after July 23, 1995, if the
15 offender or an accomplice was armed with a deadly weapon other than a
16 firearm as defined in RCW 9.41.010 and the offender is being sentenced
17 for one of the crimes listed in this subsection as eligible for any
18 deadly weapon enhancements based on the classification of the completed
19 felony crime. If the offender is being sentenced for more than one
20 offense, the deadly weapon enhancement or enhancements must be added to
21 the total period of confinement for all offenses, regardless of which
22 underlying offense is subject to a deadly weapon enhancement. If the
23 offender or an accomplice was armed with a deadly weapon other than a
24 firearm as defined in RCW 9.41.010 and the offender is being sentenced
25 for an anticipatory offense under chapter 9A.28 RCW to commit one of
26 the crimes listed in this subsection as eligible for any deadly weapon
27 enhancements, the following additional times shall be added to the
28 standard sentence range determined under subsection (2) of this section
29 based on the felony crime of conviction as classified under RCW
30 9A.28.020:

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

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

37 (c) Six months for any felony defined under any law as a class C

1 felony or with a statutory maximum sentence of five years, or both, and
2 not covered under (f) of this subsection;

3 (d) If the offender is being sentenced under (a), (b), and/or (c)
4 of this subsection for any deadly weapon enhancements and the offender
5 has previously been sentenced for any deadly weapon enhancements after
6 July 23, 1995, under (a), (b), and/or (c) of this subsection or
7 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
8 weapon enhancements under this subsection shall be twice the amount of
9 the enhancement listed;

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

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

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

32 (5) The following additional times shall be added to the standard
33 sentence range if the offender or an accomplice committed the offense
34 while in a county jail or state correctional facility and the offender
35 is being sentenced for one of the crimes listed in this subsection. If
36 the offender or an accomplice committed one of the crimes listed in
37 this subsection while in a county jail or state correctional facility,
38 and the offender is being sentenced for an anticipatory offense under

1 chapter 9A.28 RCW to commit one of the crimes listed in this
2 subsection, the following additional times shall be added to the
3 standard sentence range determined under subsection (2) of this
4 section:

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

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

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

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

13 (6) An additional twenty-four months shall be added to the standard
14 sentence range for any ranked offense involving a violation of chapter
15 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
16 9.94A.827. All enhancements under this subsection shall run
17 consecutively to all other sentencing provisions, for all offenses
18 sentenced under this chapter.

19 (7) An additional two years shall be added to the standard sentence
20 range for vehicular homicide committed while under the influence of
21 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
22 prior offense as defined in RCW 46.61.5055. All enhancements under
23 this subsection shall be mandatory, shall be served in total
24 confinement, and shall run consecutively to all other sentencing
25 provisions.

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

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

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

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

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

15 (b) Notwithstanding any other provision of law, all sexual
16 motivation enhancements under this subsection are mandatory, shall be
17 served in total confinement, and shall run consecutively to all other
18 sentencing provisions, including other sexual motivation enhancements,
19 for all offenses sentenced under this chapter. However, whether or not
20 a mandatory minimum term has expired, an offender serving a sentence
21 under this subsection may be granted an extraordinary medical placement
22 when authorized under RCW 9.94A.728(3);

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

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

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

35 (f) Nothing in this subsection prevents a sentencing court from
36 imposing a sentence outside the standard sentence range pursuant to RCW
37 9.94A.535.

1 (9) An additional one-year enhancement shall be added to the
2 standard sentence range for the felony crimes of RCW 9A.44.073,
3 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
4 or after July 22, 2007, if the offender engaged, agreed, or offered to
5 engage the victim in the sexual conduct in return for a fee. If the
6 offender is being sentenced for more than one offense, the one-year
7 enhancement must be added to the total period of total confinement for
8 all offenses, regardless of which underlying offense is subject to the
9 enhancement. If the offender is being sentenced for an anticipatory
10 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
11 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
12 solicited another, or conspired to engage, agree, or offer to engage
13 the victim in the sexual conduct in return for a fee, an additional
14 one-year enhancement shall be added to the standard sentence range
15 determined under subsection (2) of this section. For purposes of this
16 subsection, "sexual conduct" means sexual intercourse or sexual
17 contact, both as defined in chapter 9A.44 RCW.

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

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

32 (c) The increased penalty specified in (a) of this subsection is
33 unavailable in the event that the prosecution gives notice that it will
34 seek an exceptional sentence based on an aggravating factor under RCW
35 9.94A.535.

36 (11) An additional twelve months and one day shall be added to the
37 standard sentence range for a conviction of attempting to elude a

1 police vehicle as defined by RCW 46.61.024, if the conviction included
2 a finding by special allegation of endangering one or more persons
3 under RCW 9.94A.834.

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

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

21 **Sec. 2.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read
22 as follows:

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

29 Whenever a sentence outside the standard sentence range is imposed,
30 the court shall set forth the reasons for its decision in written
31 findings of fact and conclusions of law. A sentence outside the
32 standard sentence range shall be a determinate sentence.

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

36 A departure from the standards in RCW 9.94A.589 (1) and (2)
37 governing whether sentences are to be served consecutively or

1 concurrently is an exceptional sentence subject to the limitations in
2 this section, and may be appealed by the offender or the state as set
3 forth in RCW 9.94A.585 (2) through (6).

4 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

19 (e) The defendant's capacity to appreciate the wrongfulness of his
20 or her conduct, or to conform his or her conduct to the requirements of
21 the law, was significantly impaired. Voluntary use of drugs or alcohol
22 is excluded.

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

26 (g) The operation of the (~~multiple offense~~) consecutive or
27 concurrent sentence policy of RCW 9.94A.589(1) or 9.94A.533 (3) or (4)
28 results in a presumptive sentence that is clearly excessive (~~in light~~
29 ~~of the purpose of this chapter, as expressed in RCW 9.94A.010~~). A
30 sentence based on this factor must include a period of confinement that
31 equals or exceeds the minimum presumptive sentence for the most serious
32 current offense. For purposes of this subsection (1)(g):

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

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

4 (A) The difference between the effects of one criminal act and the
5 cumulative effects of all the criminal acts is nonexistent, trivial, or
6 trifling; or

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

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

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

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

20 (2) Aggravating Circumstances - Considered and Imposed by the Court
21 The trial court may impose an aggravated exceptional sentence
22 without a finding of fact by a jury under the following circumstances:

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

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

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

35 (d) The failure to consider the defendant's prior criminal history
36 which was omitted from the offender score calculation pursuant to RCW
37 9.94A.525 results in a presumptive sentence that is clearly too
38 lenient.

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

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

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

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

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

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

16 (i) The current offense involved multiple victims or multiple
17 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (i) The offense resulted in the pregnancy of a child victim of
25 rape.

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

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

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

36 (m) The offense involved a high degree of sophistication or
37 planning.

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

4 (o) The defendant committed a current sex offense, has a history of
5 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 of
13 an organization, association, or identifiable group.

14 (t) The defendant committed the current offense shortly after being
15 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 who
20 was performing his or her official duties at the time of the offense,
21 the offender knew that the victim was a law enforcement officer, and
22 the victim's status as a law enforcement officer is not an element of
23 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 bodily
30 harm necessary to satisfy the elements of the offense. This aggravator
31 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) the
35 stolen property involved is metal property; and (C) the property damage
36 to the victim caused in the course of the theft of metal property is
37 more than three times the value of the stolen metal property, or the
38 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 metal
3 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, profit,
6 or other advantage to or for a criminal street gang as defined in RCW
7 9.94A.030, its reputation, influence, or membership.

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

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

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

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

31 (b) Whenever a person is convicted of two or more serious violent
32 offenses arising from separate and distinct criminal conduct, the
33 standard sentence range for the most severe offense (~~((with the highest~~
34 ~~seriousness level under RCW 9.94A.515))~~) shall be determined using the
35 offender's prior convictions and other current convictions that are not
36 serious violent offenses in the offender score and the standard
37 sentence range for other serious violent offenses shall be determined

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

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

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

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

31 (3) Subject to subsections (1) and (2) of this section, whenever a
32 person is sentenced for a felony that was committed while the person
33 was not under sentence for conviction of a felony, the sentence shall
34 run concurrently with any felony sentence which has been imposed by any
35 court in this or another state or by a federal court subsequent to the
36 commission of the crime being sentenced unless the court pronouncing
37 the current sentence expressly orders that they be served
38 consecutively.

1 (4) Whenever any person granted probation under RCW 9.95.210 or
2 9.92.060, or both, has the probationary sentence revoked and a prison
3 sentence imposed, that sentence shall run consecutively to any sentence
4 imposed pursuant to this chapter, unless the court pronouncing the
5 subsequent sentence expressly orders that they be served concurrently.

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

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