

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6219

64th Legislature
2016 Regular Session

Passed by the Senate February 10, 2016
Yeas 49 Nays 0

President of the Senate

Passed by the House March 2, 2016
Yeas 97 Nays 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6219** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6219

Passed Legislature - 2016 Regular Session

State of Washington 64th Legislature 2016 Regular Session

By Senate Ways & Means (originally sponsored by Senators Brown, Angel, Padden, Hewitt, O'Ban, Roach, and Pearson)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to sentencing for vehicular homicide; and
2 amending RCW 9.94A.515 and 9.94A.535.

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

4 **Sec. 1.** RCW 9.94A.515 and 2015 c 261 s 11 are each amended to
5 read as follows:

TABLE 2

CRIMES INCLUDED WITHIN
EACH SERIOUSNESS LEVEL

- | | | |
|----|------|-----------------------------------|
| 9 | XVI | Aggravated Murder 1 (RCW |
| 10 | | 10.95.020) |
| 11 | XV | Homicide by abuse (RCW 9A.32.055) |
| 12 | | Malicious explosion 1 (RCW |
| 13 | | 70.74.280(1)) |
| 14 | | Murder 1 (RCW 9A.32.030) |
| 15 | XIV | Murder 2 (RCW 9A.32.050) |
| 16 | | Trafficking 1 (RCW 9A.40.100(1)) |
| 17 | XIII | Malicious explosion 2 (RCW |
| 18 | | 70.74.280(2)) |

1 Malicious placement of an explosive 1
2 (RCW 70.74.270(1))
3 XII Assault 1 (RCW 9A.36.011)
4 Assault of a Child 1 (RCW 9A.36.120)
5 Malicious placement of an imitation
6 device 1 (RCW 70.74.272(1)(a))
7 Promoting Commercial Sexual Abuse
8 of a Minor (RCW 9.68A.101)
9 Rape 1 (RCW 9A.44.040)
10 Rape of a Child 1 (RCW 9A.44.073)
11 Trafficking 2 (RCW 9A.40.100(3))
12 XI Manslaughter 1 (RCW 9A.32.060)
13 Rape 2 (RCW 9A.44.050)
14 Rape of a Child 2 (RCW 9A.44.076)
15 Vehicular Homicide, by being under
16 the influence of intoxicating liquor
17 or any drug (RCW 46.61.520)
18 Vehicular Homicide, by the operation
19 of any vehicle in a reckless
20 manner (RCW 46.61.520)
21 X Child Molestation 1 (RCW 9A.44.083)
22 Criminal Mistreatment 1 (RCW
23 9A.42.020)
24 Indecent Liberties (with forcible
25 compulsion) (RCW
26 9A.44.100(1)(a))
27 Kidnapping 1 (RCW 9A.40.020)
28 Leading Organized Crime (RCW
29 9A.82.060(1)(a))
30 Malicious explosion 3 (RCW
31 70.74.280(3))
32 Sexually Violent Predator Escape
33 (RCW 9A.76.115)
34 IX Abandonment of Dependent Person 1
35 (RCW 9A.42.060)

1 Assault of a Child 2 (RCW 9A.36.130)
2 Explosive devices prohibited (RCW
3 70.74.180)
4 Hit and Run—Death (RCW
5 46.52.020(4)(a))
6 Homicide by Watercraft, by being
7 under the influence of intoxicating
8 liquor or any drug (RCW
9 79A.60.050)
10 Inciting Criminal Profiteering (RCW
11 9A.82.060(1)(b))
12 Malicious placement of an explosive 2
13 (RCW 70.74.270(2))
14 Robbery 1 (RCW 9A.56.200)
15 Sexual Exploitation (RCW 9.68A.040)
16 VIII Arson 1 (RCW 9A.48.020)
17 Commercial Sexual Abuse of a Minor
18 (RCW 9.68A.100)
19 Homicide by Watercraft, by the
20 operation of any vessel in a
21 reckless manner (RCW
22 79A.60.050)
23 Manslaughter 2 (RCW 9A.32.070)
24 Promoting Prostitution 1 (RCW
25 9A.88.070)
26 Theft of Ammonia (RCW 69.55.010)
27 ~~((Vehicular Homicide, by the operation
28 of any vehicle in a reckless
29 manner—(RCW 46.61.520)))~~
30 VII Burglary 1 (RCW 9A.52.020)
31 Child Molestation 2 (RCW 9A.44.086)
32 Civil Disorder Training (RCW
33 9A.48.120)

1 Dealing in depictions of minor engaged
2 in sexually explicit conduct 1
3 (RCW 9.68A.050(1))
4 Drive-by Shooting (RCW 9A.36.045)
5 Homicide by Watercraft, by disregard
6 for the safety of others (RCW
7 79A.60.050)
8 Indecent Liberties (without forcible
9 compulsion) (RCW 9A.44.100(1)
10 (b) and (c))
11 Introducing Contraband 1 (RCW
12 9A.76.140)
13 Malicious placement of an explosive 3
14 (RCW 70.74.270(3))
15 Negligently Causing Death By Use of a
16 Signal Preemption Device (RCW
17 46.37.675)
18 Sending, bringing into state depictions
19 of minor engaged in sexually
20 explicit conduct 1 (RCW
21 9.68A.060(1))
22 Unlawful Possession of a Firearm in
23 the first degree (RCW
24 9.41.040(1))
25 Use of a Machine Gun in Commission
26 of a Felony (RCW 9.41.225)
27 Vehicular Homicide, by disregard for
28 the safety of others (RCW
29 46.61.520)
30 VI Bail Jumping with Murder 1 (RCW
31 9A.76.170(3)(a))
32 Bribery (RCW 9A.68.010)
33 Incest 1 (RCW 9A.64.020(1))
34 Intimidating a Judge (RCW 9A.72.160)
35 Intimidating a Juror/Witness (RCW
36 9A.72.110, 9A.72.130)

1 Malicious placement of an imitation
2 device 2 (RCW 70.74.272(1)(b))
3 Possession of Depictions of a Minor
4 Engaged in Sexually Explicit
5 Conduct 1 (RCW 9.68A.070(1))
6 Rape of a Child 3 (RCW 9A.44.079)
7 Theft of a Firearm (RCW 9A.56.300)
8 Unlawful Storage of Ammonia (RCW
9 69.55.020)
10 V Abandonment of Dependent Person 2
11 (RCW 9A.42.070)
12 Advancing money or property for
13 extortionate extension of credit
14 (RCW 9A.82.030)
15 Bail Jumping with class A Felony
16 (RCW 9A.76.170(3)(b))
17 Child Molestation 3 (RCW 9A.44.089)
18 Criminal Mistreatment 2 (RCW
19 9A.42.030)
20 Custodial Sexual Misconduct 1 (RCW
21 9A.44.160)
22 Dealing in Depictions of Minor
23 Engaged in Sexually Explicit
24 Conduct 2 (RCW 9.68A.050(2))
25 Domestic Violence Court Order
26 Violation (RCW 10.99.040,
27 10.99.050, 26.09.300, 26.10.220,
28 26.26.138, 26.50.110, 26.52.070,
29 or 74.34.145)
30 Driving While Under the Influence
31 (RCW 46.61.502(6))
32 Extortion 1 (RCW 9A.56.120)
33 Extortionate Extension of Credit (RCW
34 9A.82.020)

1 Extortionate Means to Collect
2 Extensions of Credit (RCW
3 9A.82.040)
4 Incest 2 (RCW 9A.64.020(2))
5 Kidnapping 2 (RCW 9A.40.030)
6 Perjury 1 (RCW 9A.72.020)
7 Persistent prison misbehavior (RCW
8 9.94.070)
9 Physical Control of a Vehicle While
10 Under the Influence (RCW
11 46.61.504(6))
12 Possession of a Stolen Firearm (RCW
13 9A.56.310)
14 Rape 3 (RCW 9A.44.060)
15 Rendering Criminal Assistance 1
16 (RCW 9A.76.070)
17 Sending, Bringing into State
18 Depictions of Minor Engaged in
19 Sexually Explicit Conduct 2
20 (RCW 9.68A.060(2))
21 Sexual Misconduct with a Minor 1
22 (RCW 9A.44.093)
23 Sexually Violating Human Remains
24 (RCW 9A.44.105)
25 Stalking (RCW 9A.46.110)
26 Taking Motor Vehicle Without
27 Permission 1 (RCW 9A.56.070)
28 IV Arson 2 (RCW 9A.48.030)
29 Assault 2 (RCW 9A.36.021)
30 Assault 3 (of a Peace Officer with a
31 Projectile Stun Gun) (RCW
32 9A.36.031(1)(h))
33 Assault by Watercraft (RCW
34 79A.60.060)

1 Bribing a Witness/Bribe Received by
2 Witness (RCW 9A.72.090,
3 9A.72.100)
4 Cheating 1 (RCW 9.46.1961)
5 Commercial Bribery (RCW
6 9A.68.060)
7 Counterfeiting (RCW 9.16.035(4))
8 Endangerment with a Controlled
9 Substance (RCW 9A.42.100)
10 Escape 1 (RCW 9A.76.110)
11 Hit and Run—Injury (RCW
12 46.52.020(4)(b))
13 Hit and Run with Vessel—Injury
14 Accident (RCW 79A.60.200(3))
15 Identity Theft 1 (RCW 9.35.020(2))
16 Indecent Exposure to Person Under
17 Age Fourteen (subsequent sex
18 offense) (RCW 9A.88.010)
19 Influencing Outcome of Sporting Event
20 (RCW 9A.82.070)
21 Malicious Harassment (RCW
22 9A.36.080)
23 Possession of Depictions of a Minor
24 Engaged in Sexually Explicit
25 Conduct 2 (RCW 9.68A.070(2))
26 Residential Burglary (RCW
27 9A.52.025)
28 Robbery 2 (RCW 9A.56.210)
29 Theft of Livestock 1 (RCW 9A.56.080)
30 Threats to Bomb (RCW 9.61.160)
31 Trafficking in Stolen Property 1 (RCW
32 9A.82.050)
33 Unlawful factoring of a credit card or
34 payment card transaction (RCW
35 9A.56.290(4)(b))

1 Unlawful transaction of health
2 coverage as a health care service
3 contractor (RCW 48.44.016(3))
4 Unlawful transaction of health
5 coverage as a health maintenance
6 organization (RCW 48.46.033(3))
7 Unlawful transaction of insurance
8 business (RCW 48.15.023(3))
9 Unlicensed practice as an insurance
10 professional (RCW 48.17.063(2))
11 Use of Proceeds of Criminal
12 Profiteering (RCW 9A.82.080 (1)
13 and (2))
14 Vehicle Prowling 2 (third or
15 subsequent offense) (RCW
16 9A.52.100(3))
17 Vehicular Assault, by being under the
18 influence of intoxicating liquor or
19 any drug, or by the operation or
20 driving of a vehicle in a reckless
21 manner (RCW 46.61.522)
22 Viewing of Depictions of a Minor
23 Engaged in Sexually Explicit
24 Conduct 1 (RCW 9.68A.075(1))
25 Willful Failure to Return from
26 Furlough (RCW 72.66.060)
27 III Animal Cruelty 1 (Sexual Conduct or
28 Contact) (RCW 16.52.205(3))
29 Assault 3 (Except Assault 3 of a Peace
30 Officer With a Projectile Stun
31 Gun) (RCW 9A.36.031 except
32 subsection (1)(h))
33 Assault of a Child 3 (RCW 9A.36.140)
34 Bail Jumping with class B or C Felony
35 (RCW 9A.76.170(3)(c))
36 Burglary 2 (RCW 9A.52.030)

1 Communication with a Minor for
2 Immoral Purposes (RCW
3 9.68A.090)
4 Criminal Gang Intimidation (RCW
5 9A.46.120)
6 Custodial Assault (RCW 9A.36.100)
7 Cyberstalking (subsequent conviction
8 or threat of death) (RCW
9 9.61.260(3))
10 Escape 2 (RCW 9A.76.120)
11 Extortion 2 (RCW 9A.56.130)
12 Harassment (RCW 9A.46.020)
13 Intimidating a Public Servant (RCW
14 9A.76.180)
15 Introducing Contraband 2 (RCW
16 9A.76.150)
17 Malicious Injury to Railroad Property
18 (RCW 81.60.070)
19 Mortgage Fraud (RCW 19.144.080)
20 Negligently Causing Substantial
21 Bodily Harm By Use of a Signal
22 Preemption Device (RCW
23 46.37.674)
24 Organized Retail Theft 1 (RCW
25 9A.56.350(2))
26 Perjury 2 (RCW 9A.72.030)
27 Possession of Incendiary Device (RCW
28 9.40.120)
29 Possession of Machine Gun or Short-
30 Barreled Shotgun or Rifle (RCW
31 9.41.190)
32 Promoting Prostitution 2 (RCW
33 9A.88.080)
34 Retail Theft with Special
35 Circumstances 1 (RCW
36 9A.56.360(2))

1 Securities Act violation (RCW
2 21.20.400)
3 Tampering with a Witness (RCW
4 9A.72.120)
5 Telephone Harassment (subsequent
6 conviction or threat of death)
7 (RCW 9.61.230(2))
8 Theft of Livestock 2 (RCW 9A.56.083)
9 Theft with the Intent to Resell 1 (RCW
10 9A.56.340(2))
11 Trafficking in Stolen Property 2 (RCW
12 9A.82.055)
13 Unlawful Hunting of Big Game 1
14 (RCW 77.15.410(3)(b))
15 Unlawful Imprisonment (RCW
16 9A.40.040)
17 Unlawful Misbranding of Food Fish or
18 Shellfish 1 (RCW 69.04.938(3))
19 Unlawful possession of firearm in the
20 second degree (RCW 9.41.040(2))
21 Unlawful Taking of Endangered Fish
22 or Wildlife 1 (RCW
23 77.15.120(3)(b))
24 Unlawful Trafficking in Fish, Shellfish,
25 or Wildlife 1 (RCW
26 77.15.260(3)(b))
27 Unlawful Use of a Nondesignated
28 Vessel (RCW 77.15.530(4))
29 Vehicular Assault, by the operation or
30 driving of a vehicle with disregard
31 for the safety of others (RCW
32 46.61.522)
33 Willful Failure to Return from Work
34 Release (RCW 72.65.070)
35 II Commercial Fishing Without a License
36 1 (RCW 77.15.500(3)(b))

1 Computer Trespass 1 (RCW
2 9A.52.110)
3 Counterfeiting (RCW 9.16.035(3))
4 Engaging in Fish Dealing Activity
5 Unlicensed 1 (RCW 77.15.620(3))
6 Escape from Community Custody
7 (RCW 72.09.310)
8 Failure to Register as a Sex Offender
9 (second or subsequent offense)
10 (RCW 9A.44.130 prior to June 10,
11 2010, and RCW 9A.44.132)
12 Health Care False Claims (RCW
13 48.80.030)
14 Identity Theft 2 (RCW 9.35.020(3))
15 Improperly Obtaining Financial
16 Information (RCW 9.35.010)
17 Malicious Mischief 1 (RCW
18 9A.48.070)
19 Organized Retail Theft 2 (RCW
20 9A.56.350(3))
21 Possession of Stolen Property 1 (RCW
22 9A.56.150)
23 Possession of a Stolen Vehicle (RCW
24 9A.56.068)
25 Retail Theft with Special
26 Circumstances 2 (RCW
27 9A.56.360(3))
28 Scrap Processing, Recycling, or
29 Supplying Without a License
30 (second or subsequent offense)
31 (RCW 19.290.100)
32 Theft 1 (RCW 9A.56.030)
33 Theft of a Motor Vehicle (RCW
34 9A.56.065)

1 Theft of Rental, Leased, or Lease-
2 purchased Property (valued at one
3 thousand five hundred dollars or
4 more) (RCW 9A.56.096(5)(a))
5 Theft with the Intent to Resell 2 (RCW
6 9A.56.340(3))
7 Trafficking in Insurance Claims (RCW
8 48.30A.015)
9 Unlawful factoring of a credit card or
10 payment card transaction (RCW
11 9A.56.290(4)(a))
12 Unlawful Participation of Non-Indians
13 in Indian Fishery (RCW
14 77.15.570(2))
15 Unlawful Practice of Law (RCW
16 2.48.180)
17 Unlawful Purchase or Use of a License
18 (RCW 77.15.650(3)(b))
19 Unlawful Trafficking in Fish, Shellfish,
20 or Wildlife 2 (RCW
21 77.15.260(3)(a))
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Voyeurism (RCW 9A.44.115)
25 I Attempting to Elude a Pursuing Police
26 Vehicle (RCW 46.61.024)
27 False Verification for Welfare (RCW
28 74.08.055)
29 Forgery (RCW 9A.60.020)
30 Fraudulent Creation or Revocation of a
31 Mental Health Advance Directive
32 (RCW 9A.60.060)
33 Malicious Mischief 2 (RCW
34 9A.48.080)
35 Mineral Trespass (RCW 78.44.330)

1 Possession of Stolen Property 2 (RCW
2 9A.56.160)
3 Reckless Burning 1 (RCW 9A.48.040)
4 Spotlighting Big Game 1 (RCW
5 77.15.450(3)(b))
6 Suspension of Department Privileges 1
7 (RCW 77.15.670(3)(b))
8 Taking Motor Vehicle Without
9 Permission 2 (RCW 9A.56.075)
10 Theft 2 (RCW 9A.56.040)
11 Theft of Rental, Leased, or Lease-
12 purchased Property (valued at two
13 hundred fifty dollars or more but
14 less than one thousand five
15 hundred dollars) (RCW
16 9A.56.096(5)(b))
17 Transaction of insurance business
18 beyond the scope of licensure
19 (RCW 48.17.063)
20 Unlawful Fish and Shellfish Catch
21 Accounting (RCW
22 77.15.630(3)(b))
23 Unlawful Issuance of Checks or Drafts
24 (RCW 9A.56.060)
25 Unlawful Possession of Fictitious
26 Identification (RCW 9A.56.320)
27 Unlawful Possession of Instruments of
28 Financial Fraud (RCW 9A.56.320)
29 Unlawful Possession of Payment
30 Instruments (RCW 9A.56.320)
31 Unlawful Possession of a Personal
32 Identification Device (RCW
33 9A.56.320)
34 Unlawful Production of Payment
35 Instruments (RCW 9A.56.320)

1 Unlawful Releasing, planting,
2 possessing, or placing Deleterious
3 Exotic Wildlife (RCW
4 77.15.250(2)(b))
5 Unlawful Trafficking in Food Stamps
6 (RCW 9.91.142)
7 Unlawful Use of Food Stamps (RCW
8 9.91.144)
9 Unlawful Use of Net to Take Fish 1
10 (RCW 77.15.580(3)(b))
11 Unlawful Use of Prohibited Aquatic
12 Animal Species (RCW
13 77.15.253(3))
14 Vehicle Prowl 1 (RCW 9A.52.095)
15 Violating Commercial Fishing Area or
16 Time 1 (RCW 77.15.550(3)(b))

17 **Sec. 2.** RCW 9.94A.535 and 2013 2nd sp.s. c 35 s 37 are each
18 amended to read as follows:

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

25 Whenever a sentence outside the standard sentence range is
26 imposed, the court shall set forth the reasons for its decision in
27 written findings of fact and conclusions of law. A sentence outside
28 the standard sentence range shall be a determinate sentence.

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

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

37 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (i) The current offense involved multiple victims or multiple
39 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) The offense was part of an ongoing pattern of psychological,
2 physical, or sexual abuse of a victim or multiple victims manifested
3 by multiple incidents over a prolonged period of time;
- 4 (ii) The offense occurred within sight or sound of the victim's
5 or the offender's minor children under the age of eighteen years; or
- 6 (iii) The offender's conduct during the commission of the current
7 offense manifested deliberate cruelty or intimidation of the victim.
- 8 (i) The offense resulted in the pregnancy of a child victim of
9 rape.
- 10 (j) The defendant knew that the victim of the current offense was
11 a youth who was not residing with a legal custodian and the defendant
12 established or promoted the relationship for the primary purpose of
13 victimization.
- 14 (k) The offense was committed with the intent to obstruct or
15 impair human or animal health care or agricultural or forestry
16 research or commercial production.
- 17 (l) The current offense is trafficking in the first degree or
18 trafficking in the second degree and any victim was a minor at the
19 time of the offense.
- 20 (m) The offense involved a high degree of sophistication or
21 planning.
- 22 (n) The defendant used his or her position of trust, confidence,
23 or fiduciary responsibility to facilitate the commission of the
24 current offense.
- 25 (o) The defendant committed a current sex offense, has a history
26 of sex offenses, and is not amenable to treatment.
- 27 (p) The offense involved an invasion of the victim's privacy.
- 28 (q) The defendant demonstrated or displayed an egregious lack of
29 remorse.
- 30 (r) The offense involved a destructive and foreseeable impact on
31 persons other than the victim.
- 32 (s) The defendant committed the offense to obtain or maintain his
33 or her membership or to advance his or her position in the hierarchy
34 of an organization, association, or identifiable group.
- 35 (t) The defendant committed the current offense shortly after
36 being released from incarceration.
- 37 (u) The current offense is a burglary and the victim of the
38 burglary was present in the building or residence when the crime was
39 committed.

1 (v) The offense was committed against a law enforcement officer
2 who was performing his or her official duties at the time of the
3 offense, the offender knew that the victim was a law enforcement
4 officer, and the victim's status as a law enforcement officer is not
5 an element of the offense.

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

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

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

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

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

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

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

31 (a) through (g).

32 (cc) The offense was intentionally committed because the
33 defendant perceived the victim to be homeless, as defined in RCW
34 9.94A.030.

35 (dd) The current offense involved a felony crime against persons,
36 except for assault in the third degree pursuant to RCW
37 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's
38 chamber, or any waiting area or corridor immediately adjacent to a
39 courtroom, jury room, or judge's chamber. This subsection shall apply
40 only: (i) During the times when a courtroom, jury room, or judge's

1 chamber is being used for judicial purposes during court proceedings;
2 and (ii) if signage was posted in compliance with RCW 2.28.200 at the
3 time of the offense.

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

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