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**SECOND SUBSTITUTE SENATE BILL 5488**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Saldaña, Wilson, C., Keiser, and Nguyen)

READ FIRST TIME 01/23/20.

1 AN ACT Relating to the sentencing of youth and young adults; and  
2 amending RCW 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 2018 c 7 s 8 are each amended to read  
5 as follows:

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

8 (2) For persons convicted of the anticipatory offenses of  
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 shall run consecutively to all other  
29 sentencing provisions, including other firearm or deadly weapon  
30 enhancements, for all offenses sentenced under this chapter. However,  
31 whether or not a mandatory minimum term has expired, an offender  
32 serving a sentence under this subsection may be:

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

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

36 (f) The firearm enhancements in this section shall apply to all  
37 felony crimes except the following: Possession of a machine gun or  
38 bump-fire stock, possessing a stolen firearm, drive-by shooting,  
39 theft of a firearm, unlawful possession of a firearm in the first and

1 second degree, and use of a machine gun or bump-fire stock in a  
2 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 weapon  
5 enhancements under this section are mandatory, shall be served in  
6 total confinement, and shall run consecutively to all other  
7 sentencing provisions, including other firearm or deadly weapon  
8 enhancements, for all offenses sentenced under this chapter. However,  
9 whether or not a mandatory minimum term has expired, an offender  
10 serving a sentence under this subsection may be:

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

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

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

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

17 Notwithstanding any other provision of law, all impaired driving  
18 enhancements under this subsection are mandatory, shall be served in  
19 total confinement, and shall run consecutively to all other  
20 sentencing provisions, including other impaired driving enhancements,  
21 for all offenses sentenced under this chapter.

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

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

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

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

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

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

12 (b) Notwithstanding any other provision of law, all sexual  
13 motivation enhancements under this subsection are mandatory, shall be  
14 served in total confinement, and shall run consecutively to all other  
15 sentencing provisions, including other sexual motivation  
16 enhancements, for all offenses sentenced under this chapter. However,  
17 whether or not a mandatory minimum term has expired, an offender  
18 serving a sentence under this subsection may be:

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

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

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

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

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

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

37 (9) An additional one-year enhancement shall be added to the  
38 standard sentence range for the felony crimes of RCW 9A.44.073,  
39 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
40 or after July 22, 2007, if the offender engaged, agreed, or offered

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

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

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

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

33 (11) An additional twelve months and one day shall be added to  
34 the standard sentence range for a conviction of attempting to elude a  
35 police vehicle as defined by RCW 46.61.024, if the conviction  
36 included a finding by special allegation of endangering one or more  
37 persons under RCW 9.94A.834.

38 (12) An additional twelve months shall be added to the standard  
39 sentence range for an offense that is also a violation of RCW  
40 9.94A.831.

1 (13) An additional twelve months shall be added to the standard  
2 sentence range for vehicular homicide committed while under the  
3 influence of intoxicating liquor or any drug as defined by RCW  
4 46.61.520 or for vehicular assault committed while under the  
5 influence of intoxicating liquor or any drug as defined by RCW  
6 46.61.522, or for any felony driving under the influence (RCW  
7 46.61.502(6)) or felony physical control under the influence (RCW  
8 46.61.504(6)) for each child passenger under the age of sixteen who  
9 is an occupant in the defendant's vehicle. These enhancements shall  
10 be mandatory, shall be served in total confinement, and shall run  
11 consecutively to all other sentencing provisions. If the addition of  
12 a minor child enhancement increases the sentence so that it would  
13 exceed the statutory maximum for the offense, the portion of the  
14 sentence representing the enhancement may not be reduced.

15 (14) An additional twelve months shall be added to the standard  
16 sentence range for an offense that is also a violation of RCW  
17 9.94A.832.

18 (15) Regardless of any provisions in this section, if a person is  
19 being sentenced in adult court for a crime committed under age  
20 eighteen, the court has full discretion to depart from mandatory  
21 sentencing enhancements and to take the particular circumstances  
22 surrounding the defendant's youth into account.

23 **Sec. 2.** RCW 9.94A.535 and 2019 c 219 s 1 are each amended to  
24 read as follows:

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

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

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

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



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

4 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) The defendant is less culpable because of youthfulness at the  
7 time of the offense, which is demonstrated by age, susceptibility to  
8 peer pressure, lack of sophistication or maturity, or other factors  
9 not shown in a fully developed adult.

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

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

15 (a) The defendant and the state both stipulate that justice is  
16 best 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  
19 the 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  
26 offenses going unpunished.

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

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

33 Except for circumstances listed in subsection (2) of this  
34 section, the following circumstances are an exclusive list of factors  
35 that can support a sentence above the standard range. Such facts  
36 should be 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  
2 the current offense was particularly vulnerable or incapable of  
3 resistance.

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

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

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

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

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

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

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

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

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

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

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

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

37 (vi) The offender used his or her position or status to  
38 facilitate the commission of the current offense, including positions  
39 of trust, confidence or fiduciary responsibility (e.g., pharmacist,  
40 physician, or 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  
5 multiple incidents over a prolonged period of time.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (r) The offense involved a destructive and foreseeable impact on  
39 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  
3 of an organization, association, or identifiable group.

4 (t) The defendant committed the current offense shortly after  
5 being 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  
10 who was performing his or her official duties at the time of the  
11 offense, the offender knew that the victim was a law enforcement  
12 officer, and the victim's status as a law enforcement officer is not  
13 an element of 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  
20 bodily harm necessary to satisfy the elements of the offense. This  
21 aggravator 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)  
25 the stolen property involved is metal property; and (C) the property  
26 damage to the victim caused in the course of the theft of metal  
27 property is more than three times the value of the stolen metal  
28 property, or the 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  
31 metal 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,  
34 profit, or other advantage to or for a criminal street gang as  
35 defined in RCW 9.94A.030, its reputation, influence, or membership.

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

39 (a) through (g).

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

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

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

17 (ff) The current offense involved the assault of a utility  
18 employee of any publicly or privately owned utility company or  
19 agency, who is at the time of the act engaged in official duties,  
20 including: (i) The maintenance or repair of utility poles, lines,  
21 conduits, pipes, or other infrastructure; or (ii) connecting,  
22 disconnecting, or recording utility meters.

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