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5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.36 RCW  
8 to read as follows:

9 (1) A person eighteen years of age or older is guilty of the crime  
10 of assault of a child in the first degree if the child is under the age  
11 of thirteen and the person:

12 (a) Commits the crime of assault in the first degree, as defined in  
13 RCW 9A.36.011, against the child; or

14 (b) Intentionally assaults the child and either:

15 (i) Recklessly inflicts great bodily harm; or

16 (ii) Causes substantial bodily harm, and the person has previously  
17 engaged in a pattern or practice either of (A) assaulting the child  
18 which has resulted in bodily harm that is greater than transient  
19 physical pain or minor temporary marks, or (B) causing the child  
20 physical pain or agony that is equivalent to that produced by torture.

21 (2) Assault of a child in the first degree is a class A felony."

22 "NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.36 RCW  
23 to read as follows:

24 (1) A person eighteen years of age or older is guilty of the crime  
25 of assault of a child in the second degree if the child is under the  
26 age of thirteen and the person:

1 (a) Commits the crime of assault in the second degree, as defined  
2 in RCW 9A.36.021, against a child; or

3 (b) Intentionally assaults the child and causes bodily harm that is  
4 greater than transient physical pain or minor temporary marks, and the  
5 person has previously engaged in a pattern or practice either of (i)  
6 assaulting the child which has resulted in bodily harm that is greater  
7 than transient pain or minor temporary marks, or (ii) causing the child  
8 physical pain or agony that is equivalent to that produced by torture.

9 (2) Assault of a child in the second degree is a class B felony."

10 "NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.36 RCW  
11 to read as follows:

12 (1) A person eighteen years of age or older is guilty of the crime  
13 of assault of a child in the third degree if the child is under the age  
14 of thirteen and the person commits the crime of assault in the third  
15 degree as defined in RCW 9A.36.031(1)(d) or (f) against the child.

16 (2) Assault of a child in the third degree is a class C felony."

17 "**Sec. 4.** RCW 9.94A.320 and 1991 c 32 s 3 are each amended to read  
18 as follows:

19 TABLE 2

20 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

21 XV Aggravated Murder 1 (RCW 10.95.020)

22 XIV Murder 1 (RCW 9A.32.030)

23 Homicide by abuse (RCW 9A.32.055)

24 XIII Murder 2 (RCW 9A.32.050)

25 XII Assault 1 (RCW 9A.36.011)

26 Assault of a Child 1 (RCW 9A.36.--- (section 1 of this  
27 act))

1 XI Rape 1 (RCW 9A.44.040)  
2 Rape of a Child 1 (RCW 9A.44.073)  
3 X Kidnapping 1 (RCW 9A.40.020)  
4 Rape 2 (RCW 9A.44.050)  
5 Rape of a Child 2 (RCW 9A.44.076)  
6 Child Molestation 1 (RCW 9A.44.083)  
7 Damaging building, etc., by explosion with threat to  
8 human being (RCW 70.74.280(1))  
9 Over 18 and deliver heroin or narcotic from Schedule I  
10 or II to someone under 18 (RCW 69.50.406)  
11 Leading Organized Crime (RCW 9A.82.060(1)(a))  
12 IX Assault of a Child 2 (RCW 9A.36.--- (section 2 of this  
13 act))  
14 Robbery 1 (RCW 9A.56.200)  
15 Manslaughter 1 (RCW 9A.32.060)  
16 Explosive devices prohibited (RCW 70.74.180)  
17 Indecent Liberties (with forcible compulsion)  
18 (RCW 9A.44.100(1)(a))  
19 Endangering life and property by explosives with threat to  
20 human being (RCW 70.74.270)  
21 Over 18 and deliver narcotic from Schedule III, IV, or V  
22 or a nonnarcotic from Schedule I-V to someone under  
23 18 and 3 years junior (RCW 69.50.406)  
24 Controlled Substance Homicide (RCW 69.50.415)  
25 Sexual Exploitation (RCW 9.68A.040)  
26 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))  
27 VIII Arson 1 (RCW 9A.48.020)  
28 Promoting Prostitution 1 (RCW 9A.88.070)  
29 Selling for profit (controlled or counterfeit)  
30 any controlled substance (RCW 69.50.410)

1 Manufacture, deliver, or possess with intent to deliver  
2 heroin or cocaine (RCW 69.50.401(a)(1)(i))  
3 Manufacture, deliver, or possess with intent to deliver  
4 methamphetamine (RCW 69.50.401(a)(1)(ii))  
5 Vehicular Homicide, by being under the influence of  
6 intoxicating liquor or any drug or by the operation of  
7 any vehicle in a reckless manner (RCW 46.61.520)  
8 VII Burglary 1 (RCW 9A.52.020)  
9 Vehicular Homicide, by disregard for the safety of others  
10 (RCW 46.61.520)  
11 Introducing Contraband 1 (RCW 9A.76.140)  
12 Indecent Liberties (without forcible compulsion)  
13 (RCW 9A.44.100(1) (b) and (c))  
14 Child Molestation 2 (RCW 9A.44.086)  
15 Dealing in depictions of minor engaged in sexually explicit  
16 conduct (RCW 9.68A.050)  
17 Sending, bringing into state depictions of minor engaged  
18 in sexually explicit conduct (RCW 9.68A.060)  
19 Involving a minor in drug dealing (RCW 69.50.401(f))  
20 VI Bribery (RCW 9A.68.010)  
21 Manslaughter 2 (RCW 9A.32.070)  
22 Rape of a Child 3 (RCW 9A.44.079)  
23 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)  
24 Damaging building, etc., by explosion with no threat to  
25 human being (RCW 70.74.280(2))  
26 Endangering life and property by explosives with no threat  
27 to human being (RCW 70.74.270)  
28 Incest 1 (RCW 9A.64.020(1))  
29 Manufacture, deliver, or possess with intent to deliver  
30 narcotics from Schedule I or II (except heroin or

1 cocaine) (RCW 69.50.401(a)(1)(i))  
2 Intimidating a Judge (RCW 9A.72.160)  
3 Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))  
4 V Criminal Mistreatment 1 (RCW 9A.42.020)  
5 Rape 3 (RCW 9A.44.060)  
6 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)  
7 Child Molestation 3 (RCW 9A.44.089)  
8 Kidnapping 2 (RCW 9A.40.030)  
9 Extortion 1 (RCW 9A.56.120)  
10 Incest 2 (RCW 9A.64.020(2))  
11 Perjury 1 (RCW 9A.72.020)  
12 Extortionate Extension of Credit (RCW 9A.82.020)  
13 Advancing money or property for extortionate extension of  
14 credit (RCW 9A.82.030)  
15 Extortionate Means to Collect Extensions of Credit  
16 (RCW 9A.82.040)  
17 Rendering Criminal Assistance 1 (RCW 9A.76.070)  
18 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))  
19 Delivery of imitation controlled substance by person  
20 eighteen or over to person under eighteen  
21 (RCW 69.52.030(2))  
22 IV Residential Burglary (RCW 9A.52.025)  
23 Theft of Livestock 1 (RCW 9A.56.080)  
24 Robbery 2 (RCW 9A.56.210)  
25 Assault 2 (RCW 9A.36.021)  
26 Escape 1 (RCW 9A.76.110)  
27 Arson 2 (RCW 9A.48.030)  
28 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090,  
29 9A.72.100)  
30 Malicious Harassment (RCW 9A.36.080)

1 Threats to Bomb (RCW 9.61.160)  
2 Willful Failure to Return from Furlough (RCW 72.66.060)  
3 Hit and Run -- Injury Accident (RCW 46.52.020(4))  
4 Vehicular Assault (RCW 46.61.522)  
5 Manufacture, deliver, or possess with intent to deliver  
6 narcotics from Schedule III, IV, or V or nonnarcotics  
7 from Schedule I-V (except marijuana or  
8 methamphetamines) (RCW 69.50.401(a)(1)(ii)  
9 through (iv))  
10 Influencing Outcome of Sporting Event (RCW 9A.82.070)  
11 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080  
12 (1) and (2))  
13 Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))  
14 III Criminal mistreatment 2 (RCW 9A.42.030)  
15 Extortion 2 (RCW 9A.56.130)  
16 Unlawful Imprisonment (RCW 9A.40.040)  
17 Assault 3 (RCW 9A.36.031)  
18 Assault of a Child 3 (RCW 9A.36.--- (section 3 of this  
19 act))  
20 Custodial Assault (RCW 9A.36.100)  
21 Unlawful possession of firearm or pistol by felon  
22 (RCW 9.41.040)  
23 Harassment (RCW 9A.46.020)  
24 Promoting Prostitution 2 (RCW 9A.88.080)  
25 Willful Failure to Return from Work Release (RCW 72.65.070)  
26 Burglary 2 (RCW 9A.52.030)  
27 Introducing Contraband 2 (RCW 9A.76.150)  
28 Communication with a Minor for Immoral Purposes  
29 (RCW 9.68A.090)  
30 Patronizing a Juvenile Prostitute (RCW 9.68A.100)

1 Escape 2 (RCW 9A.76.120)  
2 Perjury 2 (RCW 9A.72.030)  
3 Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))  
4 Intimidating a Public Servant (RCW 9A.76.180)  
5 Tampering with a Witness (RCW 9A.72.120)  
6 Manufacture, deliver, or possess with intent to deliver  
7 marijuana (RCW 69.50.401(a)(1)(ii))  
8 Delivery of a material in lieu of a controlled substance  
9 (RCW 69.50.401(c))  
10 Manufacture, distribute, or possess with intent to  
11 distribute an imitation controlled substance  
12 (RCW 69.52.030(1))  
13 Recklessly Trafficking in Stolen Property  
14 (RCW 9A.82.050(1))  
15 Theft of livestock 2 (RCW 9A.56.080)  
16 Securities Act violation (RCW 21.20.400)  
17 II Malicious Mischief 1 (RCW 9A.48.070)  
18 Possession of Stolen Property 1 (RCW 9A.56.150)  
19 Theft 1 (RCW 9A.56.030)  
20 Possession of controlled substance that is either heroin  
21 or narcotics from Schedule I or II (RCW 69.50.401(d))  
22 Possession of phencyclidine (PCP) (RCW 69.50.401(d))  
23 Create, deliver, or possess a counterfeit controlled  
24 substance (RCW 69.50.401(b))  
25 Computer Trespass 1 (RCW 9A.52.110)  
26 Reckless Endangerment 1 (RCW 9A.36.045)  
27 I Theft 2 (RCW 9A.56.040)  
28 Possession of Stolen Property 2 (RCW 9A.56.160)  
29 Forgery (RCW 9A.60.020)  
30 Taking Motor Vehicle Without Permission (RCW 9A.56.070)

1 Vehicle Prowl 1 (RCW 9A.52.095)  
2 Attempting to Elude a Pursuing Police Vehicle  
3 (RCW 46.61.024)  
4 Malicious Mischief 2 (RCW 9A.48.080)  
5 Reckless Burning 1 (RCW 9A.48.040)  
6 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)  
7 Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))  
8 False Verification for Welfare (RCW 74.08.055)  
9 Forged Prescription (RCW 69.41.020)  
10 Forged Prescription for a Controlled Substance  
11 (RCW 69.50.403)  
12 Possess Controlled Substance that is a Narcotic from  
13 Schedule III, IV, or V or Non-narcotic from Schedule  
14 I-V (except phencyclidine) (RCW 69.50.401(d))"

15 "Sec. 5. RCW 9.41.010 and 1983 c 232 s 1 are each amended to read  
16 as follows:

17 (1) "Short firearm" or "pistol" as used in this chapter means any  
18 firearm with a barrel less than twelve inches in length.

19 (2) "Crime of violence" as used in this chapter means:

20 (a) Any of the following felonies, as now existing or hereafter  
21 amended: Any felony defined under any law as a class A felony or an  
22 attempt to commit a class A felony, criminal solicitation of or  
23 criminal conspiracy to commit a class A felony, manslaughter in the  
24 first degree, manslaughter in the second degree, indecent liberties if  
25 committed by forcible compulsion, rape in the second degree, kidnapping  
26 in the second degree, arson in the second degree, assault in the second  
27 degree, assault of a child in the second degree, extortion in the first  
28 degree, burglary in the second degree, and robbery in the second  
29 degree;



1 (b) Any conviction for a felony offense in effect at any time prior  
2 to July 1, 1976, which is comparable to a felony classified as a crime  
3 of violence in subsection (2)(a) of this section; and

4 (c) Any federal or out-of-state conviction for an offense  
5 comparable to a felony classified as a crime of violence under  
6 subsection (2) (a) or (b) of this section.

7 (3) "Firearm" as used in this chapter means a weapon or device from  
8 which a projectile may be fired by an explosive such as gunpowder.

9 (4) "Commercial seller" as used in this chapter means a person who  
10 has a federal firearms license."

11 **"Sec. 6.** RCW 9.94A.030 and 1991 c 348 s 4, 1991 c 290 s 3, and  
12 1991 c 181 s 1 are each reenacted and amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "Collect," or any derivative thereof, "collect and remit," or  
16 "collect and deliver," when used with reference to the department of  
17 corrections, means that the department is responsible for monitoring  
18 and enforcing the offender's sentence with regard to the legal  
19 financial obligation, receiving payment thereof from the offender, and,  
20 consistent with current law, delivering daily the entire payment to the  
21 superior court clerk without depositing it in a departmental account.

22 (2) "Commission" means the sentencing guidelines commission.

23 (3) "Community corrections officer" means an employee of the  
24 department who is responsible for carrying out specific duties in  
25 supervision of sentenced offenders and monitoring of sentence  
26 conditions.

27 (4) "Community custody" means that portion of an inmate's sentence  
28 of confinement in lieu of earned early release time served in the

1 community subject to controls placed on the inmate's movement and  
2 activities by the department of corrections.

3 (5) "Community placement" means that period during which the  
4 offender is subject to the conditions of community custody and/or  
5 postrelease supervision, which begins either upon completion of the  
6 term of confinement (postrelease supervision) or at such time as the  
7 offender is transferred to community custody in lieu of earned early  
8 release. Community placement may consist of entirely community  
9 custody, entirely postrelease supervision, or a combination of the two.

10 (6) "Community service" means compulsory service, without  
11 compensation, performed for the benefit of the community by the  
12 offender.

13 (7) "Community supervision" means a period of time during which a  
14 convicted offender is subject to crime-related prohibitions and other  
15 sentence conditions imposed by a court pursuant to this chapter or RCW  
16 46.61.524. For first-time offenders, the supervision may include  
17 crime-related prohibitions and other conditions imposed pursuant to RCW  
18 9.94A.120(5). For purposes of the interstate compact for out-of-state  
19 supervision of parolees and probationers, RCW 9.95.270, community  
20 supervision is the functional equivalent of probation and should be  
21 considered the same as probation by other states.

22 (8) "Confinement" means total or partial confinement as defined in  
23 this section.

24 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
25 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
26 acceptance of a plea of guilty.

27 (10) "Court-ordered legal financial obligation" means a sum of  
28 money that is ordered by a superior court of the state of Washington  
29 for legal financial obligations which may include restitution to the  
30 victim, statutorily imposed crime victims' compensation fees as

1 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
2 drug funds, court-appointed attorneys' fees, and costs of defense,  
3 fines, and any other financial obligation that is assessed to the  
4 offender as a result of a felony conviction.

5 (11) "Crime-related prohibition" means an order of a court  
6 prohibiting conduct that directly relates to the circumstances of the  
7 crime for which the offender has been convicted, and shall not be  
8 construed to mean orders directing an offender affirmatively to  
9 participate in rehabilitative programs or to otherwise perform  
10 affirmative conduct.

11 (12)(a) "Criminal history" means the list of a defendant's prior  
12 convictions, whether in this state, in federal court, or elsewhere.  
13 The history shall include, where known, for each conviction (i) whether  
14 the defendant has been placed on probation and the length and terms  
15 thereof; and (ii) whether the defendant has been incarcerated and the  
16 length of incarceration.

17 (b) "Criminal history" shall always include juvenile convictions  
18 for sex offenses and shall also include a defendant's other prior  
19 convictions in juvenile court if: (i) The conviction was for an  
20 offense which is a felony or a serious traffic offense and is criminal  
21 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was  
22 fifteen years of age or older at the time the offense was committed;  
23 and (iii) with respect to prior juvenile class B and C felonies or  
24 serious traffic offenses, the defendant was less than twenty-three  
25 years of age at the time the offense for which he or she is being  
26 sentenced was committed.

27 (13) "Department" means the department of corrections.

28 (14) "Determinate sentence" means a sentence that states with  
29 exactitude the number of actual years, months, or days of total  
30 confinement, of partial confinement, of community supervision, the

1 number of actual hours or days of community service work, or dollars or  
2 terms of a legal financial obligation. The fact that an offender  
3 through "earned early release" can reduce the actual period of  
4 confinement shall not affect the classification of the sentence as a  
5 determinate sentence.

6 (15) "Disposable earnings" means that part of the earnings of an  
7 individual remaining after the deduction from those earnings of any  
8 amount required by law to be withheld. For the purposes of this  
9 definition, "earnings" means compensation paid or payable for personal  
10 services, whether denominated as wages, salary, commission, bonuses, or  
11 otherwise, and, notwithstanding any other provision of law making the  
12 payments exempt from garnishment, attachment, or other process to  
13 satisfy a court-ordered legal financial obligation, specifically  
14 includes periodic payments pursuant to pension or retirement programs,  
15 or insurance policies of any type, but does not include payments made  
16 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
17 or Title 74 RCW.

18 (16) "Drug offense" means:

19 (a) Any felony violation of chapter 69.50 RCW except possession of  
20 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
21 controlled substance (RCW 69.50.403);

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

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

28 (17) "Escape" means:

29 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
30 second degree (RCW 9A.76.120), willful failure to return from furlough

1 (RCW 72.66.060), willful failure to return from work release (RCW  
2 72.65.070), or willful failure to comply with any limitations on the  
3 inmate's movements while in community custody (RCW 72.09.310); or

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

7 (18) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
9 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
10 and-run injury-accident (RCW 46.52.020(4)); or

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

14 (19) "Fines" means the requirement that the offender pay a specific  
15 sum of money over a specific period of time to the court.

16 (20)(a) "First-time offender" means any person who is convicted of  
17 a felony (i) not classified as a violent offense or a sex offense under  
18 this chapter, or (ii) that is not the manufacture, delivery, or  
19 possession with intent to manufacture or deliver a controlled substance  
20 classified in schedule I or II that is a narcotic drug or the selling  
21 for profit [of] any controlled substance or counterfeit substance  
22 classified in schedule I, RCW 69.50.204, except leaves and flowering  
23 tops of marihuana, and except as provided in (b) of this subsection,  
24 who previously has never been convicted of a felony in this state,  
25 federal court, or another state, and who has never participated in a  
26 program of deferred prosecution for a felony offense.

27 (b) For purposes of (a) of this subsection, a juvenile adjudication  
28 for an offense committed before the age of fifteen years is not a  
29 previous felony conviction except for adjudications of sex offenses.

1 (21) "Nonviolent offense" means an offense which is not a violent  
2 offense.

3 (22) "Offender" means a person who has committed a felony  
4 established by state law and is eighteen years of age or older or is  
5 less than eighteen years of age but whose case has been transferred by  
6 the appropriate juvenile court to a criminal court pursuant to RCW  
7 13.40.110. Throughout this chapter, the terms "offender" and  
8 "defendant" are used interchangeably.

9 (23) "Partial confinement" means confinement for no more than one  
10 year in a facility or institution operated or utilized under contract  
11 by the state or any other unit of government, or, if home detention or  
12 work crew has been ordered by the court, in an approved residence, for  
13 a substantial portion of each day with the balance of the day spent in  
14 the community. Partial confinement includes work release, home  
15 detention, work crew, and a combination of work crew and home detention  
16 as defined in this section.

17 (24) "Postrelease supervision" is that portion of an offender's  
18 community placement that is not community custody.

19 (25) "Restitution" means the requirement that the offender pay a  
20 specific sum of money over a specific period of time to the court as  
21 payment of damages. The sum may include both public and private costs.  
22 The imposition of a restitution order does not preclude civil redress.

23 (26) "Serious traffic offense" means:

24 (a) Driving while under the influence of intoxicating liquor or any  
25 drug (RCW 46.61.502), actual physical control while under the influence  
26 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
27 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
28 or

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

4 (27) "Serious violent offense" is a subcategory of violent offense  
5 and means:

6 (a) Murder in the first degree, homicide by abuse, murder in the  
7 second degree, assault in the first degree, kidnapping in the first  
8 degree, or rape in the first degree, assault of a child in the first  
9 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
10 commit one of these felonies; or

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

14 (28) "Sentence range" means the sentencing court's discretionary  
15 range in imposing a nonappealable sentence.

16 (29) "Sex offense" means:

17 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
18 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal  
19 attempt, criminal solicitation, or criminal conspiracy to commit such  
20 crimes;

21 (b) A felony with a finding of sexual motivation under RCW  
22 9.94A.127; or

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

26 (30) "Sexual motivation" means that one of the purposes for which  
27 the defendant committed the crime was for the purpose of his or her  
28 sexual gratification.

29 (31) "Total confinement" means confinement inside the physical  
30 boundaries of a facility or institution operated or utilized under

1 contract by the state or any other unit of government for twenty-four  
2 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

3 (32) "Victim" means any person who has sustained emotional,  
4 psychological, physical, or financial injury to person or property as  
5 a direct result of the crime charged.

6 (33) "Violent offense" means:

7 (a) Any of the following felonies, as now existing or hereafter  
8 amended: Any felony defined under any law as a class A felony or an  
9 attempt to commit a class A felony, criminal solicitation of or  
10 criminal conspiracy to commit a class A felony, manslaughter in the  
11 first degree, manslaughter in the second degree, indecent liberties if  
12 committed by forcible compulsion, kidnapping in the second degree,  
13 arson in the second degree, assault in the second degree, assault of a  
14 child in the second degree, extortion in the first degree, robbery in  
15 the second degree, vehicular assault, and vehicular homicide, when  
16 proximately caused by the driving of any vehicle by any person while  
17 under the influence of intoxicating liquor or any drug as defined by  
18 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

25 (34) "Work crew" means a program of partial confinement consisting  
26 of civic improvement tasks for the benefit of the community of not less  
27 than thirty-five hours per week that complies with RCW 9.94A.135. The  
28 civic improvement tasks shall be performed on public property or on  
29 private property owned or operated by nonprofit entities, except that,  
30 for emergency purposes only, work crews may perform snow removal on any



1 private property. The civic improvement tasks shall have minimal  
2 negative impact on existing private industries or the labor force in  
3 the county where the service or labor is performed. The civic  
4 improvement tasks shall not affect employment opportunities for people  
5 with developmental disabilities contracted through sheltered workshops  
6 as defined in RCW 82.04.385. Only those offenders sentenced to a  
7 facility operated or utilized under contract by a county are eligible  
8 to participate on a work crew. Offenders sentenced for a sex offense  
9 as defined in subsection (29) of this section are not eligible for the  
10 work crew program.

11 (35) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school. Participation in work release shall  
14 be conditioned upon the offender attending work or school at regularly  
15 defined hours and abiding by the rules of the work release facility.

16 (36) "Home detention" means a program of partial confinement  
17 available to offenders wherein the offender is confined in a private  
18 residence subject to electronic surveillance. Home detention may not  
19 be imposed for offenders convicted of a violent offense, any sex  
20 offense, any drug offense, reckless burning in the first or second  
21 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
22 degree as defined in RCW 9A.36.031, assault of a child in the third  
23 degree, unlawful imprisonment as defined in RCW 9A.40.040, or  
24 harassment as defined in RCW 9A.46.020. Home detention may be imposed  
25 for offenders convicted of possession of a controlled substance (RCW  
26 69.50.401(d)) or forged prescription for a controlled substance (RCW  
27 69.50.403) if the offender fulfills the participation conditions set  
28 forth in this subsection and is monitored for drug use by treatment  
29 alternatives to street crime (TASC) or a comparable court or agency-  
30 referred program.

1 (a) Home detention may be imposed for offenders convicted of  
2 burglary in the second degree as defined in RCW 9A.52.030 or  
3 residential burglary conditioned upon the offender: (i) Successfully  
4 completing twenty-one days in a work release program, (ii) having no  
5 convictions for burglary in the second degree or residential burglary  
6 during the preceding two years and not more than two prior convictions  
7 for burglary or residential burglary, (iii) having no convictions for  
8 a violent felony offense during the preceding two years and not more  
9 than two prior convictions for a violent felony offense, (iv) having no  
10 prior charges of escape, and (v) fulfilling the other conditions of the  
11 home detention program.

12 (b) Participation in a home detention program shall be conditioned  
13 upon: (i) The offender obtaining or maintaining current employment or  
14 attending a regular course of school study at regularly defined hours,  
15 or the offender performing parental duties to offspring or minors  
16 normally in the custody of the offender, (ii) abiding by the rules of  
17 the home detention program, and (iii) compliance with court-ordered  
18 legal financial obligations. The home detention program may also be  
19 made available to offenders whose charges and convictions do not  
20 otherwise disqualify them if medical or health-related conditions,  
21 concerns or treatment would be better addressed under the home  
22 detention program, or where the health and welfare of the offender,  
23 other inmates, or staff would be jeopardized by the offender's  
24 incarceration. Participation in the home detention program for medical  
25 or health-related reasons is conditioned on the offender abiding by the  
26 rules of the home detention program and complying with court-ordered  
27 restitution."

28 "Sec. 7. RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and  
29 1991 c 104 s 3 are each reenacted and amended to read as follows:

1       When a person is convicted of a felony, the court shall impose  
2 punishment as provided in this section.

3       (1) Except as authorized in subsections (2), (5), and (7) of this  
4 section, the court shall impose a sentence within the sentence range  
5 for the offense.

6       (2) The court may impose a sentence outside the standard sentence  
7 range for that offense if it finds, considering the purpose of this  
8 chapter, that there are substantial and compelling reasons justifying  
9 an exceptional sentence.

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

14       (4) An offender convicted of the crime of murder in the first  
15 degree shall be sentenced to a term of total confinement not less than  
16 twenty years. An offender convicted of the crime of assault in the  
17 first degree or assault of a child in the first degree where the  
18 offender used force or means likely to result in death or intended to  
19 kill the victim shall be sentenced to a term of total confinement not  
20 less than five years. An offender convicted of the crime of rape in  
21 the first degree shall be sentenced to a term of total confinement not  
22 less than five years, and shall not be eligible for furlough, work  
23 release or other authorized leave of absence from the correctional  
24 facility during such minimum five-year term except for the purpose of  
25 commitment to an inpatient treatment facility. The foregoing minimum  
26 terms of total confinement are mandatory and shall not be varied or  
27 modified as provided in subsection (2) of this section.

28       (5) In sentencing a first-time offender the court may waive the  
29 imposition of a sentence within the sentence range and impose a  
30 sentence which may include up to ninety days of confinement in a

1 facility operated or utilized under contract by the county and a  
2 requirement that the offender refrain from committing new offenses.  
3 The sentence may also include up to two years of community supervision,  
4 which, in addition to crime-related prohibitions, may include  
5 requirements that the offender perform any one or more of the  
6 following:

7 (a) Devote time to a specific employment or occupation;

8 (b) Undergo available outpatient treatment for up to two years, or  
9 inpatient treatment not to exceed the standard range of confinement for  
10 that offense;

11 (c) Pursue a prescribed, secular course of study or vocational  
12 training;

13 (d) Remain within prescribed geographical boundaries and notify the  
14 court or the community corrections officer prior to any change in the  
15 offender's address or employment;

16 (e) Report as directed to the court and a community corrections  
17 officer; or

18 (f) Pay all court-ordered legal financial obligations as provided  
19 in RCW 9.94A.030 and/or perform community service work.

20 (6) If a sentence range has not been established for the  
21 defendant's crime, the court shall impose a determinate sentence which  
22 may include not more than one year of confinement, community service  
23 work, a term of community supervision not to exceed one year, and/or  
24 other legal financial obligations. The court may impose a sentence  
25 which provides more than one year of confinement if the court finds,  
26 considering the purpose of this chapter, that there are substantial and  
27 compelling reasons justifying an exceptional sentence.

28 (7)(a)(i) When an offender is convicted of a sex offense other than  
29 a violation of RCW 9A.44.050 or a sex offense that is also a serious  
30 violent offense and has no prior convictions for a sex offense or any

1 other felony sex offenses in this or any other state, the sentencing  
2 court, on its own motion or the motion of the state or the defendant,  
3 may order an examination to determine whether the defendant is amenable  
4 to treatment.

5 The report of the examination shall include at a minimum the  
6 following: The defendant's version of the facts and the official  
7 version of the facts, the defendant's offense history, an assessment of  
8 problems in addition to alleged deviant behaviors, the offender's  
9 social and employment situation, and other evaluation measures used.  
10 The report shall set forth the sources of the evaluator's information.

11 The examiner shall assess and report regarding the defendant's  
12 amenability to treatment and relative risk to the community. A  
13 proposed treatment plan shall be provided and shall include, at a  
14 minimum:

15 (A) Frequency and type of contact between offender and therapist;

16 (B) Specific issues to be addressed in the treatment and  
17 description of planned treatment modalities;

18 (C) Monitoring plans, including any requirements regarding living  
19 conditions, lifestyle requirements, and monitoring by family members  
20 and others;

21 (D) Anticipated length of treatment; and

22 (E) Recommended crime-related prohibitions.

23 The court on its own motion may order, or on a motion by the state  
24 shall order, a second examination regarding the offender's amenability  
25 to treatment. The evaluator shall be selected by the party making the  
26 motion. The defendant shall pay the cost of any second examination  
27 ordered unless the court finds the defendant to be indigent in which  
28 case the state shall pay the cost.

29 (ii) After receipt of the reports, the court shall consider whether  
30 the offender and the community will benefit from use of this special

1 sexual offender sentencing alternative and consider the victim's  
2 opinion whether the offender should receive a treatment disposition  
3 under this subsection. If the court determines that this special sex  
4 offender sentencing alternative is appropriate, the court shall then  
5 impose a sentence within the sentence range. If this sentence is less  
6 than eight years of confinement, the court may suspend the execution of  
7 the sentence and impose the following conditions of suspension:

8 (A) The court shall place the defendant on community supervision  
9 for the length of the suspended sentence or three years, whichever is  
10 greater; and

11 (B) The court shall order treatment for any period up to three  
12 years in duration. The court in its discretion shall order outpatient  
13 sex offender treatment or inpatient sex offender treatment, if  
14 available. A community mental health center may not be used for such  
15 treatment unless it has an appropriate program designed for sex  
16 offender treatment. The offender shall not change sex offender  
17 treatment providers or treatment conditions without first notifying the  
18 prosecutor, the community corrections officer, and the court, and shall  
19 not change providers without court approval after a hearing if the  
20 prosecutor or community corrections officer object to the change. In  
21 addition, as conditions of the suspended sentence, the court may impose  
22 other sentence conditions including up to six months of confinement,  
23 not to exceed the sentence range of confinement for that offense,  
24 crime-related prohibitions, and requirements that the offender perform  
25 any one or more of the following:

26 (I) Devote time to a specific employment or occupation;

27 (II) Remain within prescribed geographical boundaries and notify  
28 the court or the community corrections officer prior to any change in  
29 the offender's address or employment;

1 (III) Report as directed to the court and a community corrections  
2 officer;

3 (IV) Pay all court-ordered legal financial obligations as provided  
4 in RCW 9.94A.030, perform community service work, or any combination  
5 thereof; or

6 (V) Make recoupment to the victim for the cost of any counseling  
7 required as a result of the offender's crime.

8 (iii) The sex offender therapist shall submit quarterly reports on  
9 the defendant's progress in treatment to the court and the parties.  
10 The report shall reference the treatment plan and include at a minimum  
11 the following: Dates of attendance, defendant's compliance with  
12 requirements, treatment activities, the defendant's relative progress  
13 in treatment, and any other material as specified by the court at  
14 sentencing.

15 (iv) At the time of sentencing, the court shall set a treatment  
16 termination hearing for three months prior to the anticipated date for  
17 completion of treatment. Prior to the treatment termination hearing,  
18 the treatment professional and community corrections officer shall  
19 submit written reports to the court and parties regarding the  
20 defendant's compliance with treatment and monitoring requirements, and  
21 recommendations regarding termination from treatment, including  
22 proposed community supervision conditions. Either party may request  
23 and the court may order another evaluation regarding the advisability  
24 of termination from treatment. The defendant shall pay the cost of any  
25 additional evaluation ordered unless the court finds the defendant to  
26 be indigent in which case the state shall pay the cost. At the  
27 treatment termination hearing the court may: (A) Modify conditions of  
28 community supervision, and either (B) terminate treatment, or (C)  
29 extend treatment for up to the remaining period of community  
30 supervision.

1 (v) The court may revoke the suspended sentence at any time during  
2 the period of community supervision and order execution of the sentence  
3 if: (A) The defendant violates the conditions of the suspended  
4 sentence, or (B) the court finds that the defendant is failing to make  
5 satisfactory progress in treatment. All confinement time served during  
6 the period of community supervision shall be credited to the offender  
7 if the suspended sentence is revoked.

8 (vi) After July 1, 1991, examinations and treatment ordered  
9 pursuant to this subsection shall only be conducted by sex offender  
10 treatment providers certified by the department of health pursuant to  
11 chapter 18.155 RCW.

12 For purposes of this subsection, "victim" means any person who has  
13 sustained emotional, psychological, physical, or financial injury to  
14 person or property as a result of the crime charged. "Victim" also  
15 means a parent or guardian of a victim who is a minor child unless the  
16 parent or guardian is the perpetrator of the offense.

17 (b) When an offender is convicted of any felony sex offense  
18 committed before July 1, 1987, and is sentenced to a term of  
19 confinement of more than one year but less than six years, the  
20 sentencing court may, on its own motion or on the motion of the  
21 offender or the state, order the offender committed for up to thirty  
22 days to the custody of the secretary of social and health services for  
23 evaluation and report to the court on the offender's amenability to  
24 treatment at these facilities. If the secretary of social and health  
25 services cannot begin the evaluation within thirty days of the court's  
26 order of commitment, the offender shall be transferred to the state for  
27 confinement pending an opportunity to be evaluated at the appropriate  
28 facility. The court shall review the reports and may order that the  
29 term of confinement imposed be served in the sexual offender treatment  
30 program at the location determined by the secretary of social and



1 health services or the secretary's designee, only if the report  
2 indicates that the offender is amenable to the treatment program  
3 provided at these facilities. The offender shall be transferred to the  
4 state pending placement in the treatment program. Any offender who has  
5 escaped from the treatment program shall be referred back to the  
6 sentencing court.

7 If the offender does not comply with the conditions of the  
8 treatment program, the secretary of social and health services may  
9 refer the matter to the sentencing court. The sentencing court shall  
10 commit the offender to the department of corrections to serve the  
11 balance of the term of confinement.

12 If the offender successfully completes the treatment program before  
13 the expiration of the term of confinement, the court may convert the  
14 balance of confinement to community supervision and may place  
15 conditions on the offender including crime-related prohibitions and  
16 requirements that the offender perform any one or more of the  
17 following:

18 (i) Devote time to a specific employment or occupation;

19 (ii) Remain within prescribed geographical boundaries and notify  
20 the court or the community corrections officer prior to any change in  
21 the offender's address or employment;

22 (iii) Report as directed to the court and a community corrections  
23 officer;

24 (iv) Undergo available outpatient treatment.

25 If the offender violates any of the terms of community supervision,  
26 the court may order the offender to serve out the balance of the  
27 community supervision term in confinement in the custody of the  
28 department of corrections.

29 After June 30, 1993, this subsection (b) shall cease to have  
30 effect.

1 (c) When an offender commits any felony sex offense on or after  
2 July 1, 1987, and is sentenced to a term of confinement of more than  
3 one year but less than six years, the sentencing court may, on its own  
4 motion or on the motion of the offender or the state, request the  
5 department of corrections to evaluate whether the offender is amenable  
6 to treatment and the department may place the offender in a treatment  
7 program within a correctional facility operated by the department.

8 Except for an offender who has been convicted of a violation of RCW  
9 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
10 before the expiration of his term of confinement, the department of  
11 corrections may request the court to convert the balance of confinement  
12 to community supervision and to place conditions on the offender  
13 including crime-related prohibitions and requirements that the offender  
14 perform any one or more of the following:

15 (i) Devote time to a specific employment or occupation;

16 (ii) Remain within prescribed geographical boundaries and notify  
17 the court or the community corrections officer prior to any change in  
18 the offender's address or employment;

19 (iii) Report as directed to the court and a community corrections  
20 officer;

21 (iv) Undergo available outpatient treatment.

22 If the offender violates any of the terms of his community  
23 supervision, the court may order the offender to serve out the balance  
24 of his community supervision term in confinement in the custody of the  
25 department of corrections.

26 Nothing in (c) of this subsection shall confer eligibility for such  
27 programs for offenders convicted and sentenced for a sex offense  
28 committed prior to July 1, 1987. This subsection (c) does not apply to  
29 any crime committed after July 1, 1990.

1 (d) Offenders convicted and sentenced for a sex offense committed  
2 prior to July 1, 1987, may, subject to available funds, request an  
3 evaluation by the department of corrections to determine whether they  
4 are amenable to treatment. If the offender is determined to be  
5 amenable to treatment, the offender may request placement in a  
6 treatment program within a correctional facility operated by the  
7 department. Placement in such treatment program is subject to  
8 available funds.

9 (8)(a) When a court sentences a person to a term of total  
10 confinement to the custody of the department of corrections for an  
11 offense categorized as a sex offense or a serious violent offense  
12 committed after July 1, 1988, but before July 1, 1990, assault in the  
13 second degree, assault of a child in the second degree, any crime  
14 against a person where it is determined in accordance with RCW  
15 9.94A.125 that the defendant or an accomplice was armed with a deadly  
16 weapon at the time of commission, or any felony offense under chapter  
17 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall  
18 in addition to the other terms of the sentence, sentence the offender  
19 to a one-year term of community placement beginning either upon  
20 completion of the term of confinement or at such time as the offender  
21 is transferred to community custody in lieu of earned early release in  
22 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an  
23 offender under this subsection to the statutory maximum period of  
24 confinement then the community placement portion of the sentence shall  
25 consist entirely of such community custody to which the offender may  
26 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
27 period of community custody actually served shall be credited against  
28 the community placement portion of the sentence.

29 (b) When a court sentences a person to a term of total confinement  
30 to the custody of the department of corrections for an offense

1 categorized as a sex offense or serious violent offense committed on or  
2 after July 1, 1990, the court shall in addition to other terms of the  
3 sentence, sentence the offender to community placement for two years or  
4 up to the period of earned early release awarded pursuant to RCW  
5 9.94A.150 (1) and (2), whichever is longer. The community placement  
6 shall begin either upon completion of the term of confinement or at  
7 such time as the offender is transferred to community custody in lieu  
8 of earned early release in accordance with RCW 9.94A.150 (1) and (2).  
9 When the court sentences an offender under this subsection to the  
10 statutory maximum period of confinement then the community placement  
11 portion of the sentence shall consist entirely of the community custody  
12 to which the offender may become eligible, in accordance with RCW  
13 9.94A.150 (1) and (2). Any period of community custody actually served  
14 shall be credited against the community placement portion of the  
15 sentence. Unless a condition is waived by the court, the terms of  
16 community placement for offenders sentenced pursuant to this section  
17 shall include the following conditions:

18 (i) The offender shall report to and be available for contact with  
19 the assigned community corrections officer as directed;

20 (ii) The offender shall work at department of corrections-approved  
21 education, employment, and/or community service;

22 (iii) The offender shall not consume controlled substances except  
23 pursuant to lawfully issued prescriptions;

24 (iv) An offender in community custody shall not unlawfully possess  
25 controlled substances; and

26 (v) The offender shall pay supervision fees as determined by the  
27 department of corrections.

28 (c) The court may also order any of the following special  
29 conditions:

1 (i) The offender shall remain within, or outside of, a specified  
2 geographical boundary;

3 (ii) The offender shall not have direct or indirect contact with  
4 the victim of the crime or a specified class of individuals;

5 (iii) The offender shall participate in crime-related treatment or  
6 counseling services;

7 (iv) The offender shall not consume alcohol;

8 (v) The residence location and living arrangements of a sex  
9 offender shall be subject to the prior approval of the department of  
10 corrections; or

11 (vi) The offender shall comply with any crime-related prohibitions.

12 (d) Prior to transfer to, or during, community placement, any  
13 conditions of community placement may be removed or modified so as not  
14 to be more restrictive by the sentencing court, upon recommendation of  
15 the department of corrections.

16 (9) If the court imposes a sentence requiring confinement of thirty  
17 days or less, the court may, in its discretion, specify that the  
18 sentence be served on consecutive or intermittent days. A sentence  
19 requiring more than thirty days of confinement shall be served on  
20 consecutive days. Local jail administrators may schedule court-ordered  
21 intermittent sentences as space permits.

22 (10) If a sentence imposed includes payment of a legal financial  
23 obligation, the sentence shall specify the total amount of the legal  
24 financial obligation owed, and shall require the offender to pay a  
25 specified monthly sum toward that legal financial obligation.  
26 Restitution to victims shall be paid prior to any other payments of  
27 monetary obligations. Any legal financial obligation that is imposed  
28 by the court may be collected by the department, which shall deliver  
29 the amount paid to the county clerk for credit. The offender's  
30 compliance with payment of legal financial obligations shall be

1 supervised by the department. All monetary payments ordered shall be  
2 paid no later than ten years after the last date of release from  
3 confinement pursuant to a felony conviction or the date the sentence  
4 was entered. Independent of the department, the party or entity to  
5 whom the legal financial obligation is owed shall have the authority to  
6 utilize any other remedies available to the party or entity to collect  
7 the legal financial obligation. Nothing in this section makes the  
8 department, the state, or any of its employees, agents, or other  
9 persons acting on their behalf liable under any circumstances for the  
10 payment of these legal financial obligations. If an order includes  
11 restitution as one of the monetary assessments, the county clerk shall  
12 make disbursements to victims named in the order.

13 (11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a  
14 court may not impose a sentence providing for a term of confinement or  
15 community supervision or community placement which exceeds the  
16 statutory maximum for the crime as provided in chapter 9A.20 RCW.

17 (12) All offenders sentenced to terms involving community  
18 supervision, community service, community placement, or legal financial  
19 obligation shall be under the supervision of the secretary of the  
20 department of corrections or such person as the secretary may designate  
21 and shall follow explicitly the instructions of the secretary including  
22 reporting as directed to a community corrections officer, remaining  
23 within prescribed geographical boundaries, notifying the community  
24 corrections officer of any change in the offender's address or  
25 employment, and paying the supervision fee assessment.

26 (13) All offenders sentenced to terms involving community  
27 supervision, community service, or community placement under the  
28 supervision of the department of corrections shall not own, use, or  
29 possess firearms or ammunition. Offenders who own, use, or are found  
30 to be in actual or constructive possession of firearms or ammunition

1 shall be subject to the appropriate violation process and sanctions.  
2 "Constructive possession" as used in this subsection means the power  
3 and intent to control the firearm or ammunition. "Firearm" as used in  
4 this subsection means a weapon or device from which a projectile may be  
5 fired by an explosive such as gunpowder.

6 (14) The sentencing court shall give the offender credit for all  
7 confinement time served before the sentencing if that confinement was  
8 solely in regard to the offense for which the offender is being  
9 sentenced.

10 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)  
11 governing whether sentences are to be served consecutively or  
12 concurrently is an exceptional sentence subject to the limitations in  
13 subsections (2) and (3) of this section, and may be appealed by the  
14 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

15 (16) The court shall order restitution whenever the offender is  
16 convicted of a felony that results in injury to any person or damage to  
17 or loss of property, whether the offender is sentenced to confinement  
18 or placed under community supervision, unless extraordinary  
19 circumstances exist that make restitution inappropriate in the court's  
20 judgment. The court shall set forth the extraordinary circumstances in  
21 the record if it does not order restitution.

22 (17) As a part of any sentence, the court may impose and enforce an  
23 order that relates directly to the circumstances of the crime for which  
24 the offender has been convicted, prohibiting the offender from having  
25 any contact with other specified individuals or a specific class of  
26 individuals for a period not to exceed the maximum allowable sentence  
27 for the crime, regardless of the expiration of the offender's term of  
28 community supervision or community placement.

29 (18) In any sentence of partial confinement, the court may require  
30 the defendant to serve the partial confinement in work release, in a

1 program of home detention, on work crew, or in a combined program of  
2 work crew and home detention.

3 (19) All court-ordered legal financial obligations collected by the  
4 department and remitted to the county clerk shall be credited and paid  
5 where restitution is ordered. Restitution shall be paid prior to any  
6 other payments of monetary obligations."

7 "Sec. 8. RCW 9.94A.150 and 1990 c 3 s 202 are each amended to read  
8 as follows:

9 No person serving a sentence imposed pursuant to this chapter and  
10 committed to the custody of the department shall leave the confines of  
11 the correctional facility or be released prior to the expiration of the  
12 sentence except as follows:

13 (1) Except as otherwise provided for in subsection (2) of this  
14 section, the term of the sentence of an offender committed to a  
15 correctional facility operated by the department, may be reduced by  
16 earned early release time in accordance with procedures that shall be  
17 developed and promulgated by the correctional agency having  
18 jurisdiction in which the offender is confined. The earned early  
19 release time shall be for good behavior and good performance, as  
20 determined by the correctional agency having jurisdiction. The  
21 correctional agency shall not credit the offender with earned early  
22 release credits in advance of the offender actually earning the  
23 credits. Any program established pursuant to this section shall allow  
24 an offender to earn early release credits for presentence  
25 incarceration. If an offender is transferred from a county jail to the  
26 department of corrections, the county jail facility shall certify to  
27 the department the amount of time spent in custody at the facility and  
28 the amount of earned early release time. In the case of an offender  
29 convicted of a serious violent offense or a sex offense that is a class



1 A felony committed on or after July 1, 1990, the aggregate earned early  
2 release time may not exceed fifteen percent of the sentence. In no  
3 other case shall the aggregate earned early release time exceed one-  
4 third of the total sentence;

5 (2) A person convicted of a sex offense or an offense categorized  
6 as a serious violent offense, assault in the second degree, assault of  
7 a child in the second degree, any crime against a person where it is  
8 determined in accordance with RCW 9.94A.125 that the defendant or an  
9 accomplice was armed with a deadly weapon at the time of commission, or  
10 any felony offense under chapter 69.50 or 69.52 RCW may become  
11 eligible, in accordance with a program developed by the department, for  
12 transfer to community custody status in lieu of earned early release  
13 time pursuant to subsection (1) of this section;

14 (3) An offender may leave a correctional facility pursuant to an  
15 authorized furlough or leave of absence. In addition, offenders may  
16 leave a correctional facility when in the custody of a corrections  
17 officer or officers;

18 (4) The governor, upon recommendation from the clemency and pardons  
19 board, may grant an extraordinary release for reasons of serious health  
20 problems, senility, advanced age, extraordinary meritorious acts, or  
21 other extraordinary circumstances;

22 (5) No more than the final six months of the sentence may be served  
23 in partial confinement designed to aid the offender in finding work and  
24 reestablishing him or herself in the community;

25 (6) The governor may pardon any offender;

26 (7) The department of corrections may release an offender from  
27 confinement any time within ten days before a release date calculated  
28 under this section; and

1 (8) An offender may leave a correctional facility prior to  
 2 completion of his sentence if the sentence has been reduced as provided  
 3 in RCW 9.94A.160."

4 "Sec. 9. RCW 9.94A.310 and 1991 c 32 s 2 are each amended to read  
 5 as follows:

6 (1) TABLE 1  
 7 Sentencing Grid

8 SERIOUSNESS

9 SCORE OFFENDER SCORE 9

10 0 1 2 3 4 5 6 7 8 or more

11 \_\_\_\_\_  
 12 XV Life Sentence without Parole/Death Penalty

13 \_\_\_\_\_  
 14 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y

15 240- 250- 261- 271- 281 - 291- 312- 338- 370- 411-

16 320 333 347 361 374 388 416 450 493 548

17 \_\_\_\_\_  
 18 XIII 12y 13y 14y 15y 16y 17y 19y 21y 25y 29y

19 123- 134- 144- 154- 165- 175- 195- 216- 257- 298-

20 164 178 192 205 219 233 260 288 342 397

21 \_\_\_\_\_  
 22 XII 9y 9y11m 10y9m 11y8m 12y6m 13y5m 15y9m 17y3m 20y3m 23y3m

23 93- 102- 111- 120- 129- 138- 162 - 178- 209- 240-

24 123 136 147 160 171 184 216 236 277 318

25 \_\_\_\_\_  
 26 XI 7y6m 8y4m 9y2m 9y11m 10y9m 11y7m 14y2m 15y5m 17y11m 20y5m

27 78- 86- 95- 102- 111- 120- 146- 159- 185- 210-

28 102 114 125 136 147 158 194 211 245 280

1											
2	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
3		51-	57-	62-	67-	72-	77-	98-	108-	129 -	149-
4		68	75	82	89	96	102	130	144	171	198
5											
6	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
7		31-	36-	41-	46-	51-	57-	77-	87-	108 -	129-
8		41	48	54	61	68	75	102	116	144	171
9											
10	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
11		21-	26-	31-	36-	41-	46-	67-	77-	87 -	108-
12		27	34	41	48	54	61	89	102	116	144
13											
14	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
15		15-	21-	26-	31-	36-	41-	57-	67-	77 -	87-
16		20	27	34	41	48	54	75	89	102	116
17											
18	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
19		12+-	15-	21-	26-	31-	36-	46-	57-	67 -	77-
20		14	20	27	34	41	48	61	75	89	102
21											
22	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
23		6-	12+-	13-	15-	22-	33-	41-	51-	62 -	72-
24		12	14	17	20	29	43	54	68	82	96
25	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
26		3-	6-	12+-	13-	15-	22-	33-	43-	53 -	63-
27		9	12	14	17	20	29	43	57	70	84
28											
29	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
30		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-

1		3	8	12	12	16	22	29	43	57	68
2	<hr/>										
3	II	4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m	
4		0-90	2-	3-	4-	12+-	14-	17-	22-	33 -	43-
5		Days	6	9	12	14	18	22	29	43	57
6	<hr/>										
7	I	3m	4m	5m	8m	13m	16m	20m	2y2m		
8		0-60	0-90	2-	2-	3-	4-	12+-	14-	17 -	22-
9		Days	Days	5	6	8	12	14	18	22	29

10 NOTE: Numbers in the first horizontal row of each seriousness category  
11 represent sentencing midpoints in years(y) and months(m). Numbers in  
12 the second and third rows represent presumptive sentencing ranges in  
13 months, or in days if so designated. 12+ equals one year and one day.

14 (2) For persons convicted of the anticipatory offenses of criminal  
15 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
16 presumptive sentence is determined by locating the sentencing grid  
17 sentence range defined by the appropriate offender score and the  
18 seriousness level of the completed crime, and multiplying the range by  
19 75 percent.

20 (3) The following additional times shall be added to the  
21 presumptive sentence if the offender or an accomplice was armed with a  
22 deadly weapon as defined in this chapter and the offender is being  
23 sentenced for one of the crimes listed in this subsection. If the  
24 offender or an accomplice was armed with a deadly weapon and the  
25 offender is being sentenced for an anticipatory offense under chapter  
26 9A.28 RCW to commit one of the crimes listed in this subsection, the  
27 following times shall be added to the presumptive range determined  
28 under subsection (2) of this section:

1 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW  
2 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

3 (b) 18 months for Burglary 1 (RCW 9A.52.020)

4 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault  
5 of a Child 2 (RCW 9A.36.--- (section 2 of this act)), Escape  
6 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2  
7 of a building other than a dwelling (RCW 9A.52.030), Theft  
8 of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

9 (4) The following additional times shall be added to the  
10 presumptive sentence if the offender or an accomplice committed the  
11 offense while in a county jail or state correctional facility as that  
12 term is defined in this chapter and the offender is being sentenced for  
13 one of the crimes listed in this subsection. If the offender or an  
14 accomplice committed one of the crimes listed in this subsection while  
15 in a county jail or state correctional facility as that term is defined  
16 in this chapter, and the offender is being sentenced for an  
17 anticipatory offense under chapter 9A.28 RCW to commit one of the  
18 crimes listed in this subsection, the following times shall be added to  
19 the presumptive sentence range determined under subsection (2) of this  
20 section:

21 (a) Eighteen months for offenses committed under RCW  
22 69.50.401(a)(1)(i) or 69.50.410;

23 (b) Fifteen months for offenses committed under RCW  
24 69.50.401(a)(1)(ii), (iii), and (iv);

25 (c) Twelve months for offenses committed under RCW 69.50.401(d).

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

29 (5) An additional twenty-four months shall be added to the  
30 presumptive sentence for any ranked offense involving a violation of

1 chapter 69.50 RCW if the offense was also a violation of RCW  
2 69.50.435."

3 "Sec. 10. RCW 9.94A.360 and 1990 c 3 s 706 are each amended to  
4 read as follows:

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

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

9 (1) A prior conviction is a conviction which exists before the date  
10 of sentencing for the offense for which the offender score is being  
11 computed. Convictions entered or sentenced on the same date as the  
12 conviction for which the offender score is being computed shall be  
13 deemed "other current offenses" within the meaning of RCW 9.94A.400.

14 (2) Except as provided in subsection (4) of this section, class A  
15 and sex prior felony convictions shall always be included in the  
16 offender score. Class B prior felony convictions other than sex  
17 offenses shall not be included in the offender score, if since the last  
18 date of release from confinement (including full-time residential  
19 treatment) pursuant to a felony conviction, if any, or entry of  
20 judgment and sentence, the offender had spent ten consecutive years in  
21 the community without being convicted of any felonies. Class C prior  
22 felony convictions other than sex offenses shall not be included in the  
23 offender score if, since the last date of release from confinement  
24 (including full-time residential treatment) pursuant to a felony  
25 conviction, if any, or entry of judgment and sentence, the offender had  
26 spent five consecutive years in the community without being convicted  
27 of any felonies. Serious traffic convictions shall not be included in  
28 the offender score if, since the last date of release from confinement  
29 (including full-time residential treatment) pursuant to a felony

1 conviction, if any, or entry of judgment and sentence, the offender  
2 spent five years in the community without being convicted of any  
3 serious traffic or felony traffic offenses. This subsection applies to  
4 both adult and juvenile prior convictions.

5 (3) Out-of-state convictions for offenses shall be classified  
6 according to the comparable offense definitions and sentences provided  
7 by Washington law.

8 (4) Always include juvenile convictions for sex offenses. Include  
9 other class A juvenile felonies only if the offender was 15 or older at  
10 the time the juvenile offense was committed. Include other class B and  
11 C juvenile felony convictions only if the offender was 15 or older at  
12 the time the juvenile offense was committed and the offender was less  
13 than 23 at the time the offense for which he or she is being sentenced  
14 was committed.

15 (5) Score prior convictions for felony anticipatory offenses  
16 (attempts, criminal solicitations, and criminal conspiracies) the same  
17 as if they were convictions for completed offenses.

18 (6) In the case of multiple prior convictions, for the purpose of  
19 computing the offender score, count all convictions separately, except:

20 (a) Prior adult offenses which were found, under RCW  
21 9.94A.400(1)(a), to encompass the same criminal conduct, shall be  
22 counted as one offense, the offense that yields the highest offender  
23 score. The current sentencing court shall determine with respect to  
24 other prior adult offenses for which sentences were served concurrently  
25 whether those offenses shall be counted as one offense or as separate  
26 offenses, and if the court finds that they shall be counted as one  
27 offense, then the offense that yields the highest offender score shall  
28 be used;

29 (b) Juvenile prior convictions entered or sentenced on the same  
30 date shall count as one offense, the offense that yields the highest

1 offender score, except for juvenile prior convictions for violent  
2 offenses with separate victims, which shall count as separate offenses;  
3 and

4 (c) In the case of multiple prior convictions for offenses  
5 committed before July 1, 1986, for the purpose of computing the  
6 offender score, count all adult convictions served concurrently as one  
7 offense, and count all juvenile convictions entered on the same date as  
8 one offense. Use the conviction for the offense that yields the  
9 highest offender score.

10 (7) If the present conviction is one of the anticipatory offenses  
11 of criminal attempt, solicitation, or conspiracy, count each prior  
12 conviction as if the present conviction were for a completed offense.

13 (8) If the present conviction is for a nonviolent offense and not  
14 covered by subsection (12) or (13) of this section, count one point for  
15 each adult prior felony conviction and one point for each juvenile  
16 prior violent felony conviction and 1/2 point for each juvenile prior  
17 nonviolent felony conviction.

18 (9) If the present conviction is for a violent offense and not  
19 covered in subsection (10), (11), (12), or (13) of this section, count  
20 two points for each prior adult and juvenile violent felony conviction,  
21 one point for each prior adult nonviolent felony conviction, and 1/2  
22 point for each prior juvenile nonviolent felony conviction.

23 (10) If the present conviction is for Murder 1 or 2, Assault 1,  
24 Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count  
25 three points for prior adult and juvenile convictions for crimes in  
26 these categories, two points for each prior adult and juvenile violent  
27 conviction (not already counted), one point for each prior adult  
28 nonviolent felony conviction, and 1/2 point for each prior juvenile  
29 nonviolent felony conviction.



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

6 (12) If the present conviction is for a felony traffic offense  
7 count two points for each adult or juvenile prior conviction for  
8 Vehicular Homicide or Vehicular Assault; for each felony offense or  
9 serious traffic offense, count one point for each adult and 1/2 point  
10 for each juvenile prior conviction.

11 (13) If the present conviction is for a drug offense count three  
12 points for each adult prior felony drug offense conviction and two  
13 points for each juvenile drug offense. All other adult and juvenile  
14 felonies are scored as in subsection (9) of this section if the current  
15 drug offense is violent, or as in subsection (8) of this section if the  
16 current drug offense is nonviolent.

17 (14) If the present conviction is for Willful Failure to Return  
18 from Furlough, RCW 72.66.060, or Willful Failure to Return from Work  
19 Release, RCW 72.65.070, count only prior escape convictions in the  
20 offender score. Count adult prior escape convictions as one point and  
21 juvenile prior escape convictions as 1/2 point.

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

25 (16) If the present conviction is for Burglary 2 or residential  
26 burglary, count priors as in subsection (8) of this section; however,  
27 count two points for each adult and juvenile prior Burglary 1  
28 conviction, two points for each adult prior Burglary 2 or residential  
29 burglary conviction, and one point for each juvenile prior Burglary 2  
30 or residential burglary conviction.

1 (17) If the present conviction is for a sex offense, count priors  
2 as in subsections (8) through (16) of this section; however count three  
3 points for each adult and juvenile prior sex offense conviction.

4 (18) If the present conviction is for an offense committed while  
5 the offender was under community placement, add one point."

6 "Sec. 11. RCW 9.94A.440 and 1989 c 332 s 2 are each amended to  
7 read as follows:

8 (1) Decision not to prosecute.

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

14 GUIDELINE/COMMENTARY:

15 Examples

16 The following are examples of reasons not to prosecute which could  
17 satisfy the standard.

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

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

24 (i) It has not been enforced for many years; and

25 (ii) Most members of society act as if it were no longer in  
26 existence; and

27 (iii) It serves no deterrent or protective purpose in today's  
28 society; and

1 (iv) The statute has not been recently reconsidered by the  
2 legislature.

3 This reason is not to be construed as the basis for declining cases  
4 because the law in question is unpopular or because it is difficult to  
5 enforce.

6 (c) De Minimus Violation - It may be proper to decline to charge  
7 where the violation of law is only technical or insubstantial and where  
8 no public interest or deterrent purpose would be served by prosecution.

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

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

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

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

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

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

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

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

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

28 (f) High Disproportionate Cost of Prosecution - It may be proper to  
29 decline to charge where the cost of locating or transporting, or the  
30 burden on, prosecution witnesses is highly disproportionate to the

1 importance of prosecuting the offense in question. This reason should  
2 be limited to minor cases and should not be relied upon in serious  
3 cases.

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

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

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

17 (i) Assault cases where the victim has suffered little or no  
18 injury;

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

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

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

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

26 Notification

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

29 (2) Decision to prosecute.

30 STANDARD:

1 Crimes against persons will be filed if sufficient admissible  
2 evidence exists, which, when considered with the most plausible,  
3 reasonably foreseeable defense that could be raised under the evidence,  
4 would justify conviction by a reasonable and objective fact-finder.  
5 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
6 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
7 9A.64.020 the prosecutor should avoid prefiling agreements or  
8 diversions intended to place the accused in a program of treatment or  
9 counseling, so that treatment, if determined to be beneficial, can be  
10 provided pursuant to RCW 9.94A.120(7).

11 Crimes against property/other crimes will be filed if the  
12 admissible evidence is of such convincing force as to make it probable  
13 that a reasonable and objective fact-finder would convict after hearing  
14 all the admissible evidence and the most plausible defense that could  
15 be raised.

16 See table below for the crimes within these categories.

17 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

18 CRIMES AGAINST PERSONS

19 Aggravated Murder

20 1st Degree Murder

21 2nd Degree Murder

22 1st Degree Kidnaping

23 1st Degree Assault

24 1st Degree Assault of a Child

25 1st Degree Rape

26 1st Degree Robbery

27 1st Degree Rape of a Child

1 1st Degree Arson  
2 2nd Degree Kidnaping  
3 2nd Degree Assault  
4 2nd Degree Assault of a Child  
5 2nd Degree Rape  
6 2nd Degree Robbery  
7 1st Degree Burglary  
8 1st Degree Manslaughter  
9 2nd Degree Manslaughter  
10 1st Degree Extortion  
11 Indecent Liberties  
12 Incest  
13 2nd Degree Rape of a Child  
14 Vehicular Homicide  
15 Vehicular Assault  
16 3rd Degree Rape  
17 3rd Degree Rape of a Child  
18 1st Degree Child Molestation  
19 2nd Degree Child Molestation  
20 3rd Degree Child Molestation  
21 2nd Degree Extortion  
22 1st Degree Promoting Prostitution  
23 Intimidating a Juror  
24 Communication with a Minor  
25 Intimidating a Witness  
26 Intimidating a Public Servant  
27 Bomb Threat (if against person)  
28 3rd Degree Assault  
29 3rd Degree Assault of a Child  
30 Unlawful Imprisonment

1 Promoting a Suicide Attempt  
2 Riot (if against person)

3 CRIMES AGAINST PROPERTY/OTHER CRIMES

4 2nd Degree Arson  
5 1st Degree Escape  
6 2nd Degree Burglary  
7 1st Degree Theft  
8 1st Degree Perjury  
9 1st Degree Introducing Contraband  
10 1st Degree Possession of Stolen Property  
11 Bribery  
12 Bribing a Witness  
13 Bribe received by a Witness  
14 Bomb Threat (if against property)  
15 1st Degree Malicious Mischief  
16 2nd Degree Theft  
17 2nd Degree Escape  
18 2nd Degree Introducing Contraband  
19 2nd Degree Possession of Stolen Property  
20 2nd Degree Malicious Mischief  
21 1st Degree Reckless Burning  
22 Taking a Motor Vehicle without Authorization  
23 Forgery  
24 2nd Degree Perjury  
25 2nd Degree Promoting Prostitution  
26 Tampering with a Witness  
27 Trading in Public Office  
28 Trading in Special Influence

- 1 Receiving/Granting Unlawful Compensation
- 2 Bigamy
- 3 Eluding a Pursuing Police Vehicle
- 4 Willful Failure to Return from Furlough
- 5 Riot (if against property)
- 6 Thefts of Livestock

7 ALL OTHER UNCLASSIFIED FELONIES

8 Selection of Charges/Degree of Charge

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

12 (a) Will significantly enhance the strength of the state's case at  
13 trial; or

14 (b) Will result in restitution to all victims.

15 (2) The prosecutor should not overcharge to obtain a guilty plea.

16 Overcharging includes:

17 (a) Charging a higher degree;

18 (b) Charging additional counts.

19 This standard is intended to direct prosecutors to charge those  
20 crimes which demonstrate the nature and seriousness of a defendant's  
21 criminal conduct, but to decline to charge crimes which are not  
22 necessary to such an indication. Crimes which do not merge as a matter  
23 of law, but which arise from the same course of conduct, do not all  
24 have to be charged.

25 GUIDELINES/COMMENTARY:

26 Police Investigation



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

7 (1) The interviewing of all material witnesses, together with the  
8 obtaining of written statements whenever possible;

9 (2) The completion of necessary laboratory tests; and

10 (3) The obtaining, in accordance with constitutional requirements,  
11 of the suspect's version of the events.

12 If the initial investigation is incomplete, a prosecuting attorney  
13 should insist upon further investigation before a decision to prosecute  
14 is made, and specify what the investigation needs to include.

#### 15 Exceptions

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

18 (1) Probable cause exists to believe the suspect is guilty; and

19 (2) The suspect presents a danger to the community or is likely to  
20 flee if not apprehended; or

21 (3) The arrest of the suspect is necessary to complete the  
22 investigation of the crime.

23 In the event that the exception to the standard is applied, the  
24 prosecuting attorney shall obtain a commitment from the law enforcement  
25 agency involved to complete the investigation in a timely manner. If  
26 the subsequent investigation does not produce sufficient evidence to  
27 meet the normal charging standard, the complaint should be dismissed.

#### 28 Investigation Techniques

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

- 1 (1) Polygraph testing;
- 2 (2) Hypnosis;
- 3 (3) Electronic surveillance;
- 4 (4) Use of informants.

5 Pre-Filing Discussions with Defendant

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

9 "Sec. 12. RCW 9A.46.060 and 1988 c 145 s 15 are each amended to  
10 read as follows:

11 As used in this chapter, "harassment" may include but is not  
12 limited to any of the following crimes:

- 13 (1) Harassment (RCW 9A.46.020);
- 14 (2) Malicious harassment (RCW 9A.36.080);
- 15 (3) Telephone harassment (RCW 9.61.230);
- 16 (4) Assault in the first degree (RCW 9A.36.011);
- 17 (5) Assault of a child in the first degree (RCW 9A.36.--- (section  
18 1 of this act)));
- 19 (6) Assault in the second degree (RCW 9A.36.021));
- 20 (~~((6) Simple assault [Assault in the fourth degree])~~) (7) Assault  
21 of a child in the second degree (RCW 9A.36.--- (section 2 of this  
22 act)));
- 23 (8) Assault in the fourth degree (RCW 9A.36.041));
- 24 (~~((7))~~) (9) Reckless endangerment (([in the second degree])) in the  
25 second degree (RCW 9A.36.050));
- 26 (~~((8))~~) (10) Extortion in the first degree (RCW 9A.56.120));
- 27 (~~((9))~~) (11) Extortion in the second degree (RCW 9A.56.130));
- 28 (~~((10))~~) (12) Coercion (RCW 9A.36.070));
- 29 (~~((11))~~) (13) Burglary in the first degree (RCW 9A.52.020));

1        (~~(12)~~) (14) Burglary in the second degree (RCW 9A.52.030);  
2        (~~(13)~~) (15) Criminal trespass in the first degree (RCW  
3 9A.52.070);  
4        (~~(14)~~) (16) Criminal trespass in the second degree (RCW  
5 9A.52.080);  
6        (~~(15)~~) (17) Malicious mischief in the first degree (RCW  
7 9A.48.070);  
8        (~~(16)~~) (18) Malicious mischief in the second degree (RCW  
9 9A.48.080);  
10       (~~(17)~~) (19) Malicious mischief in the third degree (RCW  
11 9A.48.090);  
12       (~~(18)~~) (20) Kidnapping in the first degree (RCW 9A.40.020);  
13       (~~(19)~~) (21) Kidnapping in the second degree (RCW 9A.40.030);  
14       (~~(20)~~) (22) Unlawful imprisonment (RCW 9A.40.040);  
15       (~~(21)~~) (23) Rape in the first degree (RCW 9A.44.040);  
16       (~~(22)~~) (24) Rape in the second degree (RCW 9A.44.050);  
17       (~~(23)~~) (25) Rape in the third degree (RCW 9A.44.060);  
18       (~~(24)~~) (26) Indecent liberties (RCW 9A.44.100);  
19       (~~(25)~~) (27) Rape of a child in the first degree (RCW 9A.44.073);  
20       (~~(26)~~) (28) Rape of a child in the second degree (RCW 9A.44.076);  
21       (~~(27)~~) (29) Rape of a child in the third degree (RCW 9A.44.079);  
22       (~~(28)~~) (30) Child molestation in the first degree (RCW  
23 9A.44.083);  
24       (~~(29)~~) (31) Child molestation in the second degree (RCW  
25 9A.44.086); and  
26       (~~(30)~~) (32) Child molestation in the third degree (RCW  
27 9A.44.089)."

28        "**Sec. 13.** RCW 9A.82.010 and 1989 c 20 s 17 are each amended to  
29 read as follows:

1 Unless the context requires the contrary, the definitions in this  
2 section apply throughout this chapter.

3 (1) "Creditor" means a person making an extension of credit or a  
4 person claiming by, under, or through a person making an extension of  
5 credit.

6 (2) "Debtor" means a person to whom an extension of credit is made  
7 or a person who guarantees the repayment of an extension of credit or  
8 in any manner undertakes to indemnify the creditor against loss  
9 resulting from the failure of a person to whom an extension is made to  
10 repay the same.

11 (3) "Extortionate extension of credit" means an extension of credit  
12 with respect to which it is the understanding of the creditor and the  
13 debtor at the time the extension is made that delay in making repayment  
14 or failure to make repayment could result in the use of violence or  
15 other criminal means to cause harm to the person, reputation, or  
16 property of any person.

17 (4) "Extortionate means" means the use, or an express or implicit  
18 threat of use, of violence or other criminal means to cause harm to the  
19 person, reputation, or property of any person.

20 (5) "To collect an extension of credit" means to induce in any way  
21 a person to make repayment thereof.

22 (6) "To extend credit" means to make or renew a loan or to enter  
23 into an agreement, tacit or express, whereby the repayment or  
24 satisfaction of a debt or claim, whether acknowledged or disputed,  
25 valid or invalid, and however arising, may or shall be deferred.

26 (7) "Repayment of an extension of credit" means the repayment,  
27 satisfaction, or discharge in whole or in part of a debt or claim,  
28 acknowledged or disputed, valid or invalid, resulting from or in  
29 connection with that extension of credit.

1 (8) "Dealer in property" means a person who buys and sells property  
2 as a business.

3 (9) "Stolen property" means property that has been obtained by  
4 theft, robbery, or extortion.

5 (10) "Traffic" means to sell, transfer, distribute, dispense, or  
6 otherwise dispose of stolen property to another person, or to buy,  
7 receive, possess, or obtain control of stolen property, with intent to  
8 sell, transfer, distribute, dispense, or otherwise dispose of the  
9 property to another person.

10 (11) "Control" means the possession of a sufficient interest to  
11 permit substantial direction over the affairs of an enterprise.

12 (12) "Enterprise" includes any individual, sole proprietorship,  
13 partnership, corporation, business trust, or other profit or nonprofit  
14 legal entity, and includes any union, association, or group of  
15 individuals associated in fact although not a legal entity, and both  
16 illicit and licit enterprises and governmental and nongovernmental  
17 entities.

18 (13) "Financial institution" means any bank, trust company, savings  
19 and loan association, savings bank, mutual savings bank, credit union,  
20 or loan company under the jurisdiction of the state or an agency of the  
21 United States.

22 (14) "Criminal profiteering" means any act, including any  
23 anticipatory or completed offense, committed for financial gain, that  
24 is chargeable or indictable under the laws of the state in which the  
25 act occurred and, if the act occurred in a state other than this state,  
26 would be chargeable or indictable under the laws of this state had the  
27 act occurred in this state and punishable as a felony and by  
28 imprisonment for more than one year, regardless of whether the act is  
29 charged or indicted, as any of the following:

30 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

1 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;  
2 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;  
3 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;  
4 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and  
5 9A.56.080;  
6 (f) Child selling or child buying, as defined in RCW 9A.64.030;  
7 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
8 9A.68.050;  
9 (h) Gambling, as defined in RCW 9.46.220 and 9.46.230;  
10 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;  
11 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;  
12 (k) Advancing money for use in an extortionate extension of credit,  
13 as defined in RCW 9A.82.030;  
14 (l) Collection of an extortionate extension of credit, as defined  
15 in RCW 9A.82.040;  
16 (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;  
17 (n) Delivery or manufacture of controlled substances or possession  
18 with intent to deliver or manufacture controlled substances under  
19 chapter 69.50 RCW;  
20 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;  
21 (p) Leading organized crime, as defined in RCW 9A.82.060;  
22 (q) Obstructing criminal investigations or prosecutions in  
23 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
24 9A.76.070, or 9A.76.180;  
25 (r) Fraud in the purchase or sale of securities, as defined in RCW  
26 21.20.010;  
27 (s) Promoting pornography, as defined in RCW 9.68.140;  
28 (t) Sexual exploitation of children, as defined in RCW 9.68A.040,  
29 9.68A.050, and 9.68A.060;

1 (u) Promoting prostitution, as defined in RCW 9A.88.070 and  
2 9A.88.080;

3 (v) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

4 (w) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

5 (x) Assault of a child, as defined in RCW 9A.36.--- and 9A.36.---  
6 (sections 1 and 2 of this act);

7 (y) A pattern of equity skimming, as defined in RCW 61.34.020; or

8 (~~(y)~~) (z) Commercial telephone solicitation in violation of RCW  
9 19.158.040(1).

10 (15) "Pattern of criminal profiteering activity" means engaging in  
11 at least three acts of criminal profiteering, one of which occurred  
12 after July 1, 1985, and the last of which occurred within five years,  
13 excluding any period of imprisonment, after the commission of the  
14 earliest act of criminal profiteering. In order to constitute a  
15 pattern, the three acts must have the same or similar intent, results,  
16 accomplices, principals, victims, or methods of commission, or be  
17 otherwise interrelated by distinguishing characteristics including a  
18 nexus to the same enterprise, and must not be isolated events.  
19 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by  
20 any person other than the attorney general or county prosecuting  
21 attorney in which one or more acts of fraud in the purchase or sale of  
22 securities are asserted as acts of criminal profiteering activity, it  
23 is a condition to civil liability under RCW 9A.82.100 that the  
24 defendant has been convicted in a criminal proceeding of fraud in the  
25 purchase or sale of securities under RCW 21.20.400 or under the laws of  
26 another state or of the United States requiring the same elements of  
27 proof, but such conviction need not relate to any act or acts asserted  
28 as acts of criminal profiteering activity in such civil action under  
29 RCW 9A.82.100.

1 (16) "Records" means any book, paper, writing, record, computer  
2 program, or other material.

3 (17) "Documentary material" means any book, paper, document,  
4 writing, drawing, graph, chart, photograph, phonograph record, magnetic  
5 tape, computer printout, other data compilation from which information  
6 can be obtained or from which information can be translated into usable  
7 form, or other tangible item.

8 (18) "Unlawful debt" means any money or other thing of value  
9 constituting principal or interest of a debt that is legally  
10 unenforceable in the state in full or in part because the debt was  
11 incurred or contracted:

12 (a) In violation of any one of the following:

13 (i) Chapter 67.16 RCW relating to horse racing;

14 (ii) Chapter 9.46 RCW relating to gambling;

15 (b) In a gambling activity in violation of federal law; or

16 (c) In connection with the business of lending money or a thing of  
17 value at a rate that is at least twice the permitted rate under the  
18 applicable state or federal law relating to usury.

19 (19) (a) "Beneficial interest" means:

20 (i) The interest of a person as a beneficiary under a trust  
21 established under Title 11 RCW in which the trustee for the trust holds  
22 legal or record title to real property;

23 (ii) The interest of a person as a beneficiary under any other  
24 trust arrangement under which a trustee holds legal or record title to  
25 real property for the benefit of the beneficiary; or

26 (iii) The interest of a person under any other form of express  
27 fiduciary arrangement under which one person holds legal or record  
28 title to real property for the benefit of the other person.



1 (b) "Beneficial interest" does not include the interest of a  
2 stockholder in a corporation or the interest of a partner in a general  
3 partnership or limited partnership.

4 (c) A beneficial interest shall be considered to be located where  
5 the real property owned by the trustee is located.

6 (20) "Real property" means any real property or interest in real  
7 property, including but not limited to a land sale contract, lease, or  
8 mortgage of real property.

9 (21) (a) "Trustee" means:

10 (i) A person acting as a trustee under a trust established under  
11 Title 11 RCW in which the trustee holds legal or record title to real  
12 property;

13 (ii) A person who holds legal or record title to real property in  
14 which another person has a beneficial interest; or

15 (iii) A successor trustee to a person who is a trustee under  
16 subsection (21)(a) (i) or (ii) of this section.

17 (b) "Trustee" does not mean a person appointed or acting as:

18 (i) A personal representative under Title 11 RCW;

19 (ii) A trustee of any testamentary trust;

20 (iii) A trustee of any indenture of trust under which a bond is  
21 issued; or

22 (iv) A trustee under a deed of trust."

23 "**Sec. 14.** RCW 13.34.130 and 1991 c 127 s 4 are each amended to  
24 read as follows:

25 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now  
26 or hereafter amended, it has been proven by a preponderance of the  
27 evidence that the child is dependent within the meaning of RCW  
28 13.34.030(2); after consideration of the predisposition report prepared  
29 pursuant to RCW 13.34.110 and after a disposition hearing has been held

1 pursuant to RCW 13.34.110, the court shall enter an order of  
2 disposition pursuant to this section.

3 (1) The court shall order one of the following dispositions of the  
4 case:

5 (a) Order a disposition other than removal of the child from his or  
6 her home, which shall provide a program designed to alleviate the  
7 immediate danger to the child, to mitigate or cure any damage the child  
8 has already suffered, and to aid the parents so that the child will not  
9 be endangered in the future. In selecting a program, the court should  
10 choose those services that least interfere with family autonomy,  
11 provided that the services are adequate to protect the child.

12 (b) Order that the child be removed from his or her home and  
13 ordered into the custody, control, and care of a relative or the  
14 department of social and health services or a licensed child placing  
15 agency for placement in a foster family home or group care facility  
16 licensed pursuant to chapter 74.15 RCW or in a home not required to be  
17 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable  
18 cause to believe that the safety or welfare of the child would be  
19 jeopardized or that efforts to reunite the parent and child will be  
20 hindered, such child shall be placed with a grandparent, brother,  
21 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom  
22 the child has a relationship and is comfortable, and who is willing and  
23 available to care for the child. An order for out-of-home placement  
24 may be made only if the court finds that reasonable efforts have been  
25 made to prevent or eliminate the need for removal of the child from the  
26 child's home and to make it possible for the child to return home,  
27 specifying the services that have been provided to the child and the  
28 child's parent, guardian, or legal custodian, and that:

29 (i) There is no parent or guardian available to care for such  
30 child;

1 (ii) The parent, guardian, or legal custodian is not willing to  
2 take custody of the child;

3 (iii) A manifest danger exists that the child will suffer serious  
4 abuse or neglect if the child is not removed from the home and an order  
5 under RCW 26.44.063 would not protect the child from danger; or

6 (iv) The extent of the child's disability is such that the parent,  
7 guardian, or legal custodian is unable to provide the necessary care  
8 for the child and the parent, guardian, or legal custodian has  
9 determined that the child would benefit from placement outside of the  
10 home.

11 (2) If the court has ordered a child removed from his or her home  
12 pursuant to ~~((RCW 13.34.130))~~ subsection (1)(b) of this section, the  
13 court may order that a petition seeking termination of the parent and  
14 child relationship be filed if the court finds it is recommended by the  
15 supervising agency, that it is in the best interests of the child and  
16 that it is not reasonable to provide further services to reunify the  
17 family because the existence of aggravated circumstances make it  
18 unlikely that services will effectuate the return of the child to the  
19 child's parents in the near future. In determining whether aggravated  
20 circumstances exist, the court shall consider one or more of the  
21 following:

22 (a) Conviction of the parent of rape of the child in the first,  
23 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
24 9A.44.079;

25 (b) Conviction of the parent of criminal mistreatment of the child  
26 in the first or second degree as defined in RCW 9A.42.020 and  
27 9A.42.030;

28 (c) Conviction of the parent of one of the following assault  
29 crimes, when the child is the victim: Assault ~~((of the child))~~ in the  
30 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or

1 assault of a child in the first or second degree as defined in RCW  
2 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

3 (d) Conviction of the parent of murder, manslaughter, or homicide  
4 by abuse of the child's other parent, sibling, or another child;

5 (e) A finding by a court that a parent is a sexually violent  
6 predator as defined in RCW 71.09.020;

7 (f) Failure of the parent to complete available treatment ordered  
8 under this chapter or the equivalent laws of another state, where such  
9 failure has resulted in a prior termination of parental rights to  
10 another child and the parent has failed to effect significant change in  
11 the interim.

12 (3) Whenever a child is ordered removed from the child's home, the  
13 agency charged with his or her care shall provide the court with:

14 (a) A permanent plan of care that may include one of the following:  
15 Return of the child to the home of the child's parent, adoption,  
16 guardianship, or long-term placement with a relative or in foster care  
17 with a written agreement.

18 (b) Unless the court has ordered, pursuant to ((RCW 13.34.130))  
19 subsection (2) of this section, that a termination petition be filed,  
20 a specific plan as to where the child will be placed, what steps will  
21 be taken to return the child home, and what actions the agency will  
22 take to maintain parent-child ties. All aspects of the plan shall  
23 include the goal of achieving permanence for the child.

24 (i) The agency plan shall specify what services the parents will be  
25 offered in order to enable them to resume custody, what requirements  
26 the parents must meet in order to resume custody, and a time limit for  
27 each service plan and parental requirement.

28 (ii) The agency shall be required to encourage the maximum parent-  
29 child contact possible, including regular visitation and participation  
30 by the parents in the care of the child while the child is in

1 placement. Visitation may be limited or denied only if the court  
2 determines that such limitation or denial is necessary to protect the  
3 child's health, safety, or welfare.

4 (iii) A child shall be placed as close to the child's home as  
5 possible, preferably in the child's own neighborhood, unless the court  
6 finds that placement at a greater distance is necessary to promote the  
7 child's or parents' well-being.

8 (iv) The agency charged with supervising a child in placement shall  
9 provide all reasonable services that are available within the agency,  
10 or within the community, or those services which the department of  
11 social and health services has existing contracts to purchase. It  
12 shall report to the court if it is unable to provide such services.

13 (c) If the court has ordered, pursuant to ((RCW—13.34.130))  
14 subsection (2) of this section, that a termination petition be filed,  
15 a specific plan as to where the child will be placed, what steps will  
16 be taken to achieve permanency for the child, services to be offered or  
17 provided to the child, and, if visitation would be in the best  
18 interests of the child, a recommendation to the court regarding  
19 visitation between parent and child pending a fact-finding hearing on  
20 the termination petition. The agency shall not be required to develop  
21 a plan of services for the parents or provide services to the parents.

22 (4) If there is insufficient information at the time of the  
23 disposition hearing upon which to base a determination regarding the  
24 suitability of a proposed placement with a relative, the child shall  
25 remain in foster care and the court shall direct the supervising agency  
26 to conduct necessary background investigations as provided in chapter  
27 74.15 RCW and report the results of such investigation to the court  
28 within thirty days. However, if such relative appears otherwise  
29 suitable and competent to provide care and treatment, the criminal  
30 history background check need not be completed before placement, but as

1 soon as possible after placement. Any placements with relatives,  
2 pursuant to this section, shall be contingent upon cooperation by the  
3 relative with the agency case plan and compliance with court orders  
4 related to the care and supervision of the child including, but not  
5 limited to, court orders regarding parent-child contacts and any other  
6 conditions imposed by the court. Noncompliance with the case plan or  
7 court order shall be grounds for removal of the child from the  
8 relative's home, subject to review by the court.

9 (5) Except for children whose cases are reviewed by a citizen  
10 review board under chapter 13.70 RCW, the status of all children found  
11 to be dependent shall be reviewed by the court at least every six  
12 months from the beginning date of the placement episode or the date  
13 dependency is established, whichever is first, at a hearing in which it  
14 shall be determined whether court supervision should continue. The  
15 review shall include findings regarding the agency and parental  
16 completion of disposition plan requirements, and if necessary, revised  
17 permanency time limits.

18 (a) A child shall not be returned home at the review hearing unless  
19 the court finds that a reason for removal as set forth in this section  
20 no longer exists. The parents, guardian, or legal custodian shall  
21 report to the court the efforts they have made to correct the  
22 conditions which led to removal. If a child is returned, casework  
23 supervision shall continue for a period of six months, at which time  
24 there shall be a hearing on the need for continued intervention.

25 (b) If the child is not returned home, the court shall establish in  
26 writing:

27 (i) Whether reasonable services have been provided to or offered to  
28 the parties to facilitate reunion, specifying the services provided or  
29 offered;

1 (ii) Whether the child has been placed in the least-restrictive  
2 setting appropriate to the child's needs, including whether  
3 consideration has been given to placement with the child's relatives;

4 (iii) Whether there is a continuing need for placement and whether  
5 the placement is appropriate;

6 (iv) Whether there has been compliance with the case plan by the  
7 child, the child's parents, and the agency supervising the placement;

8 (v) Whether progress has been made toward correcting the problems  
9 that necessitated the child's placement in out-of-home care;

10 (vi) Whether the parents have visited the child and any reasons why  
11 visitation has not occurred or has been infrequent;

12 (vii) Whether additional services are needed to facilitate the  
13 return of the child to the child's parents; if so, the court shall  
14 order that reasonable services be offered specifying such services; and

15 (viii) The projected date by which the child will be returned home  
16 or other permanent plan of care will be implemented.

17 (c) The court at the review hearing may order that a petition  
18 seeking termination of the parent and child relationship be filed."

19 **"Sec. 15.** RCW 13.34.190 and 1990 c 284 s 33 are each amended to  
20 read as follows:

21 After hearings pursuant to RCW 13.34.110, the court may enter an  
22 order terminating all parental rights to a child if the court finds  
23 that:

24 (1) The allegations contained in the petition as provided in RCW  
25 13.34.180 (1) through (6) are established by clear, cogent, and  
26 convincing evidence; or

27 (2) RCW 13.34.180 (3) and (4) may be waived because the allegations  
28 under RCW 13.34.180 (1), (2), (5), and (6) are established beyond a  
29 reasonable doubt; or

1       (~~(e)~~—~~{(3)}~~) (3) The allegation under RCW 13.34.180(7) is  
2 established beyond a reasonable doubt. In determining whether RCW  
3 13.34.180 (5) and (6) are established beyond a reasonable doubt, the  
4 court shall consider one or more of the following:

5       (a) Conviction of the parent of rape of the child in the first,  
6 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
7 9A.44.079;

8       (b) Conviction of the parent of criminal mistreatment of the child  
9 in the first or second degree as defined in RCW 9A.42.020 or 9A.42.030;

10       (c) Conviction of the parent of one of the following assault  
11 crimes, when the child is the victim: Assault ((of the child)) in the  
12 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or  
13 assault of a child in the first or second degree as defined in RCW  
14 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

15       (d) Conviction of the parent of murder, manslaughter, or homicide  
16 by abuse of the child's other parent, sibling, or another child;

17       (e) A finding by a court that a parent is a sexually violent  
18 predator as defined in RCW ((~~9A.88.010~~)) 71.09.020;

19       (f) Failure of the parent to complete available treatment ordered  
20 under this chapter or the equivalent laws of another state, where such  
21 failure has resulted in a prior termination of parental rights to  
22 another child and the parent has failed to effect significant change in  
23 the interim; and

24       (~~(3)~~—~~{(4)}~~) (4) Such an order is in the best interests of the  
25 child."

26       **"Sec. 16.** RCW 43.43.830 and 1990 c 146 s 8 and 1990 c 3 s 1101 are  
27 each reenacted and amended to read as follows:

28       Unless the context clearly requires otherwise, the definitions in  
29 this section apply throughout RCW 43.43.830 through 43.43.840.



1 (1) "Applicant" means:

2 (a) Any prospective employee who will or may have unsupervised  
3 access to children under sixteen years of age or developmentally  
4 disabled persons or vulnerable adults during the course of his or her  
5 employment or involvement with the business or organization;

6 (b) Any prospective volunteer who will have regularly scheduled  
7 unsupervised access to children under sixteen years of age,  
8 developmentally disabled persons, or vulnerable adults during the  
9 course of his or her employment or involvement with the business or  
10 organization under circumstances where such access will or may involve  
11 groups of (i) five or fewer children under twelve years of age, (ii)  
12 three or fewer children between twelve and sixteen years of age, (iii)  
13 developmentally disabled persons, or (iv) vulnerable adults; or

14 (c) Any prospective adoptive parent, as defined in RCW 26.33.020.

15 (2) "Business or organization" means a business or organization  
16 licensed in this state, any agency of the state, or other governmental  
17 entity, that educates, trains, treats, supervises, or provides  
18 recreation to developmentally disabled persons, vulnerable adults, or  
19 children under sixteen years of age, including school districts and  
20 educational service districts.

21 (3) "Civil adjudication" means a specific court finding of sexual  
22 abuse or exploitation or physical abuse in a dependency action under  
23 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In  
24 the case of vulnerable adults, civil adjudication means a specific  
25 court finding of abuse or financial exploitation in a protection  
26 proceeding under chapter 74.34 RCW. It does not include administrative  
27 proceedings. The term "civil adjudication" is further limited to court  
28 findings that identify as the perpetrator of the abuse a named  
29 individual, over the age of eighteen years, who was a party to the  
30 dependency or dissolution proceeding or was a respondent in a

1 protection proceeding in which the finding was made and who contested  
2 the allegation of abuse or exploitation.

3 (4) "Conviction record" means "conviction record" information as  
4 defined in RCW 10.97.030(3) relating to a crime against children or  
5 other persons committed by either an adult or a juvenile. It does not  
6 include a conviction for an offense that has been the subject of an  
7 expungement, pardon, annulment, certificate of rehabilitation, or other  
8 equivalent procedure based on a finding of the rehabilitation of the  
9 person convicted, or a conviction that has been the subject of a  
10 pardon, annulment, or other equivalent procedure based on a finding of  
11 innocence. It does include convictions for offenses for which the  
12 defendant received a deferred or suspended sentence, unless the record  
13 has been expunged according to law.

14 (5) "Crime against children or other persons" means a conviction of  
15 any of the following offenses: Aggravated murder; first or second  
16 degree murder; first or second degree kidnaping; first, second, or  
17 third degree assault; first, second, or third degree assault of a  
18 child; first, second, or third degree rape; first, second, or third  
19 degree rape of a child; first or second degree robbery; first degree  
20 arson; first degree burglary; first or second degree manslaughter;  
21 first or second degree extortion; indecent liberties; incest; vehicular  
22 homicide; first degree promoting prostitution; communication with a  
23 minor; unlawful imprisonment; simple assault; sexual exploitation of  
24 minors; first or second degree criminal mistreatment; child abuse or  
25 neglect as defined in RCW 26.44.020; first or second degree custodial  
26 interference; malicious harassment; first, second, or third degree  
27 child molestation; first or second degree sexual misconduct with a  
28 minor; first or second degree rape of a child; patronizing a juvenile  
29 prostitute; child abandonment; promoting pornography; selling or  
30 distributing erotic material to a minor; custodial assault; violation

1 of child abuse restraining order; child buying or selling;  
2 prostitution; felony indecent exposure; or any of these crimes as they  
3 may be renamed in the future.

4 (6) "Crimes relating to financial exploitation" means a conviction  
5 for first, second, or third degree extortion; first, second, or third  
6 degree theft; first or second degree robbery; forgery; or any of these  
7 crimes as they may be renamed in the future.

8 (7) "Disciplinary board final decision" means any final decision  
9 issued by the disciplinary board or the director of the department of  
10 licensing for the following businesses or professions:

11 (a) Chiropractic;

12 (b) Dentistry;

13 (c) Dental hygiene;

14 (d) Massage;

15 (e) Midwifery;

16 (f) Naturopathy;

17 (g) Osteopathy;

18 (h) Physical therapy;

19 (i) Physicians;

20 (j) Practical nursing;

21 (k) Registered nursing;

22 (l) Psychology; and

23 (m) Real estate brokers and salesmen.

24 (8) "Unsupervised" means not in the presence of:

25 (a) Another employee or volunteer from the same business or  
26 organization as the applicant; or

27 (b) Any relative or guardian of any of the children or  
28 developmentally disabled persons to which the applicant has access  
29 during the course of his or her employment or involvement with the  
30 business or organization.

1 (9) "Vulnerable adult" means a person sixty years of age or older  
2 who has the functional, mental, or physical inability to care for  
3 himself or herself or a patient in a state hospital as defined in  
4 chapter 72.23 RCW.

5 (10) "Financial exploitation" means the illegal or improper use of  
6 a vulnerable adult or that adult's resources for another person's  
7 profit or advantage.

8 (11) "Agency" means any person, firm, partnership, association,  
9 corporation, or facility which receives, provides services to, houses  
10 or otherwise cares for vulnerable adults."

11 **"Sec. 17.** RCW 71.09.020 and 1990 1st ex.s. c 12 s 2 are each  
12 amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "Sexually violent predator" means any person who has been  
16 convicted of or charged with a crime of sexual violence and who suffers  
17 from a mental abnormality or personality disorder which makes the  
18 person likely to engage in predatory acts of sexual violence.

19 (2) "Mental abnormality" means a congenital or acquired condition  
20 affecting the emotional or volitional capacity which predisposes the  
21 person to the commission of criminal sexual acts in a degree  
22 constituting such person a menace to the health and safety of others.

23 (3) "Predatory" means acts directed towards strangers or  
24 individuals with whom a relationship has been established or promoted  
25 for the primary purpose of victimization.

26 (4) "Sexually violent offense" means an act committed on, before,  
27 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as  
28 rape in the first degree, rape in the second degree by forcible  
29 compulsion, rape of a child in the first or second degree, statutory

1 rape in the first or second degree, indecent liberties by forcible  
2 compulsion, indecent liberties against a child under age fourteen,  
3 incest against a child under age fourteen, or child molestation in the  
4 first or second degree; (b) a felony offense in effect at any time  
5 prior to July 1, 1990, that is comparable to a sexually violent offense  
6 as defined in (a) of this subsection, or any federal or out-of-state  
7 conviction for a felony offense that under the laws of this state would  
8 be a sexually violent offense as defined in this subsection; (c) an act  
9 of murder in the first or second degree, assault in the first or second  
10 degree, assault of a child in the first or second degree, kidnapping in  
11 the first or second degree, burglary in the first degree, residential  
12 burglary, or unlawful imprisonment, which act, either at the time of  
13 sentencing for the offense or subsequently during civil commitment  
14 proceedings pursuant to chapter 71.09 RCW, has been determined beyond  
15 a reasonable doubt to have been sexually motivated, as that term is  
16 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28  
17 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
18 to commit one of the felonies designated in (a), (b), or (c) of this  
19 subsection."

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21 By Committee on Judiciary

22  
23 On page 1, line 2 of the title, after "child;" strike the remainder  
24 of the title and insert "amending RCW 9.94A.320, 9.41.010, 9.94A.150,  
25 9.94A.310, 9.94A.360, 9.94A.440, 9A.46.060, 9A.82.010, 13.34.130,  
26 13.34.190, and 71.09.020; reenacting and amending RCW 9.94A.030,  
27 9.94A.120, and 43.43.830; adding new sections to chapter 9A.36 RCW; and  
28 prescribing penalties."