
SENATE BILL 5610

State of Washington

65th Legislature

2017 Regular Session

By Senators Darneille, Hasegawa, and Saldaña

Read first time 01/31/17. Referred to Committee on Human Services,
Mental Health & Housing.

1 AN ACT Relating to the sentencing of juveniles; and amending RCW
2 9.94A.533 and 9.94A.535.

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

4 **Sec. 1.** RCW 9.94A.533 and 2016 c 203 s 7 are each amended to
5 read 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
9 criminal attempt, solicitation, or conspiracy under chapter 9A.28
10 RCW, the standard sentence range is determined by locating the
11 sentencing grid sentence range defined by the appropriate offender
12 score and the seriousness level of the completed crime, and
13 multiplying the range by 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
16 the offender or an accomplice was armed with a firearm as defined in
17 RCW 9.41.010 and the offender is being sentenced for one of the
18 crimes listed in this subsection as eligible for any firearm
19 enhancements based on the classification of the completed felony
20 crime. If the offender is being sentenced for more than one offense,
21 the firearm enhancement or enhancements must be added to the total

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

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

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

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

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

26 (e) (~~Notwithstanding any other provision of law,~~) All firearm
27 enhancements under this section are mandatory, shall be served in
28 total confinement, and, except as provided in subsection (15) of this
29 section, shall run consecutively to all other sentencing provisions,
30 including other firearm or deadly weapon enhancements, for all
31 offenses sentenced under this chapter. However, whether or not a
32 mandatory minimum term has expired, an offender serving a sentence
33 under this subsection may be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (8)(a) The following additional times shall be added to the
28 standard sentence range for felony crimes committed on or after July
29 1, 2006, if the offense was committed with sexual motivation, as that
30 term is defined in RCW 9.94A.030. If the offender is being sentenced
31 for more than one offense, the sexual motivation enhancement must be
32 added to the total period of total confinement for all offenses,
33 regardless of which underlying offense is subject to a sexual
34 motivation enhancement. If the offender committed the offense with
35 sexual motivation and the offender is being sentenced for an
36 anticipatory offense under chapter 9A.28 RCW, the following
37 additional times shall be added to the standard sentence range
38 determined under subsection (2) of this section based on the felony
39 crime of conviction as classified 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 (a)(i), (ii), and/or (iii) of this subsection and
11 the offender has previously been sentenced for any sexual motivation
12 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
13 (iii) of this subsection, all sexual motivation enhancements under
14 this 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, except as provided in subsection
18 (15) of this section, shall run consecutively to all other sentencing
19 provisions, including other sexual motivation enhancements, for all
20 offenses sentenced under this chapter. However, whether or not a
21 mandatory minimum term has expired, an offender serving a sentence
22 under this subsection may be:

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

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

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

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

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

38 (f) Nothing in this subsection prevents a sentencing court from
39 imposing a sentence outside the standard sentence range pursuant to
40 RCW 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
5 to engage the victim in the sexual conduct in return for a fee. If
6 the offender is being sentenced for more than one offense, the
7 one-year enhancement must be added to the total period of total
8 confinement for all offenses, regardless of which underlying offense
9 is subject to the enhancement. If the offender is being sentenced for
10 an anticipatory offense for the felony crimes of RCW 9A.44.073,
11 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
12 offender attempted, solicited another, or conspired to engage, agree,
13 or offer to engage the victim in the sexual conduct in return for a
14 fee, an additional one-year enhancement shall be added to the
15 standard sentence range determined under subsection (2) of this
16 section. For purposes of this subsection, "sexual conduct" means
17 sexual intercourse or sexual contact, both as defined in chapter
18 9A.44 RCW.

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

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

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

37 (11) An additional twelve months and one day shall be added to
38 the standard sentence range for a conviction of attempting to elude a
39 police vehicle as defined by RCW 46.61.024, if the conviction

1 included a finding by special allegation of endangering one or more
2 persons under RCW 9.94A.834.

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

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

21 (14) An additional twelve months shall be added to the standard
22 sentence range for an offense that is also a violation of RCW
23 9.94A.832.

24 (15) If the offender is being sentenced in adult court for a
25 crime committed as a minor, enhancements are served concurrently, and
26 the court has discretion to reduce the sentence when the sentencing
27 enhancements result in a sentence that is clearly excessive.

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

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

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

1 If the sentencing court finds that an exceptional sentence
2 outside the standard sentence range should be imposed, the sentence
3 is subject 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
13 and are not intended to be exclusive reasons for exceptional
14 sentences.

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

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

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

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

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

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

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

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

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

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

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

10 (l) The defendant's age, sophistication, and role in the crime if
11 the defendant is under adult court jurisdiction for a crime committed
12 as a minor.

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

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

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

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

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

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

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

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

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

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

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

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

11 (i) The current offense involved multiple victims or multiple
12 incidents per victim;

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

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

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

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

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

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

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

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

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

39 (vi) The offender used his or her position or status to
40 facilitate the commission of the current offense, including positions

1 of trust, confidence or fiduciary responsibility (e.g., pharmacist,
2 physician, or other medical professional).

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

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

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

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

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

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

18 (i) The offense resulted in the pregnancy of a child victim of
19 rape.

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

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

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

30 (m) The offense involved a high degree of sophistication or
31 planning.

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

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

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

38 (q) The defendant demonstrated or displayed an egregious lack of
39 remorse.

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

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

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

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

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

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

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

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

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

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

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

38 (bb) The current offense involved paying to view, over the
39 internet in violation of RCW 9.68A.075, depictions of a minor engaged

1 in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)
2 (a) through (g).

3 (cc) The offense was intentionally committed because the
4 defendant perceived the victim to be homeless, as defined in RCW
5 9.94A.030.

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

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

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