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ENGROSSED SUBSTITUTE HOUSE BILL 2427

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State of Washington

61st Legislature

2010 Regular Session

**By** House Public Safety & Emergency Preparedness (originally sponsored by Representatives Pearson, Hurst, Bailey, Goodman, Kirby, Chandler, Herrera, O'Brien, Warnick, Ross, Condotta, Dammeier, Shea, Klippert, Smith, Walsh, Parker, Jacks, Blake, Rodne, Williams, McCune, Campbell, Johnson, Eddy, Morrell, Kelley, Short, Maxwell, Sullivan, Conway, Roach, Kristiansen, Haler, Sells, Schmick, Ericks, Ormsby, Kretz, Moeller, and Hope; by request of Attorney General)

READ FIRST TIME 01/18/10.

1 AN ACT Relating to punishment for domestic violence offenders;  
2 amending RCW 9.94A.030 and 9.94A.525; reenacting and amending RCW  
3 9.94A.535; creating a new section; and providing an effective date.

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

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

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

17 Unless the context clearly requires otherwise, the definitions in  
18 this section apply throughout this chapter.

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

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

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

12 (4) "Community corrections officer" means an employee of the  
13 department who is responsible for carrying out specific duties in  
14 supervision of sentenced offenders and monitoring of sentence  
15 conditions.

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

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

24 (7) "Community restitution" means compulsory service, without  
25 compensation, performed for the benefit of the community by the  
26 offender.

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

28 (9) "Conviction" means an adjudication of guilt pursuant to Title  
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
30 acceptance of a plea of guilty.

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

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

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

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

12 (c) The determination of a defendant's criminal history is distinct  
13 from the determination of an offender score. A prior conviction that  
14 was not included in an offender score calculated pursuant to a former  
15 version of the sentencing reform act remains part of the defendant's  
16 criminal history.

17 (12) "Criminal street gang" means any ongoing organization,  
18 association, or group of three or more persons, whether formal or  
19 informal, having a common name or common identifying sign or symbol,  
20 having as one of its primary activities the commission of criminal  
21 acts, and whose members or associates individually or collectively  
22 engage in or have engaged in a pattern of criminal street gang  
23 activity. This definition does not apply to employees engaged in  
24 concerted activities for their mutual aid and protection, or to the  
25 activities of labor and bona fide nonprofit organizations or their  
26 members or agents.

27 (13) "Criminal street gang associate or member" means any person  
28 who actively participates in any criminal street gang and who  
29 intentionally promotes, furthers, or assists in any criminal act by the  
30 criminal street gang.

31 (14) "Criminal street gang-related offense" means any felony or  
32 misdemeanor offense, whether in this state or elsewhere, that is  
33 committed for the benefit of, at the direction of, or in association  
34 with any criminal street gang, or is committed with the intent to  
35 promote, further, or assist in any criminal conduct by the gang, or is  
36 committed for one or more of the following reasons:

37 (a) To gain admission, prestige, or promotion within the gang;

1 (b) To increase or maintain the gang's size, membership, prestige,  
2 dominance, or control in any geographical area;

3 (c) To exact revenge or retribution for the gang or any member of  
4 the gang;

5 (d) To obstruct justice, or intimidate or eliminate any witness  
6 against the gang or any member of the gang;

7 (e) To directly or indirectly cause any benefit, aggrandizement,  
8 gain, profit, or other advantage for the gang, its reputation,  
9 influence, or membership; or

10 (f) To provide the gang with any advantage in, or any control or  
11 dominance over any criminal market sector, including, but not limited  
12 to, manufacturing, delivering, or selling any controlled substance  
13 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
14 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
15 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
16 (chapter 9.68 RCW).

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

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

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

27 (18) "Determinate sentence" means a sentence that states with  
28 exactitude the number of actual years, months, or days of total  
29 confinement, of partial confinement, of community custody, the number  
30 of actual hours or days of community restitution work, or dollars or  
31 terms of a legal financial obligation. The fact that an offender  
32 through earned release can reduce the actual period of confinement  
33 shall not affect the classification of the sentence as a determinate  
34 sentence.

35 (19) "Disposable earnings" means that part of the earnings of an  
36 offender remaining after the deduction from those earnings of any  
37 amount required by law to be withheld. For the purposes of this  
38 definition, "earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonuses, or  
2 otherwise, and, notwithstanding any other provision of law making the  
3 payments exempt from garnishment, attachment, or other process to  
4 satisfy a court-ordered legal financial obligation, specifically  
5 includes periodic payments pursuant to pension or retirement programs,  
6 or insurance policies of any type, but does not include payments made  
7 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
8 or Title 74 RCW.

9 (20) "Domestic violence" has the same meaning as defined in RCW  
10 10.99.020 and 26.50.010.

11 (21) "Drug offender sentencing alternative" is a sentencing option  
12 available to persons convicted of a felony offense other than a violent  
13 offense or a sex offense and who are eligible for the option under RCW  
14 9.94A.660.

15 ((+21+)) (22) "Drug offense" means:

16 (a) Any felony violation of chapter 69.50 RCW except possession of  
17 a controlled substance (RCW 69.50.4013) or forged prescription for a  
18 controlled substance (RCW 69.50.403);

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

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

25 ((+22+)) (23) "Earned release" means earned release from  
26 confinement as provided in RCW 9.94A.728.

27 ((+23+)) (24) "Escape" means:

28 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
29 first degree (RCW 9A.76.110), escape in the second degree (RCW  
30 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
31 willful failure to return from work release (RCW 72.65.070), or willful  
32 failure to be available for supervision by the department while in  
33 community custody (RCW 72.09.310); or

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

37 ((+24+)) (25) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
2 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
3 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
4 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
5 felony physical control of a vehicle while under the influence of  
6 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

10 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the  
11 sentencing court to be paid by the offender to the court over a  
12 specific period of time.

13 ~~((+26+))~~ (27) "First-time offender" means any person who has no  
14 prior convictions for a felony and is eligible for the first-time  
15 offender waiver under RCW 9.94A.650.

16 ~~((+27+))~~ (28) "Home detention" means a program of partial  
17 confinement available to offenders wherein the offender is confined in  
18 a private residence subject to electronic surveillance.

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

33 ~~((+29+))~~ (30) "Most serious offense" means any of the following  
34 felonies or a felony attempt to commit any of the following felonies:

35 (a) Any felony defined under any law as a class A felony or  
36 criminal solicitation of or criminal conspiracy to commit a class A  
37 felony;

38 (b) Assault in the second degree;

- 1 (c) Assault of a child in the second degree;  
2 (d) Child molestation in the second degree;  
3 (e) Controlled substance homicide;  
4 (f) Extortion in the first degree;  
5 (g) Incest when committed against a child under age fourteen;  
6 (h) Indecent liberties;  
7 (i) Kidnapping in the second degree;  
8 (j) Leading organized crime;  
9 (k) Manslaughter in the first degree;  
10 (l) Manslaughter in the second degree;  
11 (m) Promoting prostitution in the first degree;  
12 (n) Rape in the third degree;  
13 (o) Robbery in the second degree;  
14 (p) Sexual exploitation;  
15 (q) Vehicular assault, when caused by the operation or driving of  
16 a vehicle by a person while under the influence of intoxicating liquor  
17 or any drug or by the operation or driving of a vehicle in a reckless  
18 manner;  
19 (r) Vehicular homicide, when proximately caused by the driving of  
20 any vehicle by any person while under the influence of intoxicating  
21 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
22 any vehicle in a reckless manner;  
23 (s) Any other class B felony offense with a finding of sexual  
24 motivation;  
25 (t) Any other felony with a deadly weapon verdict under RCW  
26 9.94A.825;  
27 (u) Any felony offense in effect at any time prior to December 2,  
28 1993, that is comparable to a most serious offense under this  
29 subsection, or any federal or out-of-state conviction for an offense  
30 that under the laws of this state would be a felony classified as a  
31 most serious offense under this subsection;  
32 (v)(i) A prior conviction for indecent liberties under RCW  
33 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
34 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
35 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
36 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
37 (ii) A prior conviction for indecent liberties under RCW  
38 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,

1 if: (A) The crime was committed against a child under the age of  
2 fourteen; or (B) the relationship between the victim and perpetrator is  
3 included in the definition of indecent liberties under RCW  
4 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
5 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
6 through July 27, 1997;

7 (w) Any out-of-state conviction for a felony offense with a finding  
8 of sexual motivation if the minimum sentence imposed was ten years or  
9 more; provided that the out-of-state felony offense must be comparable  
10 to a felony offense under Title 9 or 9A RCW and the out-of-state  
11 definition of sexual motivation must be comparable to the definition of  
12 sexual motivation contained in this section.

13 ~~((+30+))~~ (31) "Nonviolent offense" means an offense which is not a  
14 violent offense.

15 ~~((+31+))~~ (32) "Offender" means a person who has committed a felony  
16 established by state law and is eighteen years of age or older or is  
17 less than eighteen years of age but whose case is under superior court  
18 jurisdiction under RCW 13.04.030 or has been transferred by the  
19 appropriate juvenile court to a criminal court pursuant to RCW  
20 13.40.110. In addition, for the purpose of community custody  
21 requirements under this chapter, "offender" also means a misdemeanor or  
22 gross misdemeanor probationer convicted of an offense included in RCW  
23 9.94A.501(1) and ordered by a superior court to probation under the  
24 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or  
25 9.95.210. Throughout this chapter, the terms "offender" and  
26 "defendant" are used interchangeably.

27 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more  
28 than one year in a facility or institution operated or utilized under  
29 contract by the state or any other unit of government, or, if home  
30 detention or work crew has been ordered by the court, in an approved  
31 residence, for a substantial portion of each day with the balance of  
32 the day spent in the community. Partial confinement includes work  
33 release, home detention, work crew, and a combination of work crew and  
34 home detention.

35 ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:

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



1 (i) Any "serious violent" felony offense as defined in this  
2 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a  
3 Child 1 (RCW 9A.36.120);  
4 (ii) Any "violent" offense as defined by this section, excluding  
5 Assault of a Child 2 (RCW 9A.36.130);  
6 (iii) Deliver or Possession with Intent to Deliver a Controlled  
7 Substance (chapter 69.50 RCW);  
8 (iv) Any violation of the firearms and dangerous weapon act  
9 (chapter 9.41 RCW);  
10 (v) Theft of a Firearm (RCW 9A.56.300);  
11 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);  
12 (vii) Malicious Harassment (RCW 9A.36.080);  
13 (viii) Harassment where a subsequent violation or deadly threat is  
14 made (RCW 9A.46.020(2)(b));  
15 (ix) Criminal Gang Intimidation (RCW 9A.46.120);  
16 (x) Any felony conviction by a person eighteen years of age or  
17 older with a special finding of involving a juvenile in a felony  
18 offense under RCW 9.94A.833;  
19 (xi) Residential Burglary (RCW 9A.52.025);  
20 (xii) Burglary 2 (RCW 9A.52.030);  
21 (xiii) Malicious Mischief 1 (RCW 9A.48.070);  
22 (xiv) Malicious Mischief 2 (RCW 9A.48.080);  
23 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);  
24 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
25 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);  
26 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
27 9A.56.075);  
28 (xix) Extortion 1 (RCW 9A.56.120);  
29 (xx) Extortion 2 (RCW 9A.56.130);  
30 (xxi) Intimidating a Witness (RCW 9A.72.110);  
31 (xxii) Tampering with a Witness (RCW 9A.72.120);  
32 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
33 (xxiv) Coercion (RCW 9A.36.070);  
34 (xxv) Harassment (RCW 9A.46.020); or  
35 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
36 (b) That at least one of the offenses listed in (a) of this  
37 subsection shall have occurred after July 1, 2008;

1 (c) That the most recent committed offense listed in (a) of this  
2 subsection occurred within three years of a prior offense listed in (a)  
3 of this subsection; and

4 (d) Of the offenses that were committed in (a) of this subsection,  
5 the offenses occurred on separate occasions or were committed by two or  
6 more persons.

7 (~~(34)~~) (35) "Persistent offender" is an offender who:

8 (a)(i) Has been convicted in this state of any felony considered a  
9 most serious offense; and

10 (ii) Has, before the commission of the offense under (a) of this  
11 subsection, been convicted as an offender on at least two separate  
12 occasions, whether in this state or elsewhere, of felonies that under  
13 the laws of this state would be considered most serious offenses and  
14 would be included in the offender score under RCW 9.94A.525; provided  
15 that of the two or more previous convictions, at least one conviction  
16 must have occurred before the commission of any of the other most  
17 serious offenses for which the offender was previously convicted; or

18 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
19 of a child in the first degree, child molestation in the first degree,  
20 rape in the second degree, rape of a child in the second degree, or  
21 indecent liberties by forcible compulsion; (B) any of the following  
22 offenses with a finding of sexual motivation: Murder in the first  
23 degree, murder in the second degree, homicide by abuse, kidnapping in  
24 the first degree, kidnapping in the second degree, assault in the first  
25 degree, assault in the second degree, assault of a child in the first  
26 degree, assault of a child in the second degree, or burglary in the  
27 first degree; or (C) an attempt to commit any crime listed in this  
28 subsection (~~(34)~~) (35)(b)(i); and

29 (ii) Has, before the commission of the offense under (b)(i) of this  
30 subsection, been convicted as an offender on at least one occasion,  
31 whether in this state or elsewhere, of an offense listed in (b)(i) of  
32 this subsection or any federal or out-of-state offense or offense under  
33 prior Washington law that is comparable to the offenses listed in  
34 (b)(i) of this subsection. A conviction for rape of a child in the  
35 first degree constitutes a conviction under (b)(i) of this subsection  
36 only when the offender was sixteen years of age or older when the  
37 offender committed the offense. A conviction for rape of a child in

1 the second degree constitutes a conviction under (b)(i) of this  
2 subsection only when the offender was eighteen years of age or older  
3 when the offender committed the offense.

4 ~~((+35+))~~ (36) "Predatory" means: (a) The perpetrator of the crime  
5 was a stranger to the victim, as defined in this section; (b) the  
6 perpetrator established or promoted a relationship with the victim  
7 prior to the offense and the victimization of the victim was a  
8 significant reason the perpetrator established or promoted the  
9 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
10 volunteer, or other person in authority in any public or private school  
11 and the victim was a student of the school under his or her authority  
12 or supervision. For purposes of this subsection, "school" does not  
13 include home-based instruction as defined in RCW 28A.225.010; (ii) a  
14 coach, trainer, volunteer, or other person in authority in any  
15 recreational activity and the victim was a participant in the activity  
16 under his or her authority or supervision; or (iii) a pastor, elder,  
17 volunteer, or other person in authority in any church or religious  
18 organization, and the victim was a member or participant of the  
19 organization under his or her authority.

20 ~~((+36+))~~ (37) "Private school" means a school regulated under  
21 chapter 28A.195 or 28A.205 RCW.

22 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW  
23 28A.150.010.

24 ~~((+38+))~~ (39) "Repetitive domestic violence offense" means any:  
25 (a)(i) Domestic violence assault that is not a felony offense under  
26 RCW 9A.36.041;

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

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

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

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

36 (b) Any federal, out-of-state, tribal court, military, county, or  
37 municipal conviction for an offense that under the laws of this state

1 would be classified as a repetitive domestic violence offense under (a)  
2 of this subsection.

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

7 ~~((39))~~ (41) "Risk assessment" means the application of the risk  
8 instrument recommended to the department by the Washington state  
9 institute for public policy as having the highest degree of predictive  
10 accuracy for assessing an offender's risk of reoffense.

11 ~~((40))~~ (42) "Serious traffic offense" means:

12 (a) Nonfelony driving while under the influence of intoxicating  
13 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
14 while under the influence of intoxicating liquor or any drug (RCW  
15 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
16 attended vehicle (RCW 46.52.020(5)); or

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

20 ~~((41))~~ (43) "Serious violent offense" is a subcategory of violent  
21 offense and means:

- 22 (a)(i) Murder in the first degree;
- 23 (ii) Homicide by abuse;
- 24 (iii) Murder in the second degree;
- 25 (iv) Manslaughter in the first degree;
- 26 (v) Assault in the first degree;
- 27 (vi) Kidnapping in the first degree;
- 28 (vii) Rape in the first degree;
- 29 (viii) Assault of a child in the first degree; or
- 30 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
31 commit one of these felonies; or

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

35 ~~((42))~~ (44) "Sex offense" means:

- 36 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
37 RCW 9A.44.130(12);
- 38 (ii) A violation of RCW 9A.64.020;

1 (iii) A felony that is a violation of chapter 9.68A RCW other than  
2 RCW 9.68A.080; or  
3 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
4 criminal solicitation, or criminal conspiracy to commit such crimes;  
5 (b) Any conviction for a felony offense in effect at any time prior  
6 to July 1, 1976, that is comparable to a felony classified as a sex  
7 offense in (a) of this subsection;  
8 (c) A felony with a finding of sexual motivation under RCW  
9 9.94A.835 or 13.40.135; or  
10 (d) Any federal or out-of-state conviction for an offense that  
11 under the laws of this state would be a felony classified as a sex  
12 offense under (a) of this subsection.  
13 (~~(43)~~) (45) "Sexual motivation" means that one of the purposes  
14 for which the defendant committed the crime was for the purpose of his  
15 or her sexual gratification.  
16 (~~(44)~~) (46) "Standard sentence range" means the sentencing  
17 court's discretionary range in imposing a nonappealable sentence.  
18 (~~(45)~~) (47) "Statutory maximum sentence" means the maximum length  
19 of time for which an offender may be confined as punishment for a crime  
20 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
21 the crime, or other statute defining the maximum penalty for a crime.  
22 (~~(46)~~) (48) "Stranger" means that the victim did not know the  
23 offender twenty-four hours before the offense.  
24 (~~(47)~~) (49) "Total confinement" means confinement inside the  
25 physical boundaries of a facility or institution operated or utilized  
26 under contract by the state or any other unit of government for twenty-  
27 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.  
28 (~~(48)~~) (50) "Transition training" means written and verbal  
29 instructions and assistance provided by the department to the offender  
30 during the two weeks prior to the offender's successful completion of  
31 the work ethic camp program. The transition training shall include  
32 instructions in the offender's requirements and obligations during the  
33 offender's period of community custody.  
34 (~~(49)~~) (51) "Victim" means any person who has sustained  
35 emotional, psychological, physical, or financial injury to person or  
36 property as a direct result of the crime charged.  
37 (~~(50)~~) (52) "Violent offense" means:  
38 (a) Any of the following felonies:

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

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

5 (iii) Manslaughter in the first degree;

6 (iv) Manslaughter in the second degree;

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

8 (vi) Kidnapping in the second degree;

9 (vii) Arson in the second degree;

10 (viii) Assault in the second degree;

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

12 (x) Extortion in the first degree;

13 (xi) Robbery in the second degree;

14 (xii) Drive-by shooting;

15 (xiii) Vehicular assault, when caused by the operation or driving  
16 of a vehicle by a person while under the influence of intoxicating  
17 liquor or any drug or by the operation or driving of a vehicle in a  
18 reckless manner; and

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

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

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

29 (~~(+51+)~~) (53) "Work crew" means a program of partial confinement  
30 consisting of civic improvement tasks for the benefit of the community  
31 that complies with RCW 9.94A.725.

32 (~~(+52+)~~) (54) "Work ethic camp" means an alternative incarceration  
33 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
34 lower the cost of corrections by requiring offenders to complete a  
35 comprehensive array of real-world job and vocational experiences,  
36 character-building work ethics training, life management skills  
37 development, substance abuse rehabilitation, counseling, literacy  
38 training, and basic adult education.

1       (~~(53)~~) (55) "Work release" means a program of partial confinement  
2 available to offenders who are employed or engaged as a student in a  
3 regular course of study at school.

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

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

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

10       (1) A prior conviction is a conviction which exists before the date  
11 of sentencing for the offense for which the offender score is being  
12 computed. Convictions entered or sentenced on the same date as the  
13 conviction for which the offender score is being computed shall be  
14 deemed "other current offenses" within the meaning of RCW 9.94A.589.

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

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

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

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

36       (e) If the present conviction is felony driving while under the  
37 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or

1 felony physical control of a vehicle while under the influence of  
2 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions  
3 of felony driving while under the influence of intoxicating liquor or  
4 any drug, felony physical control of a vehicle while under the  
5 influence of intoxicating liquor or any drug, and serious traffic  
6 offenses shall be included in the offender score if: (i) The prior  
7 convictions were committed within five years since the last date of  
8 release from confinement (including full-time residential treatment) or  
9 entry of judgment and sentence; or (ii) the prior convictions would be  
10 considered "prior offenses within ten years" as defined in RCW  
11 46.61.5055.

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

17 (g) This subsection applies to both adult and juvenile prior  
18 convictions.

19 (3) Out-of-state convictions for offenses shall be classified  
20 according to the comparable offense definitions and sentences provided  
21 by Washington law. Federal convictions for offenses shall be  
22 classified according to the comparable offense definitions and  
23 sentences provided by Washington law. If there is no clearly  
24 comparable offense under Washington law or the offense is one that is  
25 usually considered subject to exclusive federal jurisdiction, the  
26 offense shall be scored as a class C felony equivalent if it was a  
27 felony under the relevant federal statute.

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

31 (5)(a) In the case of multiple prior convictions, for the purpose  
32 of computing the offender score, count all convictions separately,  
33 except:

34 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
35 encompass the same criminal conduct, shall be counted as one offense,  
36 the offense that yields the highest offender score. The current  
37 sentencing court shall determine with respect to other prior adult  
38 offenses for which sentences were served concurrently or prior juvenile



1 offenses for which sentences were served consecutively, whether those  
2 offenses shall be counted as one offense or as separate offenses using  
3 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
4 if the court finds that they shall be counted as one offense, then the  
5 offense that yields the highest offender score shall be used. The  
6 current sentencing court may presume that such other prior offenses  
7 were not the same criminal conduct from sentences imposed on separate  
8 dates, or in separate counties or jurisdictions, or in separate  
9 complaints, indictments, or informations;

10 (ii) In the case of multiple prior convictions for offenses  
11 committed before July 1, 1986, for the purpose of computing the  
12 offender score, count all adult convictions served concurrently as one  
13 offense, and count all juvenile convictions entered on the same date as  
14 one offense. Use the conviction for the offense that yields the  
15 highest offender score.

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

22 (6) If the present conviction is one of the anticipatory offenses  
23 of criminal attempt, solicitation, or conspiracy, count each prior  
24 conviction as if the present conviction were for a completed offense.  
25 When these convictions are used as criminal history, score them the  
26 same as a completed crime.

27 (7) If the present conviction is for a nonviolent offense and not  
28 covered by subsection (11), (12), or (13) of this section, count one  
29 point for each adult prior felony conviction and one point for each  
30 juvenile prior violent felony conviction and 1/2 point for each  
31 juvenile prior nonviolent felony conviction.

32 (8) If the present conviction is for a violent offense and not  
33 covered in subsection (9), (10), (11), (12), or (13) of this section,  
34 count two points for each prior adult and juvenile violent felony  
35 conviction, one point for each prior adult nonviolent felony  
36 conviction, and 1/2 point for each prior juvenile nonviolent felony  
37 conviction.

1 (9) If the present conviction is for a serious violent offense,  
2 count three points for prior adult and juvenile convictions for crimes  
3 in this category, two points for each prior adult and juvenile violent  
4 conviction (not already counted), one point for each prior adult  
5 nonviolent felony conviction, and 1/2 point for each prior juvenile  
6 nonviolent felony conviction.

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

12 (11) If the present conviction is for a felony traffic offense  
13 count two points for each adult or juvenile prior conviction for  
14 Vehicular Homicide or Vehicular Assault; for each felony offense count  
15 one point for each adult and 1/2 point for each juvenile prior  
16 conviction; for each serious traffic offense, other than those used for  
17 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
18 adult and 1/2 point for each juvenile prior conviction; count one point  
19 for each adult and 1/2 point for each juvenile prior conviction for  
20 operation of a vessel while under the influence of intoxicating liquor  
21 or any drug.

22 (12) If the present conviction is for homicide by watercraft or  
23 assault by watercraft count two points for each adult or juvenile prior  
24 conviction for homicide by watercraft or assault by watercraft; for  
25 each felony offense count one point for each adult and 1/2 point for  
26 each juvenile prior conviction; count one point for each adult and 1/2  
27 point for each juvenile prior conviction for driving under the  
28 influence of intoxicating liquor or any drug, actual physical control  
29 of a motor vehicle while under the influence of intoxicating liquor or  
30 any drug, or operation of a vessel while under the influence of  
31 intoxicating liquor or any drug.

32 (13) If the present conviction is for manufacture of  
33 methamphetamine count three points for each adult prior manufacture of  
34 methamphetamine conviction and two points for each juvenile manufacture  
35 of methamphetamine offense. If the present conviction is for a drug  
36 offense and the offender has a criminal history that includes a sex  
37 offense or serious violent offense, count three points for each adult  
38 prior felony drug offense conviction and two points for each juvenile

1 drug offense. All other adult and juvenile felonies are scored as in  
2 subsection (8) of this section if the current drug offense is violent,  
3 or as in subsection (7) of this section if the current drug offense is  
4 nonviolent.

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

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

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

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

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

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

32 (20) If the present conviction is for Theft of a Motor Vehicle,  
33 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
34 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
35 priors as in subsections (7) through (18) of this section; however  
36 count one point for prior convictions of Vehicle Prowling 2, and three  
37 points for each adult and juvenile prior Theft 1 (of a motor vehicle),  
38 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a

1 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),  
2 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a  
3 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without  
4 Permission 2 conviction.

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

9 (a) Count two points for each adult and juvenile prior conviction  
10 where domestic violence as defined in RCW 9.94A.030, was plead and  
11 proven after August 1, 2011, for the following offenses: A violation  
12 of a no contact order that is a felony offense, a violation of a  
13 protection order that is a felony offense, a felony domestic violence  
14 harassment offense, a felony domestic violence stalking offense, a  
15 domestic violence Burglary 1 offense, a domestic violence Kidnapping 1  
16 offense, a domestic violence Kidnapping 2 offense, a domestic violence  
17 unlawful imprisonment offense, a domestic violence Robbery 1 offense,  
18 a domestic violence Robbery 2 offense, a domestic violence Assault 1  
19 offense, a domestic violence Assault 2 offense, a domestic violence  
20 Assault 3 offense, a domestic violence Arson 1 offense, or a domestic  
21 violence Arson 2 offense; and

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

26 (22) The fact that a prior conviction was not included in an  
27 offender's offender score or criminal history at a previous sentencing  
28 shall have no bearing on whether it is included in the criminal history  
29 or offender score for the current offense. Prior convictions that were  
30 not counted in the offender score or included in criminal history under  
31 repealed or previous versions of the sentencing reform act shall be  
32 included in criminal history and shall count in the offender score if  
33 the current version of the sentencing reform act requires including or  
34 counting those convictions. Prior convictions that were not included  
35 in criminal history or in the offender score shall be included upon any  
36 resentencing to ensure imposition of an accurate sentence.

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

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

9       Whenever a sentence outside the standard sentence range is imposed,  
10 the court shall set forth the reasons for its decision in written  
11 findings of fact and conclusions of law. A sentence outside the  
12 standard sentence range shall be a determinate sentence.

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

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

21       (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

36       (e) The defendant's capacity to appreciate the wrongfulness of his  
37 or her conduct, or to conform his or her conduct to the requirements of

1 the law, was significantly impaired. Voluntary use of drugs or alcohol  
2 is excluded.

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

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

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

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

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

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

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

27 (d) The failure to consider the defendant's prior criminal history  
28 which was omitted from the offender score calculation pursuant to RCW  
29 9.94A.525 results in a presumptive sentence that is clearly too  
30 lenient.

31 (3) Aggravating Circumstances - Considered by a Jury -Imposed by  
32 the Court

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

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

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

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

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

8 (i) The current offense involved multiple victims or multiple  
9 incidents per victim;

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

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

14 (iv) The defendant used his or her position of trust, confidence,  
15 or fiduciary responsibility to facilitate the commission of the current  
16 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (i) The offense resulted in the pregnancy of a child victim of  
16 rape.

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

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

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

27 (m) The offense involved a high degree of sophistication or  
28 planning.

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

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

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

35 (q) The defendant demonstrated or displayed an egregious lack of  
36 remorse.

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



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

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

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

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

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

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

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

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

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

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

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

--- END ---