

---

**HOUSE BILL 1071**

---

**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Valdez and Lekanoff

Prefiled 01/04/21.

1 AN ACT Relating to bias-based criminal offenses; and amending RCW  
2 9.94A.411 and 9.94A.535.

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

4 **Sec. 1.** RCW 9.94A.411 and 2019 c 46 s 5008 are each amended to  
5 read as follows:

6 (1) Decision not to prosecute.

7 STANDARD: A prosecuting attorney may decline to prosecute, even  
8 though technically sufficient evidence to prosecute exists, in  
9 situations where prosecution would serve no public purpose, would  
10 defeat the underlying purpose of the law in question or would result  
11 in decreased respect for the law.

12 GUIDELINE/COMMENTARY:

13 Examples

14 The following are examples of reasons not to prosecute which  
15 could satisfy the standard.

16 (a) Contrary to Legislative Intent - It may be proper to decline  
17 to charge where the application of criminal sanctions would be  
18 clearly contrary to the intent of the legislature in enacting the  
19 particular statute.

20 (b) Antiquated Statute - It may be proper to decline to charge  
21 where the statute in question is antiquated in that:

- 1 (i) It has not been enforced for many years; and  
2 (ii) Most members of society act as if it were no longer in  
3 existence; and  
4 (iii) It serves no deterrent or protective purpose in today's  
5 society; and  
6 (iv) The statute has not been recently reconsidered by the  
7 legislature.

8 This reason is not to be construed as the basis for declining  
9 cases because the law in question is unpopular or because it is  
10 difficult to enforce.

11 (c) De Minimis Violation - It may be proper to decline to charge  
12 where the violation of law is only technical or insubstantial and  
13 where no public interest or deterrent purpose would be served by  
14 prosecution.

15 (d) Confinement on Other Charges - It may be proper to decline to  
16 charge because the accused has been sentenced on another charge to a  
17 lengthy period of confinement; and

18 (i) Conviction of the new offense would not merit any additional  
19 direct or collateral punishment;

20 (ii) The new offense is either a misdemeanor or a felony which is  
21 not particularly aggravated; and

22 (iii) Conviction of the new offense would not serve any  
23 significant deterrent purpose.

24 (e) Pending Conviction on Another Charge - It may be proper to  
25 decline to charge because the accused is facing a pending prosecution  
26 in the same or another county; and

27 (i) Conviction of the new offense would not merit any additional  
28 direct or collateral punishment;

29 (ii) Conviction in the pending prosecution is imminent;

30 (iii) The new offense is either a misdemeanor or a felony which  
31 is not particularly aggravated; and

32 (iv) Conviction of the new offense would not serve any  
33 significant deterrent purpose.

34 (f) High Disproportionate Cost of Prosecution - It may be proper  
35 to decline to charge where the cost of locating or transporting, or  
36 the burden on, prosecution witnesses is highly disproportionate to  
37 the importance of prosecuting the offense in question. This reason  
38 should be limited to minor cases and should not be relied upon in  
39 serious cases.

1 (g) Improper Motives of Complainant - It may be proper to decline  
2 charges because the motives of the complainant are improper and  
3 prosecution would serve no public purpose, would defeat the  
4 underlying purpose of the law in question or would result in  
5 decreased respect for the law.

6 (h) Immunity - It may be proper to decline to charge where  
7 immunity is to be given to an accused in order to prosecute another  
8 where the accused's information or testimony will reasonably lead to  
9 the conviction of others who are responsible for more serious  
10 criminal conduct or who represent a greater danger to the public  
11 interest.

12 (i) Victim Request - It may be proper to decline to charge  
13 because the victim requests that no criminal charges be filed and the  
14 case involves the following crimes or situations:

15 (i) Assault cases where the victim has suffered little or no  
16 injury;

17 (ii) Crimes against property, not involving violence, where no  
18 major loss was suffered;

19 (iii) Where doing so would not jeopardize the safety of society.

20 Care should be taken to insure that the victim's request is  
21 freely made and is not the product of threats or pressure by the  
22 accused.

23 The presence of these factors may also justify the decision to  
24 dismiss a prosecution which has been commenced.

25 Notification

26 The prosecutor is encouraged to notify the victim, when  
27 practical, and the law enforcement personnel, of the decision not to  
28 prosecute.

29 (2) Decision to prosecute.

30 (a) STANDARD:

31 Crimes against persons will be filed if sufficient admissible  
32 evidence exists, which, when considered with the most plausible,  
33 reasonably foreseeable defense that could be raised under the  
34 evidence, would justify conviction by a reasonable and objective fact  
35 finder. With regard to offenses prohibited by RCW 9A.44.040,  
36 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,  
37 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling  
38 agreements or diversions intended to place the accused in a program  
39 of treatment or counseling, so that treatment, if determined to be  
40 beneficial, can be provided pursuant to RCW 9.94A.670.

1 Crimes against property/other crimes will be filed if the  
2 admissible evidence is of such convincing force as to make it  
3 probable that a reasonable and objective fact finder would convict  
4 after hearing all the admissible evidence and the most plausible  
5 defense that could be raised.

6 See table below for the crimes within these categories.

7 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

8 CRIMES AGAINST PERSONS

9 Aggravated Murder (RCW 10.95.020)  
10 1st Degree Murder (RCW 9A.32.030)  
11 2nd Degree Murder (RCW 9A.32.050)  
12 1st Degree Manslaughter (RCW 9A.32.060)  
13 2nd Degree Manslaughter (RCW 9A.32.070)  
14 1st Degree Kidnapping (RCW 9A.40.020)  
15 2nd Degree Kidnapping (RCW 9A.40.030)  
16 1st Degree Assault (RCW 9A.36.011)  
17 2nd Degree Assault (RCW 9A.36.021)  
18 3rd Degree Assault (RCW 9A.36.031)  
19 4th Degree Assault (if a violation of RCW 9A.36.041(3))  
20 1st Degree Assault of a Child (RCW 9A.36.120)  
21 2nd Degree Assault of a Child (RCW 9A.36.130)  
22 3rd Degree Assault of a Child (RCW 9A.36.140)  
23 1st Degree Rape (RCW 9A.44.040)  
24 2nd Degree Rape (RCW 9A.44.050)  
25 3rd Degree Rape (RCW 9A.44.060)  
26 1st Degree Rape of a Child (RCW 9A.44.073)  
27 2nd Degree Rape of a Child (RCW 9A.44.076)  
28 3rd Degree Rape of a Child (RCW 9A.44.079)  
29 1st Degree Robbery (RCW 9A.56.200)  
30 2nd Degree Robbery (RCW 9A.56.210)  
31 1st Degree Arson (RCW 9A.48.020)  
32 1st Degree Burglary (RCW 9A.52.020)  
33 1st Degree Identity Theft (RCW 9.35.020(2))  
34 2nd Degree Identity Theft (RCW 9.35.020(3))  
35 1st Degree Extortion (RCW 9A.56.120)  
36 2nd Degree Extortion (RCW 9A.56.130)  
37 1st Degree Criminal Mistreatment (RCW 9A.42.020)  
38 2nd Degree Criminal Mistreatment (RCW 9A.42.030)  
39 1st Degree Theft from a Vulnerable Adult (RCW 9A.56.400(1))

1 2nd Degree Theft from a Vulnerable Adult (RCW 9A.56.400(2))  
2 Indecent Liberties (RCW 9A.44.100)  
3 Incest (RCW 9A.64.020)  
4 Vehicular Homicide (RCW 46.61.520)  
5 Vehicular Assault (RCW 46.61.522)  
6 1st Degree Child Molestation (RCW 9A.44.083)  
7 2nd Degree Child Molestation (RCW 9A.44.086)  
8 3rd Degree Child Molestation (RCW 9A.44.089)  
9 1st Degree Promoting Prostitution (RCW 9A.88.070)  
10 Intimidating a Juror (RCW 9A.72.130)  
11 Communication with a Minor (RCW 9.68A.090)  
12 Intimidating a Witness (RCW 9A.72.110)  
13 Intimidating a Public Servant (RCW 9A.76.180)  
14 Bomb Threat (if against person) (RCW 9.61.160)  
15 Unlawful Imprisonment (RCW 9A.40.040)  
16 Promoting a Suicide Attempt (RCW 9A.36.060)  
17 Criminal Mischief (if against person) (RCW 9A.84.010)  
18 Stalking (RCW 9A.46.110)  
19 Custodial Assault (RCW 9A.36.100)  
20 Domestic Violence Court Order Violation (RCW 10.99.040,  
21 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.50.110, 26.52.070, or  
22 74.34.145)  
23 Counterfeiting (if a violation of RCW 9.16.035(4))  
24 Felony Driving a Motor Vehicle While Under the Influence of  
25 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))  
26 Felony Physical Control of a Motor Vehicle While Under the  
27 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))  
28 Hate Crime offense (RCW 9A.36.080)  
29 CRIMES AGAINST PROPERTY/OTHER CRIMES  
30 2nd Degree Arson (RCW 9A.48.030)  
31 1st Degree Escape (RCW 9A.76.110)  
32 2nd Degree Escape (RCW 9A.76.120)  
33 2nd Degree Burglary (RCW 9A.52.030)  
34 1st Degree Theft (RCW 9A.56.030)  
35 2nd Degree Theft (RCW 9A.56.040)  
36 1st Degree Perjury (RCW 9A.72.020)  
37 2nd Degree Perjury (RCW 9A.72.030)  
38 1st Degree Introducing Contraband (RCW 9A.76.140)  
39 2nd Degree Introducing Contraband (RCW 9A.76.150)

1 1st Degree Possession of Stolen Property (RCW 9A.56.150)  
2 2nd Degree Possession of Stolen Property (RCW 9A.56.160)  
3 Bribery (RCW 9A.68.010)  
4 Bribing a Witness (RCW 9A.72.090)  
5 Bribe received by a Witness (RCW 9A.72.100)  
6 Bomb Threat (if against property) (RCW 9.61.160)  
7 1st Degree Malicious Mischief (RCW 9A.48.070)  
8 2nd Degree Malicious Mischief (RCW 9A.48.080)  
9 1st Degree Reckless Burning (RCW 9A.48.040)  
10 Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and  
11 9A.56.075)  
12 Forgery (RCW 9A.60.020)  
13 2nd Degree Promoting Prostitution (RCW 9A.88.080)  
14 Tampering with a Witness (RCW 9A.72.120)  
15 Trading in Public Office (RCW 9A.68.040)  
16 Trading in Special Influence (RCW 9A.68.050)  
17 Receiving/Granting Unlawful Compensation (RCW 9A.68.030)  
18 Bigamy (RCW 9A.64.010)  
19 Eluding a Pursuing Police Vehicle (RCW 46.61.024)  
20 Willful Failure to Return from Furlough  
21 Escape from Community Custody  
22 Criminal Mischief (if against property) (RCW 9A.84.010)  
23 1st Degree Theft of Livestock (RCW 9A.56.080)  
24 2nd Degree Theft of Livestock (RCW 9A.56.083)

25 ALL OTHER UNCLASSIFIED FELONIES

26 Selection of Charges/Degree of Charge

27 (i) The prosecutor should file charges which adequately describe  
28 the nature of defendant's conduct. Other offenses may be charged only  
29 if they are necessary to ensure that the charges:

30 (A) Will significantly enhance the strength of the state's case  
31 at trial; or

32 (B) Will result in restitution to all victims.

33 (ii) The prosecutor should not overcharge to obtain a guilty  
34 plea. Overcharging includes:

35 (A) Charging a higher degree;

36 (B) Charging additional counts.

37 This standard is intended to direct prosecutors to charge those  
38 crimes which demonstrate the nature and seriousness of a defendant's  
39 criminal conduct, but to decline to charge crimes which are not

1 necessary to such an indication. Crimes which do not merge as a  
2 matter of law, but which arise from the same course of conduct, do  
3 not all have to be charged.

4 (b) GUIDELINES/COMMENTARY:

5 (i) Police Investigation

6 A prosecuting attorney is dependent upon law enforcement agencies  
7 to conduct the necessary factual investigation which must precede the  
8 decision to prosecute. The prosecuting attorney shall ensure that a  
9 thorough factual investigation has been conducted before a decision  
10 to prosecute is made. In ordinary circumstances the investigation  
11 should include the following:

12 (A) The interviewing of all material witnesses, together with the  
13 obtaining of written statements whenever possible;

14 (B) The completion of necessary laboratory tests; and

15 (C) The obtaining, in accordance with constitutional  
16 requirements, of the suspect's version of the events.

17 If the initial investigation is incomplete, a prosecuting  
18 attorney should insist upon further investigation before a decision  
19 to prosecute is made, and specify what the investigation needs to  
20 include.

21 (ii) Exceptions

22 In certain situations, a prosecuting attorney may authorize  
23 filing of a criminal complaint before the investigation is complete  
24 if:

25 (A) Probable cause exists to believe the suspect is guilty; and

26 (B) The suspect presents a danger to the community or is likely  
27 to flee if not apprehended; or

28 (C) The arrest of the suspect is necessary to complete the  
29 investigation of the crime.

30 In the event that the exception to the standard is applied, the  
31 prosecuting attorney shall obtain a commitment from the law  
32 enforcement agency involved to complete the investigation in a timely  
33 manner. If the subsequent investigation does not produce sufficient  
34 evidence to meet the normal charging standard, the complaint should  
35 be dismissed.

36 (iii) Investigation Techniques

37 The prosecutor should be fully advised of the investigatory  
38 techniques that were used in the case investigation including:

39 (A) Polygraph testing;

- 1 (B) Hypnosis;
- 2 (C) Electronic surveillance;
- 3 (D) Use of informants.

4 (iv) Prefiling Discussions with Defendant

5 Discussions with the defendant or his/her representative  
6 regarding the selection or disposition of charges may occur prior to  
7 the filing of charges, and potential agreements can be reached.

8 (v) Prefiling Discussions with Victim(s)

9 Discussions with the victim(s) or victims' representatives  
10 regarding the selection or disposition of charges may occur before  
11 the filing of charges. The discussions may be considered by the  
12 prosecutor in charging and disposition decisions, and should be  
13 considered before reaching any agreement with the defendant regarding  
14 these decisions.

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

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

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

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

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

35 (1) Mitigating Circumstances - Court to Consider

36 The court may impose an exceptional sentence below the standard  
37 range if it finds that mitigating circumstances are established by a  
38 preponderance of the evidence. The following are illustrative only



1 and are not intended to be exclusive reasons for exceptional  
2 sentences.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (3) Aggravating Circumstances - Considered by a Jury - Imposed by  
21 the Court

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

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

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

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

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

36 (i) The current offense involved multiple victims or multiple  
37 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

31 (g) The offense was part of an ongoing pattern of sexual abuse of  
32 the same victim under the age of (~~eighteen~~) 18 years manifested by  
33 multiple incidents over a prolonged period of time.

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

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

1 (ii) The offense occurred within sight or sound of the victim's  
2 or the offender's minor children under the age of (~~eighteen~~) 18  
3 years; or

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

6 (i) The offense resulted in the pregnancy of a child victim of  
7 rape.

8 (j) The defendant knew that the victim of the current offense was  
9 a youth who was not residing with a legal custodian and the defendant  
10 established or promoted the relationship for the primary purpose of  
11 victimization.

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

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

18 (m) The offense involved a high degree of sophistication or  
19 planning.

20 (n) The defendant used his or her position of trust, confidence,  
21 or fiduciary responsibility to facilitate the commission of the  
22 current offense.

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

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

26 (q) The defendant demonstrated or displayed an egregious lack of  
27 remorse.

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

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

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

35 (u) The current offense is a burglary and the victim of the  
36 burglary was present in the building or residence when the crime was  
37 committed.

38 (v) The offense was committed against a law enforcement officer  
39 who was performing his or her official duties at the time of the  
40 offense, the offender knew that the victim was a law enforcement

1 officer, and the victim's status as a law enforcement officer is not  
2 an element of the offense.

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

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

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

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

18 (ii) For purposes of this subsection, "metal property" means  
19 commercial metal property, private metal property, or nonferrous  
20 metal property, as defined in RCW 19.290.010.

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

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

29 (cc) The offense was intentionally committed because the  
30 defendant perceived the victim to be homeless, as defined in RCW  
31 9.94A.030.

32 (dd) The current offense involved a felony crime against persons,  
33 except for assault in the third degree pursuant to RCW  
34 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's  
35 chamber, or any waiting area or corridor immediately adjacent to a  
36 courtroom, jury room, or judge's chamber. This subsection shall apply  
37 only: (i) During the times when a courtroom, jury room, or judge's  
38 chamber is being used for judicial purposes during court proceedings;  
39 and (ii) if signage was posted in compliance with RCW 2.28.200 at the  
40 time of the offense.

1 (ee) During the commission of the current offense, the defendant  
2 was driving in the opposite direction of the normal flow of traffic  
3 on a multiple lane highway, as defined by RCW 46.04.350, with a  
4 posted speed limit of (~~forty-five~~) 45 miles per hour or greater.

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

11 (gg) The current offense is an offense other than a hate crime  
12 offense pursuant to RCW 9A.36.080, and the defendant's conduct in  
13 committing the offense was motivated by the defendant's perception of  
14 the victim's race, color, religion, ancestry, national origin,  
15 gender, sexual orientation, gender expression or identity, or mental,  
16 physical, or sensory disability.

--- END ---