
SUBSTITUTE SENATE BILL 6104

State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Rasmussen, Thorsness, Hayner, Sellar, A. Smith and Erwin)

Read first time 1/30/92.

1 AN ACT Relating to creating the crimes of first, second, and third
2 degree assault against a child; amending RCW 9.94A.320, 9.41.010,
3 9.94A.150, 9.94A.310, 9.94A.360, 9.94A.440, 9A.46.060, 9A.82.010,
4 13.34.130, 13.34.190, and 71.09.020; reenacting and amending RCW
5 9.94A.030, 9.94A.120, and 43.43.830; adding new sections to chapter
6 9A.36 RCW; and prescribing penalties.

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

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

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

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

1 (b) Intentionally assaults the child and either:
2 (i) Recklessly inflicts great bodily harm; or
3 (ii) Causes substantial bodily harm, and the person either has
4 previously engaged in a pattern or practice of assaulting the child or
5 has previously caused the child pain or agony that is equivalent to
6 that produced by torture.

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

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

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

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

15 (b) Intentionally assaults the child and causes bodily harm that is
16 greater than transient pain or minor temporary marks, and the person
17 either has previously engaged in a pattern or practice of assaulting
18 the child or has previously caused the child pain or agony that is
19 equivalent to that produced by torture.

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

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

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

26 (a) Commits the crime of assault in the third degree as defined in
27 RCW 9A.36.031(1)(d) or (f) against a child;

1 (b) With criminal negligence, causes bodily harm that is greater
2 than transient pain or minor temporary marks; or

3 (c) Intentionally assaults the child and causes bodily harm that is
4 greater than transient pain or minor temporary marks.

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

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

8 TABLE 2

9 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- 10 XV Aggravated Murder 1 (RCW 10.95.020)
- 11 XIV Murder 1 (RCW 9A.32.030)
- 12 Homicide by abuse (RCW 9A.32.055)
- 13 XIII Murder 2 (RCW 9A.32.050)
- 14 XII Assault 1 (RCW 9A.36.011)
- 15 Assault of a Child 1 (RCW 9A.36.--- (section 1 of this
16 act))
- 17 XI Rape 1 (RCW 9A.44.040)
- 18 Rape of a Child 1 (RCW 9A.44.073)
- 19 X Kidnapping 1 (RCW 9A.40.020)
- 20 Rape 2 (RCW 9A.44.050)
- 21 Rape of a Child 2 (RCW 9A.44.076)
- 22 Child Molestation 1 (RCW 9A.44.083)
- 23 Damaging building, etc., by explosion with threat to
24 human being (RCW 70.74.280(1))
- 25 Over 18 and deliver heroin or narcotic from Schedule I
26 or II to someone under 18 (RCW 69.50.406)
- 27 Leading Organized Crime (RCW 9A.82.060(1)(a))
- 28 IX Assault of a Child 2 (RCW 9A.36.--- (section 2 of this

1 act))
2 Robbery 1 (RCW 9A.56.200)
3 Manslaughter 1 (RCW 9A.32.060)
4 Explosive devices prohibited (RCW 70.74.180)
5 Indecent Liberties (with forcible compulsion)
6 (RCW 9A.44.100(1)(a))
7 Endangering life and property by explosives with threat to
8 human being (RCW 70.74.270)
9 Over 18 and deliver narcotic from Schedule III, IV, or V
10 or a nonnarcotic from Schedule I-V to someone under
11 18 and 3 years junior (RCW 69.50.406)
12 Controlled Substance Homicide (RCW 69.50.415)
13 Sexual Exploitation (RCW 9.68A.040)
14 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
15 VIII Arson 1 (RCW 9A.48.020)
16 Promoting Prostitution 1 (RCW 9A.88.070)
17 Selling for profit (controlled or counterfeit)
18 any controlled substance (RCW 69.50.410)
19 Manufacture, deliver, or possess with intent to deliver
20 heroin or cocaine (RCW 69.50.401(a)(1)(i))
21 Manufacture, deliver, or possess with intent to deliver
22 methamphetamine (RCW 69.50.401(a)(1)(ii))
23 Vehicular Homicide, by being under the influence of
24 intoxicating liquor or any drug or by the operation of
25 any vehicle in a reckless manner (RCW 46.61.520)
26 VII Burglary 1 (RCW 9A.52.020)
27 Vehicular Homicide, by disregard for the safety of others
28 (RCW 46.61.520)
29 Introducing Contraband 1 (RCW 9A.76.140)
30 Indecent Liberties (without forcible compulsion)

1 (RCW 9A.44.100(1) (b) and (c))
2 Child Molestation 2 (RCW 9A.44.086)
3 Dealing in depictions of minor engaged in sexually explicit
4 conduct (RCW 9.68A.050)
5 Sending, bringing into state depictions of minor engaged
6 in sexually explicit conduct (RCW 9.68A.060)
7 Involving a minor in drug dealing (RCW 69.50.401(f))
8 VI Bribery (RCW 9A.68.010)
9 Manslaughter 2 (RCW 9A.32.070)
10 Rape of a Child 3 (RCW 9A.44.079)
11 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
12 Damaging building, etc., by explosion with no threat to
13 human being (RCW 70.74.280(2))
14 Endangering life and property by explosives with no threat
15 to human being (RCW 70.74.270)
16 Incest 1 (RCW 9A.64.020(1))
17 Manufacture, deliver, or possess with intent to deliver
18 narcotics from Schedule I or II (except heroin or
19 cocaine) (RCW 69.50.401(a)(1)(i))
20 Intimidating a Judge (RCW 9A.72.160)
21 Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
22 V Criminal Mistreatment 1 (RCW 9A.42.020)
23 Rape 3 (RCW 9A.44.060)
24 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
25 Child Molestation 3 (RCW 9A.44.089)
26 Kidnapping 2 (RCW 9A.40.030)
27 Extortion 1 (RCW 9A.56.120)
28 Incest 2 (RCW 9A.64.020(2))
29 Perjury 1 (RCW 9A.72.020)
30 Extortionate Extension of Credit (RCW 9A.82.020)

1 Advancing money or property for extortionate extension of
2 credit (RCW 9A.82.030)
3 Extortionate Means to Collect Extensions of Credit
4 (RCW 9A.82.040)
5 Rendering Criminal Assistance 1 (RCW 9A.76.070)
6 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
7 Delivery of imitation controlled substance by person
8 eighteen or over to person under eighteen
9 (RCW 69.52.030(2))
10 IV Residential Burglary (RCW 9A.52.025)
11 Theft of Livestock 1 (RCW 9A.56.080)
12 Robbery 2 (RCW 9A.56.210)
13 Assault 2 (RCW 9A.36.021)
14 Escape 1 (RCW 9A.76.110)
15 Arson 2 (RCW 9A.48.030)
16 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090,
17 9A.72.100)
18 Malicious Harassment (RCW 9A.36.080)
19 Threats to Bomb (RCW 9.61.160)
20 Willful Failure to Return from Furlough (RCW 72.66.060)
21 Hit and Run -- Injury Accident (RCW 46.52.020(4))
22 Vehicular Assault (RCW 46.61.522)
23 Manufacture, deliver, or possess with intent to deliver
24 narcotics from Schedule III, IV, or V or nonnarcotics
25 from Schedule I-V (except marijuana or
26 methamphetamines) (RCW 69.50.401(a)(1)(ii)
27 through (iv))
28 Influencing Outcome of Sporting Event (RCW 9A.82.070)
29 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080
30 (1) and (2))

1 Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
2 III Criminal mistreatment 2 (RCW 9A.42.030)
3 Extortion 2 (RCW 9A.56.130)
4 Unlawful Imprisonment (RCW 9A.40.040)
5 Assault 3 (RCW 9A.36.031)
6 Assault of a Child 3 (RCW 9A.36.--- (section 3 of this
7 act))
8 Custodial Assault (RCW 9A.36.100)
9 Unlawful possession of firearm or pistol by felon
10 (RCW 9.41.040)
11 Harassment (RCW 9A.46.020)
12 Promoting Prostitution 2 (RCW 9A.88.080)
13 Willful Failure to Return from Work Release (RCW 72.65.070)
14 Burglary 2 (RCW 9A.52.030)
15 Introducing Contraband 2 (RCW 9A.76.150)
16 Communication with a Minor for Immoral Purposes
17 (RCW 9.68A.090)
18 Patronizing a Juvenile Prostitute (RCW 9.68A.100)
19 Escape 2 (RCW 9A.76.120)
20 Perjury 2 (RCW 9A.72.030)
21 Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
22 Intimidating a Public Servant (RCW 9A.76.180)
23 Tampering with a Witness (RCW 9A.72.120)
24 Manufacture, deliver, or possess with intent to deliver
25 marijuana (RCW 69.50.401(a)(1)(ii))
26 Delivery of a material in lieu of a controlled substance
27 (RCW 69.50.401(c))
28 Manufacture, distribute, or possess with intent to
29 distribute an imitation controlled substance
30 (RCW 69.52.030(1))

1 Recklessly Trafficking in Stolen Property
2 (RCW 9A.82.050(1))
3 Theft of livestock 2 (RCW 9A.56.080)
4 Securities Act violation (RCW 21.20.400)
5 II Malicious Mischief 1 (RCW 9A.48.070)
6 Possession of Stolen Property 1 (RCW 9A.56.150)
7 Theft 1 (RCW 9A.56.030)
8 Possession of controlled substance that is either heroin
9 or narcotics from Schedule I or II (RCW 69.50.401(d))
10 Possession of phencyclidine (PCP) (RCW 69.50.401(d))
11 Create, deliver, or possess a counterfeit controlled
12 substance (RCW 69.50.401(b))
13 Computer Trespass 1 (RCW 9A.52.110)
14 Reckless Endangerment 1 (RCW 9A.36.045)
15 I Theft 2 (RCW 9A.56.040)
16 Possession of Stolen Property 2 (RCW 9A.56.160)
17 Forgery (RCW 9A.60.020)
18 Taking Motor Vehicle Without Permission (RCW 9A.56.070)
19 Vehicle Prowl 1 (RCW 9A.52.095)
20 Attempting to Elude a Pursuing Police Vehicle
21 (RCW 46.61.024)
22 Malicious Mischief 2 (RCW 9A.48.080)
23 Reckless Burning 1 (RCW 9A.48.040)
24 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
25 Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
26 False Verification for Welfare (RCW 74.08.055)
27 Forged Prescription (RCW 69.41.020)
28 Forged Prescription for a Controlled Substance
29 (RCW 69.50.403)
30 Possess Controlled Substance that is a Narcotic from

1 Schedule III, IV, or V or Non-narcotic from Schedule
2 I-V (except phencyclidine) (RCW 69.50.401(d))

3 **Sec. 5.** RCW 9.41.010 and 1983 c 232 s 1 are each amended to read
4 as follows:

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

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

8 (a) Any of the following felonies, as now existing or hereafter
9 amended: Any felony defined under any law as a class A felony or an
10 attempt to commit a class A felony, criminal solicitation of or
11 criminal conspiracy to commit a class A felony, manslaughter in the
12 first degree, manslaughter in the second degree, indecent liberties if
13 committed by forcible compulsion, rape in the second degree, kidnapping
14 in the second degree, arson in the second degree, assault in the second
15 degree, assault of a child in the second degree, extortion in the first
16 degree, burglary in the second degree, and robbery in the second
17 degree;

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

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

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

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

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

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

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

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

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

17 (4) "Community custody" means that portion of an inmate's sentence
18 of confinement in lieu of earned early release time served in the
19 community subject to controls placed on the inmate's movement and
20 activities by the department of corrections.

21 (5) "Community placement" means that period during which the
22 offender is subject to the conditions of community custody and/or
23 postrelease supervision, which begins either upon completion of the
24 term of confinement (postrelease supervision) or at such time as the
25 offender is transferred to community custody in lieu of earned early
26 release. Community placement may consist of entirely community
27 custody, entirely postrelease supervision, or a combination of the two.

28 (6) "Community service" means compulsory service, without
29 compensation, performed for the benefit of the community by the
30 offender.

1 (7) "Community supervision" means a period of time during which a
2 convicted offender is subject to crime-related prohibitions and other
3 sentence conditions imposed by a court pursuant to this chapter or RCW
4 46.61.524. For first-time offenders, the supervision may include
5 crime-related prohibitions and other conditions imposed pursuant to RCW
6 9.94A.120(5). For purposes of the interstate compact for out-of-state
7 supervision of parolees and probationers, RCW 9.95.270, community
8 supervision is the functional equivalent of probation and should be
9 considered the same as probation by other states.

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

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

15 (10) "Court-ordered legal financial obligation" means a sum of
16 money that is ordered by a superior court of the state of Washington
17 for legal financial obligations which may include restitution to the
18 victim, statutorily imposed crime victims' compensation fees as
19 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
20 drug funds, court-appointed attorneys' fees, and costs of defense,
21 fines, and any other financial obligation that is assessed to the
22 offender as a result of a felony conviction.

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

29 (12)(a) "Criminal history" means the list of a defendant's prior
30 convictions, whether in this state, in federal court, or elsewhere.

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

5 (b) "Criminal history" shall always include juvenile convictions
6 for sex offenses and shall also include a defendant's other prior
7 convictions in juvenile court if: (i) The conviction was for an
8 offense which is a felony or a serious traffic offense and is criminal
9 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
10 fifteen years of age or older at the time the offense was committed;
11 and (iii) with respect to prior juvenile class B and C felonies or
12 serious traffic offenses, the defendant was less than twenty-three
13 years of age at the time the offense for which he or she is being
14 sentenced was committed.

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

16 (14) "Determinate sentence" means a sentence that states with
17 exactitude the number of actual years, months, or days of total
18 confinement, of partial confinement, of community supervision, the
19 number of actual hours or days of community service work, or dollars or
20 terms of a legal financial obligation. The fact that an offender
21 through "earned early release" can reduce the actual period of
22 confinement shall not affect the classification of the sentence as a
23 determinate sentence.

24 (15) "Disposable earnings" means that part of the earnings of an
25 individual remaining after the deduction from those earnings of any
26 amount required by law to be withheld. For the purposes of this
27 definition, "earnings" means compensation paid or payable for personal
28 services, whether denominated as wages, salary, commission, bonuses, or
29 otherwise, and, notwithstanding any other provision of law making the
30 payments exempt from garnishment, attachment, or other process to

1 satisfy a court-ordered legal financial obligation, specifically
2 includes periodic payments pursuant to pension or retirement programs,
3 or insurance policies of any type, but does not include payments made
4 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
5 or Title 74 RCW.

6 (16) "Drug offense" means:

7 (a) Any felony violation of chapter 69.50 RCW except possession of
8 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
9 controlled substance (RCW 69.50.403);

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

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

16 (17) "Escape" means:

17 (a) Escape in the first degree (RCW 9A.76.110), escape in the
18 second degree (RCW 9A.76.120), willful failure to return from furlough
19 (RCW 72.66.060), willful failure to return from work release (RCW
20 72.65.070), or willful failure to comply with any limitations on the
21 inmate's movements while in community custody (RCW 72.09.310); or

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

25 (18) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
27 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
28 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

22 (22) "Offender" means a person who has committed a felony
23 established by state law and is eighteen years of age or older or is
24 less than eighteen years of age but whose case has been transferred by
25 the appropriate juvenile court to a criminal court pursuant to RCW
26 13.40.110. Throughout this chapter, the terms "offender" and
27 "defendant" are used interchangeably.

28 (23) "Partial confinement" means confinement for no more than one
29 year in a facility or institution operated or utilized under contract
30 by the state or any other unit of government, or, if home detention or

1 work crew has been ordered by the court, in an approved residence, for
2 a substantial portion of each day with the balance of the day spent in
3 the community. Partial confinement includes work release, home
4 detention, work crew, and a combination of work crew and home detention
5 as defined in this section.

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

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

12 (26) "Serious traffic offense" means:

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

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

21 (27) "Serious violent offense" is a subcategory of violent offense
22 and means:

23 (a) Murder in the first degree, homicide by abuse, murder in the
24 second degree, assault in the first degree, kidnapping in the first
25 degree, or rape in the first degree, assault of a child in the first
26 degree, or an attempt, criminal solicitation, or criminal conspiracy to
27 commit one of these felonies; or

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

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

3 (29) "Sex offense" means:

4 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
5 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
6 attempt, criminal solicitation, or criminal conspiracy to commit such
7 crimes;

8 (b) A felony with a finding of sexual motivation under RCW
9 9.94A.127; or

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

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

16 (31) "Total confinement" means confinement inside the physical
17 boundaries of a facility or institution operated or utilized under
18 contract by the state or any other unit of government for twenty-four
19 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

23 (33) "Violent offense" means:

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

1 child in the second degree, extortion in the first degree, robbery in
2 the second degree, vehicular assault, and vehicular homicide, when
3 proximately caused by the driving of any vehicle by any person while
4 under the influence of intoxicating liquor or any drug as defined by
5 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

12 (34) "Work crew" means a program of partial confinement consisting
13 of civic improvement tasks for the benefit of the community of not less
14 than thirty-five hours per week that complies with RCW 9.94A.135. The
15 civic improvement tasks shall be performed on public property or on
16 private property owned or operated by nonprofit entities, except that,
17 for emergency purposes only, work crews may perform snow removal on any
18 private property. The civic improvement tasks shall have minimal
19 negative impact on existing private industries or the labor force in
20 the county where the service or labor is performed. The civic
21 improvement tasks shall not affect employment opportunities for people
22 with developmental disabilities contracted through sheltered workshops
23 as defined in RCW 82.04.385. Only those offenders sentenced to a
24 facility operated or utilized under contract by a county are eligible
25 to participate on a work crew. Offenders sentenced for a sex offense
26 as defined in subsection (29) of this section are not eligible for the
27 work crew program.

28 (35) "Work release" means a program of partial confinement
29 available to offenders who are employed or engaged as a student in a
30 regular course of study at school. Participation in work release shall

1 be conditioned upon the offender attending work or school at regularly
2 defined hours and abiding by the rules of the work release facility.

3 (36) "Home detention" means a program of partial confinement
4 available to offenders wherein the offender is confined in a private
5 residence subject to electronic surveillance. Home detention may not
6 be imposed for offenders convicted of a violent offense, any sex
7 offense, any drug offense, reckless burning in the first or second
8 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
9 degree as defined in RCW 9A.36.031, assault of a child in the third
10 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
11 harassment as defined in RCW 9A.46.020. Home detention may be imposed
12 for offenders convicted of possession of a controlled substance (RCW
13 69.50.401(d)) or forged prescription for a controlled substance (RCW
14 69.50.403) if the offender fulfills the participation conditions set
15 forth in this subsection and is monitored for drug use by treatment
16 alternatives to street crime (TASC) or a comparable court or agency-
17 referred program.

18 (a) Home detention may be imposed for offenders convicted of
19 burglary in the second degree as defined in RCW 9A.52.030 or
20 residential burglary conditioned upon the offender: (i) Successfully
21 completing twenty-one days in a work release program, (ii) having no
22 convictions for burglary in the second degree or residential burglary
23 during the preceding two years and not more than two prior convictions
24 for burglary or residential burglary, (iii) having no convictions for
25 a violent felony offense during the preceding two years and not more
26 than two prior convictions for a violent felony offense, (iv) having no
27 prior charges of escape, and (v) fulfilling the other conditions of the
28 home detention program.

29 (b) Participation in a home detention program shall be conditioned
30 upon: (i) The offender obtaining or maintaining current employment or

1 attending a regular course of school study at regularly defined hours,
2 or the offender performing parental duties to offspring or minors
3 normally in the custody of the offender, (ii) abiding by the rules of
4 the home detention program, and (iii) compliance with court-ordered
5 legal financial obligations. The home detention program may also be
6 made available to offenders whose charges and convictions do not
7 otherwise disqualify them if medical or health-related conditions,
8 concerns or treatment would be better addressed under the home
9 detention program, or where the health and welfare of the offender,
10 other inmates, or staff would be jeopardized by the offender's
11 incarceration. Participation in the home detention program for medical
12 or health-related reasons is conditioned on the offender abiding by the
13 rules of the home detention program and complying with court-ordered
14 restitution.

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

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

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

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

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

1 (4) An offender convicted of the crime of murder in the first
2 degree shall be sentenced to a term of total confinement not less than
3 twenty years. An offender convicted of the crime of assault in the
4 first degree or assault of a child in the first degree where the
5 offender used force or means likely to result in death or intended to
6 kill the victim shall be sentenced to a term of total confinement not
7 less than five years. An offender convicted of the crime of rape in
8 the first degree shall be sentenced to a term of total confinement not
9 less than five years, and shall not be eligible for furlough, work
10 release or other authorized leave of absence from the correctional
11 facility during such minimum five-year term except for the purpose of
12 commitment to an inpatient treatment facility. The foregoing minimum
13 terms of total confinement are mandatory and shall not be varied or
14 modified as provided in subsection (2) of this section.

15 (5) In sentencing a first-time offender the court may waive the
16 imposition of a sentence within the sentence range and impose a
17 sentence which may include up to ninety days of confinement in a
18 facility operated or utilized under contract by the county and a
19 requirement that the offender refrain from committing new offenses.
20 The sentence may also include up to two years of community supervision,
21 which, in addition to crime-related prohibitions, may include
22 requirements that the offender perform any one or more of the
23 following:

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

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

28 (c) Pursue a prescribed, secular course of study or vocational
29 training;

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

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

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

8 (6) If a sentence range has not been established for the
9 defendant's crime, the court shall impose a determinate sentence which
10 may include not more than one year of confinement, community service
11 work, a term of community supervision not to exceed one year, and/or
12 other legal financial obligations. The court may impose a sentence
13 which provides more than one year of confinement if the court finds,
14 considering the purpose of this chapter, that there are substantial and
15 compelling reasons justifying an exceptional sentence.

16 (7)(a)(i) When an offender is convicted of a sex offense other than
17 a violation of RCW 9A.44.050 or a sex offense that is also a serious
18 violent offense and has no prior convictions for a sex offense or any
19 other felony sex offenses in this or any other state, the sentencing
20 court, on its own motion or the motion of the state or the defendant,
21 may order an examination to determine whether the defendant is amenable
22 to treatment.

23 The report of the examination shall include at a minimum the
24 following: The defendant's version of the facts and the official
25 version of the facts, the defendant's offense history, an assessment of
26 problems in addition to alleged deviant behaviors, the offender's
27 social and employment situation, and other evaluation measures used.
28 The report shall set forth the sources of the evaluator's information.

29 The examiner shall assess and report regarding the defendant's
30 amenability to treatment and relative risk to the community. A

1 proposed treatment plan shall be provided and shall include, at a
2 minimum:

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

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

6 (C) Monitoring plans, including any requirements regarding living
7 conditions, lifestyle requirements, and monitoring by family members
8 and others;

9 (D) Anticipated length of treatment; and

10 (E) Recommended crime-related prohibitions.

11 The court on its own motion may order, or on a motion by the state
12 shall order, a second examination regarding the offender's amenability
13 to treatment. The evaluator shall be selected by the party making the
14 motion. The defendant shall pay the cost of any second examination
15 ordered unless the court finds the defendant to be indigent in which
16 case the state shall pay the cost.

17 (ii) After receipt of the reports, the court shall consider whether
18 the offender and the community will benefit from use of this special
19 sexual offender sentencing alternative and consider the victim's
20 opinion whether the offender should receive a treatment disposition
21 under this subsection. If the court determines that this special sex
22 offender sentencing alternative is appropriate, the court shall then
23 impose a sentence within the sentence range. If this sentence is less
24 than eight years of confinement, the court may suspend the execution of
25 the sentence and impose the following conditions of suspension:

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

29 (B) The court shall order treatment for any period up to three
30 years in duration. The court in its discretion shall order outpatient

1 sex offender treatment or inpatient sex offender treatment, if
2 available. A community mental health center may not be used for such
3 treatment unless it has an appropriate program designed for sex
4 offender treatment. The offender shall not change sex offender
5 treatment providers or treatment conditions without first notifying the
6 prosecutor, the community corrections officer, and the court, and shall
7 not change providers without court approval after a hearing if the
8 prosecutor or community corrections officer object to the change. In
9 addition, as conditions of the suspended sentence, the court may impose
10 other sentence conditions including up to six months of confinement,
11 not to exceed the sentence range of confinement for that offense,
12 crime-related prohibitions, and requirements that the offender perform
13 any one or more of the following:

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

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

18 (III) Report as directed to the court and a community corrections
19 officer;

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

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

25 (iii) The sex offender therapist shall submit quarterly reports on
26 the defendant's progress in treatment to the court and the parties.
27 The report shall reference the treatment plan and include at a minimum
28 the following: Dates of attendance, defendant's compliance with
29 requirements, treatment activities, the defendant's relative progress

1 in treatment, and any other material as specified by the court at
2 sentencing.

3 (iv) At the time of sentencing, the court shall set a treatment
4 termination hearing for three months prior to the anticipated date for
5 completion of treatment. Prior to the treatment termination hearing,
6 the treatment professional and community corrections officer shall
7 submit written reports to the court and parties regarding the
8 defendant's compliance with treatment and monitoring requirements, and
9 recommendations regarding termination from treatment, including
10 proposed community supervision conditions. Either party may request
11 and the court may order another evaluation regarding the advisability
12 of termination from treatment. The defendant shall pay the cost of any
13 additional evaluation ordered unless the court finds the defendant to
14 be indigent in which case the state shall pay the cost. At the
15 treatment termination hearing the court may: (A) Modify conditions of
16 community supervision, and either (B) terminate treatment, or (C)
17 extend treatment for up to the remaining period of community
18 supervision.

19 (v) The court may revoke the suspended sentence at any time during
20 the period of community supervision and order execution of the sentence
21 if: (A) The defendant violates the conditions of the suspended
22 sentence, or (B) the court finds that the defendant is failing to make
23 satisfactory progress in treatment. All confinement time served during
24 the period of community supervision shall be credited to the offender
25 if the suspended sentence is revoked.

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

1 For purposes of this subsection, "victim" means any person who has
2 sustained emotional, psychological, physical, or financial injury to
3 person or property as a result of the crime charged. "Victim" also
4 means a parent or guardian of a victim who is a minor child unless the
5 parent or guardian is the perpetrator of the offense.

6 (b) When an offender is convicted of any felony sex offense
7 committed before July 1, 1987, and is sentenced to a term of
8 confinement of more than one year but less than six years, the
9 sentencing court may, on its own motion or on the motion of the
10 offender or the state, order the offender committed for up to thirty
11 days to the custody of the secretary of social and health services for
12 evaluation and report to the court on the offender's amenability to
13 treatment at these facilities. If the secretary of social and health
14 services cannot begin the evaluation within thirty days of the court's
15 order of commitment, the offender shall be transferred to the state for
16 confinement pending an opportunity to be evaluated at the appropriate
17 facility. The court shall review the reports and may order that the
18 term of confinement imposed be served in the sexual offender treatment
19 program at the location determined by the secretary of social and
20 health services or the secretary's designee, only if the report
21 indicates that the offender is amenable to the treatment program
22 provided at these facilities. The offender shall be transferred to the
23 state pending placement in the treatment program. Any offender who has
24 escaped from the treatment program shall be referred back to the
25 sentencing court.

26 If the offender does not comply with the conditions of the
27 treatment program, the secretary of social and health services may
28 refer the matter to the sentencing court. The sentencing court shall
29 commit the offender to the department of corrections to serve the
30 balance of the term of confinement.

1 If the offender successfully completes the treatment program before
2 the expiration of the term of confinement, the court may convert the
3 balance of confinement to community supervision and may place
4 conditions on the offender including crime-related prohibitions and
5 requirements that the offender perform any one or more of the
6 following:

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

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

11 (iii) Report as directed to the court and a community corrections
12 officer;

13 (iv) Undergo available outpatient treatment.

14 If the offender violates any of the terms of community supervision,
15 the court may order the offender to serve out the balance of the
16 community supervision term in confinement in the custody of the
17 department of corrections.

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

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

27 Except for an offender who has been convicted of a violation of RCW
28 9A.44.040 or 9A.44.050, if the offender completes the treatment program
29 before the expiration of his term of confinement, the department of
30 corrections may request the court to convert the balance of confinement

1 to community supervision and to place conditions on the offender
2 including crime-related prohibitions and requirements that the offender
3 perform any one or more of the following:

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

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

8 (iii) Report as directed to the court and a community corrections
9 officer;

10 (iv) Undergo available outpatient treatment.

11 If the offender violates any of the terms of his community
12 supervision, the court may order the offender to serve out the balance
13 of his community supervision term in confinement in the custody of the
14 department of corrections.

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

19 (d) Offenders convicted and sentenced for a sex offense committed
20 prior to July 1, 1987, may, subject to available funds, request an
21 evaluation by the department of corrections to determine whether they
22 are amenable to treatment. If the offender is determined to be
23 amenable to treatment, the offender may request placement in a
24 treatment program within a correctional facility operated by the
25 department. Placement in such treatment program is subject to
26 available funds.

27 (8)(a) When a court sentences a person to a term of total
28 confinement to the custody of the department of corrections for an
29 offense categorized as a sex offense or a serious violent offense
30 committed after July 1, 1988, but before July 1, 1990, assault in the

1 second degree, assault of a child in the second degree, any crime
2 against a person where it is determined in accordance with RCW
3 9.94A.125 that the defendant or an accomplice was armed with a deadly
4 weapon at the time of commission, or any felony offense under chapter
5 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
6 in addition to the other terms of the sentence, sentence the offender
7 to a one-year term of community placement beginning either upon
8 completion of the term of confinement or at such time as the offender
9 is transferred to community custody in lieu of earned early release in
10 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
11 offender under this subsection to the statutory maximum period of
12 confinement then the community placement portion of the sentence shall
13 consist entirely of such community custody to which the offender may
14 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
15 period of community custody actually served shall be credited against
16 the community placement portion of the sentence.

17 (b) When a court sentences a person to a term of total confinement
18 to the custody of the department of corrections for an offense
19 categorized as a sex offense or serious violent offense committed on or
20 after July 1, 1990, the court shall in addition to other terms of the
21 sentence, sentence the offender to community placement for two years or
22 up to the period of earned early release awarded pursuant to RCW
23 9.94A.150 (1) and (2), whichever is longer. The community placement
24 shall begin either upon completion of the term of confinement or at
25 such time as the offender is transferred to community custody in lieu
26 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
27 When the court sentences an offender under this subsection to the
28 statutory maximum period of confinement then the community placement
29 portion of the sentence shall consist entirely of the community custody
30 to which the offender may become eligible, in accordance with RCW

1 9.94A.150 (1) and (2). Any period of community custody actually served
2 shall be credited against the community placement portion of the
3 sentence. Unless a condition is waived by the court, the terms of
4 community placement for offenders sentenced pursuant to this section
5 shall include the following conditions:

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

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

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

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

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

16 (c) The court may also order any of the following special
17 conditions:

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

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

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

24 (iv) The offender shall not consume alcohol;

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

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

29 (d) Prior to transfer to, or during, community placement, any
30 conditions of community placement may be removed or modified so as not

1 to be more restrictive by the sentencing court, upon recommendation of
2 the department of corrections.

3 (9) If the court imposes a sentence requiring confinement of thirty
4 days or less, the court may, in its discretion, specify that the
5 sentence be served on consecutive or intermittent days. A sentence
6 requiring more than thirty days of confinement shall be served on
7 consecutive days. Local jail administrators may schedule court-ordered
8 intermittent sentences as space permits.

9 (10) If a sentence imposed includes payment of a legal financial
10 obligation, the sentence shall specify the total amount of the legal
11 financial obligation owed, and shall require the offender to pay a
12 specified monthly sum toward that legal financial obligation.
13 Restitution to victims shall be paid prior to any other payments of
14 monetary obligations. Any legal financial obligation that is imposed
15 by the court may be collected by the department, which shall deliver
16 the amount paid to the county clerk for credit. The offender's
17 compliance with payment of legal financial obligations shall be
18 supervised by the department. All monetary payments ordered shall be
19 paid no later than ten years after the last date of release from
20 confinement pursuant to a felony conviction or the date the sentence
21 was entered. Independent of the department, the party or entity to
22 whom the legal financial obligation is owed shall have the authority to
23 utilize any other remedies available to the party or entity to collect
24 the legal financial obligation. Nothing in this section makes the
25 department, the state, or any of its employees, agents, or other
26 persons acting on their behalf liable under any circumstances for the
27 payment of these legal financial obligations. If an order includes
28 restitution as one of the monetary assessments, the county clerk shall
29 make disbursements to victims named in the order.

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

5 (12) All offenders sentenced to terms involving community
6 supervision, community service, community placement, or legal financial
7 obligation shall be under the supervision of the secretary of the
8 department of corrections or such person as the secretary may designate
9 and shall follow explicitly the instructions of the secretary including
10 reporting as directed to a community corrections officer, remaining
11 within prescribed geographical boundaries, notifying the community
12 corrections officer of any change in the offender's address or
13 employment, and paying the supervision fee assessment.

14 (13) All offenders sentenced to terms involving community
15 supervision, community service, or community placement under the
16 supervision of the department of corrections shall not own, use, or
17 possess firearms or ammunition. Offenders who own, use, or are found
18 to be in actual or constructive possession of firearms or ammunition
19 shall be subject to the appropriate violation process and sanctions.
20 "Constructive possession" as used in this subsection means the power
21 and intent to control the firearm or ammunition. "Firearm" as used in
22 this subsection means a weapon or device from which a projectile may be
23 fired by an explosive such as gunpowder.

24 (14) The sentencing court shall give the offender credit for all
25 confinement time served before the sentencing if that confinement was
26 solely in regard to the offense for which the offender is being
27 sentenced.

28 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)
29 governing whether sentences are to be served consecutively or
30 concurrently is an exceptional sentence subject to the limitations in

1 subsections (2) and (3) of this section, and may be appealed by the
2 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

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

10 (17) As a part of any sentence, the court may impose and enforce an
11 order that relates directly to the circumstances of the crime for which
12 the offender has been convicted, prohibiting the offender from having
13 any contact with other specified individuals or a specific class of
14 individuals for a period not to exceed the maximum allowable sentence
15 for the crime, regardless of the expiration of the offender's term of
16 community supervision or community placement.

17 (18) In any sentence of partial confinement, the court may require
18 the defendant to serve the partial confinement in work release, in a
19 program of home detention, on work crew, or in a combined program of
20 work crew and home detention.

21 (19) All court-ordered legal financial obligations collected by the
22 department and remitted to the county clerk shall be credited and paid
23 where restitution is ordered. Restitution shall be paid prior to any
24 other payments of monetary obligations.

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

27 No person serving a sentence imposed pursuant to this chapter and
28 committed to the custody of the department shall leave the confines of

1 the correctional facility or be released prior to the expiration of the
2 sentence except as follows:

3 (1) Except as otherwise provided for in subsection (2) of this
4 section, the term of the sentence of an offender committed to a
5 correctional facility operated by the department, may be reduced by
6 earned early release time in accordance with procedures that shall be
7 developed and promulgated by the correctional agency having
8 jurisdiction in which the offender is confined. The earned early
9 release time shall be for good behavior and good performance, as
10 determined by the correctional agency having jurisdiction. The
11 correctional agency shall not credit the offender with earned early
12 release credits in advance of the offender actually earning the
13 credits. Any program established pursuant to this section shall allow
14 an offender to earn early release credits for presentence
15 incarceration. If an offender is transferred from a county jail to the
16 department of corrections, the county jail facility shall certify to
17 the department the amount of time spent in custody at the facility and
18 the amount of earned early release time. In the case of an offender
19 convicted of a serious violent offense or a sex offense that is a class
20 A felony committed on or after July 1, 1990, the aggregate earned early
21 release time may not exceed fifteen percent of the sentence. In no
22 other case shall the aggregate earned early release time exceed one-
23 third of the total sentence;

24 (2) A person convicted of a sex offense or an offense categorized
25 as a serious violent offense, assault in the second degree, assault of
26 a child in the second degree, any crime against a person where it is
27 determined in accordance with RCW 9.94A.125 that the defendant or an
28 accomplice was armed with a deadly weapon at the time of commission, or
29 any felony offense under chapter 69.50 or 69.52 RCW may become
30 eligible, in accordance with a program developed by the department, for

1 transfer to community custody status in lieu of earned early release
2 time pursuant to subsection (1) of this section;

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

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

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

14 (6) The governor may pardon any offender;

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

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

21 **Sec. 9.** RCW 9.94A.310 and 1991 c 32 s 2 are each amended to read
22 as follows:

23 (1) TABLE 1
24 Sentencing Grid
25 SERIOUSNESS
26 SCORE OFFENDER SCORE 9
27 0 1 2 3 4 5 6 7 8 or more
28

1	XV	Life Sentence without Parole/Death Penalty									
2	<hr/>										
3	XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
4		240-	250-	261-	271-	281	- 291-	312-	338-	370-	411-
5		320	333	347	361	374	388	416	450	493	548
6	<hr/>										
7	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
8		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
9		164	178	192	205	219	233	260	288	342	397
10	<hr/>										
11	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
12		93-	102-	111-	120-	129-	138-	162	- 178-	209-	240-
13		123	136	147	160	171	184	216	236	277	318
14	<hr/>										
15	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
16		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
17		102	114	125	136	147	158	194	211	245	280
18	<hr/>										
19	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
20		51-	57-	62-	67-	72-	77-	98-	108-	129	- 149-
21		68	75	82	89	96	102	130	144	171	198
22	<hr/>										
23	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
24		31-	36-	41-	46-	51-	57-	77-	87-	108	- 129-
25		41	48	54	61	68	75	102	116	144	171
26	<hr/>										
27	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
28		21-	26-	31-	36-	41-	46-	67-	77-	87	- 108-
29		27	34	41	48	54	61	89	102	116	144
30	<hr/>										

1	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
2		15-	21-	26-	31-	36-	41-	57-	67-	77 -	87-
3		20	27	34	41	48	54	75	89	102	116
4											
5	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
6		12+-	15-	21-	26-	31-	36-	46-	57-	67 -	77-
7		14	20	27	34	41	48	61	75	89	102
8											
9	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
10		6-	12+-	13-	15-	22-	33-	41-	51-	62 -	72-
11		12	14	17	20	29	43	54	68	82	96
12	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
13		3-	6-	12+-	13-	15-	22-	33-	43-	53 -	63-
14		9	12	14	17	20	29	43	57	70	84
15											
16	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
17		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
18		3	8	12	12	16	22	29	43	57	68
19											
20	II	4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m	
21		0-90	2-	3-	4-	12+-	14-	17-	22-	33 -	43-
22		Days	6	9	12	14	18	22	29	43	57
23											
24	I	3m	4m	5m	8m	13m	16m	20m	2y2m		
25		0-60	0-90	2-	2-	3-	4-	12+-	14-	17 -	22-
26		Days	Days	5	6	8	12	14	18	22	29

27 NOTE: Numbers in the first horizontal row of each seriousness category
28 represent sentencing midpoints in years(y) and months(m). Numbers in

1 the second and third rows represent presumptive sentencing ranges in
2 months, or in days if so designated. 12+ equals one year and one day.

3 (2) For persons convicted of the anticipatory offenses of criminal
4 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
5 presumptive sentence is determined by locating the sentencing grid
6 sentence range defined by the appropriate offender score and the
7 seriousness level of the completed crime, and multiplying the range by
8 75 percent.

9 (3) The following additional times shall be added to the
10 presumptive sentence if the offender or an accomplice was armed with a
11 deadly weapon as defined in this chapter and the offender is being
12 sentenced for one of the crimes listed in this subsection. If the
13 offender or an accomplice was armed with a deadly weapon and the
14 offender is being sentenced for an anticipatory offense under chapter
15 9A.28 RCW to commit one of the crimes listed in this subsection, the
16 following times shall be added to the presumptive range determined
17 under subsection (2) of this section:

18 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW
19 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

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

21 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault
22 of a Child 2 (RCW 9A.36.--- (section 2 of this act)), Escape
23 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2
24 of a building other than a dwelling (RCW 9A.52.030), Theft
25 of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

26 (4) The following additional times shall be added to the
27 presumptive sentence if the offender or an accomplice committed the
28 offense while in a county jail or state correctional facility as that
29 term is defined in this chapter and the offender is being sentenced for
30 one of the crimes listed in this subsection. If the offender or an

1 accomplice committed one of the crimes listed in this subsection while
2 in a county jail or state correctional facility as that term is defined
3 in this chapter, and the offender is being sentenced for an
4 anticipatory offense under chapter 9A.28 RCW to commit one of the
5 crimes listed in this subsection, the following times shall be added to
6 the presumptive sentence range determined under subsection (2) of this
7 section:

8 (a) Eighteen months for offenses committed under RCW
9 69.50.401(a)(1)(i) or 69.50.410;

10 (b) Fifteen months for offenses committed under RCW
11 69.50.401(a)(1)(ii), (iii), and (iv);

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

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

16 (5) An additional twenty-four months shall be added to the
17 presumptive sentence for any ranked offense involving a violation of
18 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

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

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

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

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

1 (2) Except as provided in subsection (4) of this section, class A
2 and sex prior felony convictions shall always be included in the
3 offender score. Class B prior felony convictions other than sex
4 offenses shall not be included in the offender score, if since the last
5 date of release from confinement (including full-time residential
6 treatment) pursuant to a felony conviction, if any, or entry of
7 judgment and sentence, the offender had spent ten consecutive years in
8 the community without being convicted of any felonies. Class C prior
9 felony convictions other than sex offenses shall not be included in the
10 offender score if, since the last date of release from confinement
11 (including full-time residential treatment) pursuant to a felony
12 conviction, if any, or entry of judgment and sentence, the offender had
13 spent five consecutive years in the community without being convicted
14 of any felonies. Serious traffic convictions shall not be included in
15 the offender score if, since the last date of release from confinement
16 (including full-time residential treatment) pursuant to a felony
17 conviction, if any, or entry of judgment and sentence, the offender
18 spent five years in the community without being convicted of any
19 serious traffic or felony traffic offenses. This subsection applies to
20 both adult and juvenile prior convictions.

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

24 (4) Always include juvenile convictions for sex offenses. Include
25 other class A juvenile felonies only if the offender was 15 or older at
26 the time the juvenile offense was committed. Include other class B and
27 C juvenile felony convictions only if the offender was 15 or older at
28 the time the juvenile offense was committed and the offender was less
29 than 23 at the time the offense for which he or she is being sentenced
30 was committed.

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

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

6 (a) Prior adult offenses which were found, under RCW
7 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
8 counted as one offense, the offense that yields the highest offender
9 score. The current sentencing court shall determine with respect to
10 other prior adult offenses for which sentences were served concurrently
11 whether those offenses shall be counted as one offense or as separate
12 offenses, and if the court finds that they shall be counted as one
13 offense, then the offense that yields the highest offender score shall
14 be used;

15 (b) Juvenile prior convictions entered or sentenced on the same
16 date shall count as one offense, the offense that yields the highest
17 offender score, except for juvenile prior convictions for violent
18 offenses with separate victims, which shall count as separate offenses;
19 and

20 (c) In the case of multiple prior convictions for offenses
21 committed before July 1, 1986, for the purpose of computing the
22 offender score, count all adult convictions served concurrently as one
23 offense, and count all juvenile convictions entered on the same date as
24 one offense. Use the conviction for the offense that yields the
25 highest offender score.

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

29 (8) If the present conviction is for a nonviolent offense and not
30 covered by subsection (12) or (13) of this section, count one point for

1 each adult prior felony conviction and one point for each juvenile
2 prior violent felony conviction and 1/2 point for each juvenile prior
3 nonviolent felony conviction.

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

9 (10) If the present conviction is for Murder 1 or 2, Assault 1,
10 Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count
11 three points for prior adult and juvenile convictions for crimes in
12 these categories, two points for each prior adult and juvenile violent
13 conviction (not already counted), one point for each prior adult
14 nonviolent felony conviction, and 1/2 point for each prior juvenile
15 nonviolent felony conviction.

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

21 (12) If the present conviction is for a felony traffic offense
22 count two points for each adult or juvenile prior conviction for
23 Vehicular Homicide or Vehicular Assault; for each felony offense or
24 serious traffic offense, count one point for each adult and 1/2 point
25 for each juvenile prior conviction.

26 (13) If the present conviction is for a drug offense count three
27 points for each adult prior felony drug offense conviction and two
28 points for each juvenile drug offense. All other adult and juvenile
29 felonies are scored as in subsection (9) of this section if the current

1 drug offense is violent, or as in subsection (8) of this section if the
2 current drug offense is nonviolent.

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

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

11 (16) If the present conviction is for Burglary 2 or residential
12 burglary, count priors as in subsection (8) of this section; however,
13 count two points for each adult and juvenile prior Burglary 1
14 conviction, two points for each adult prior Burglary 2 or residential
15 burglary conviction, and one point for each juvenile prior Burglary 2
16 or residential burglary conviction.

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

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

22 **Sec. 11.** RCW 9.94A.440 and 1989 c 332 s 2 are each amended to read
23 as follows:

24 (1) Decision not to prosecute.

25 STANDARD: A prosecuting attorney may decline to prosecute, even
26 though technically sufficient evidence to prosecute exists, in
27 situations where prosecution would serve no public purpose, would
28 defeat the underlying purpose of the law in question or would result in
29 decreased respect for the law.

1 GUIDELINE/COMMENTARY:

2 Examples

3 The following are examples of reasons not to prosecute which could
4 satisfy the standard.

5 (a) Contrary to Legislative Intent - It may be proper to decline to
6 charge where the application of criminal sanctions would be clearly
7 contrary to the intent of the legislature in enacting the particular
8 statute.

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

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

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

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

16 (iv) The statute has not been recently reconsidered by the
17 legislature.

18 This reason is not to be construed as the basis for declining cases
19 because the law in question is unpopular or because it is difficult to
20 enforce.

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

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

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

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

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

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

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

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

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

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

13 (f) High Disproportionate Cost of Prosecution - It may be proper to
14 decline to charge where the cost of locating or transporting, or the
15 burden on, prosecution witnesses is highly disproportionate to the
16 importance of prosecuting the offense in question. This reason should
17 be limited to minor cases and should not be relied upon in serious
18 cases.

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

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

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

4 (i) Assault cases where the victim has suffered little or no
5 injury;

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

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

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

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

13 Notification

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

16 (2) Decision to prosecute.

17 STANDARD:

18 Crimes against persons will be filed if sufficient admissible
19 evidence exists, which, when considered with the most plausible,
20 reasonably foreseeable defense that could be raised under the evidence,
21 would justify conviction by a reasonable and objective fact-finder.
22 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
23 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
24 9A.64.020 the prosecutor should avoid prefiling agreements or
25 diversions intended to place the accused in a program of treatment or
26 counseling, so that treatment, if determined to be beneficial, can be
27 provided pursuant to RCW 9.94A.120(7).

28 Crimes against property/other crimes will be filed if the
29 admissible evidence is of such convincing force as to make it probable
30 that a reasonable and objective fact-finder would convict after hearing

1 all the admissible evidence and the most plausible defense that could
2 be raised.

3 See table below for the crimes within these categories.

4 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

5 CRIMES AGAINST PERSONS

6 Aggravated Murder

7 1st Degree Murder

8 2nd Degree Murder

9 1st Degree Kidnaping

10 1st Degree Assault

11 1st Degree Assault of a Child

12 1st Degree Rape

13 1st Degree Robbery

14 1st Degree Rape of a Child

15 1st Degree Arson

16 2nd Degree Kidnaping

17 2nd Degree Assault

18 2nd Degree Assault of a Child

19 2nd Degree Rape

20 2nd Degree Robbery

21 1st Degree Burglary

22 1st Degree Manslaughter

23 2nd Degree Manslaughter

24 1st Degree Extortion

25 Indecent Liberties

26 Incest

27 2nd Degree Rape of a Child

- 1 Vehicular Homicide
- 2 Vehicular Assault
- 3 3rd Degree Rape
- 4 3rd Degree Rape of a Child
- 5 1st Degree Child Molestation
- 6 2nd Degree Child Molestation
- 7 3rd Degree Child Molestation
- 8 2nd Degree Extortion
- 9 1st Degree Promoting Prostitution
- 10 Intimidating a Juror
- 11 Communication with a Minor
- 12 Intimidating a Witness
- 13 Intimidating a Public Servant
- 14 Bomb Threat (if against person)
- 15 3rd Degree Assault
- 16 3rd Degree Assault of a Child
- 17 Unlawful Imprisonment
- 18 Promoting a Suicide Attempt
- 19 Riot (if against person)

- 20 CRIMES AGAINST PROPERTY/OTHER CRIMES

- 21 2nd Degree Arson
- 22 1st Degree Escape
- 23 2nd Degree Burglary
- 24 1st Degree Theft
- 25 1st Degree Perjury
- 26 1st Degree Introducing Contraband
- 27 1st Degree Possession of Stolen Property
- 28 Bribery

1 Bribing a Witness
2 Bribe received by a Witness
3 Bomb Threat (if against property)
4 1st Degree Malicious Mischief
5 2nd Degree Theft
6 2nd Degree Escape
7 2nd Degree Introducing Contraband
8 2nd Degree Possession of Stolen Property
9 2nd Degree Malicious Mischief
10 1st Degree Reckless Burning
11 Taking a Motor Vehicle without Authorization
12 Forgery
13 2nd Degree Perjury
14 2nd Degree Promoting Prostitution
15 Tampering with a Witness
16 Trading in Public Office
17 Trading in Special Influence
18 Receiving/Granting Unlawful Compensation
19 Bigamy
20 Eluding a Pursuing Police Vehicle
21 Willful Failure to Return from Furlough
22 Riot (if against property)
23 Thefts of Livestock

24 ALL OTHER UNCLASSIFIED FELONIES

25 Selection of Charges/Degree of Charge

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

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

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

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

5 Overcharging includes:

6 (a) Charging a higher degree;

7 (b) Charging additional counts.

8 This standard is intended to direct prosecutors to charge those
9 crimes which demonstrate the nature and seriousness of a defendant's
10 criminal conduct, but to decline to charge crimes which are not
11 necessary to such an indication. Crimes which do not merge as a matter
12 of law, but which arise from the same course of conduct, do not all
13 have to be charged.

14 GUIDELINES/COMMENTARY:

15 Police Investigation

16 A prosecuting attorney is dependent upon law enforcement agencies
17 to conduct the necessary factual investigation which must precede the
18 decision to prosecute. The prosecuting attorney shall ensure that a
19 thorough factual investigation has been conducted before a decision to
20 prosecute is made. In ordinary circumstances the investigation should
21 include the following:

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

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

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

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

4 Exceptions

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

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

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

10 (3) The arrest of the suspect is necessary to complete the
11 investigation of the crime.

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

17 Investigation Techniques

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

20 (1) Polygraph testing;

21 (2) Hypnosis;

22 (3) Electronic surveillance;

23 (4) Use of informants.

24 Pre-Filing Discussions with Defendant

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

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

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

3 (1) Harassment (RCW 9A.46.020);

4 (2) Malicious harassment (RCW 9A.36.080);

5 (3) Telephone harassment (RCW 9.61.230);

6 (4) Assault in the first degree (RCW 9A.36.011);

7 (5) Assault of a child in the first degree (RCW 9A.36.--- (section
8 1 of this act)));

9 (6) Assault in the second degree (RCW 9A.36.021);

10 (~~((6) Simple assault [Assault in the fourth degree])~~) (7) Assault
11 of a child in the second degree (RCW 9A.36.--- (section 2 of this
12 act)));

13 (8) Assault in the fourth degree (RCW 9A.36.041);

14 (~~((7))~~) (9) Reckless endangerment (~~([in the second degree])~~) in the
15 second degree (RCW 9A.36.050);

16 (~~((8))~~) (10) Extortion in the first degree (RCW 9A.56.120);

17 (~~((9))~~) (11) Extortion in the second degree (RCW 9A.56.130);

18 (~~((10))~~) (12) Coercion (RCW 9A.36.070);

19 (~~((11))~~) (13) Burglary in the first degree (RCW 9A.52.020);

20 (~~((12))~~) (14) Burglary in the second degree (RCW 9A.52.030);

21 (~~((13))~~) (15) Criminal trespass in the first degree (RCW
22 9A.52.070);

23 (~~((14))~~) (16) Criminal trespass in the second degree (RCW
24 9A.52.080);

25 (~~((15))~~) (17) Malicious mischief in the first degree (RCW
26 9A.48.070);

27 (~~((16))~~) (18) Malicious mischief in the second degree (RCW
28 9A.48.080);

29 (~~((17))~~) (19) Malicious mischief in the third degree (RCW
30 9A.48.090);

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

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

19 Unless the context requires the contrary, the definitions in this
20 section apply throughout this chapter.

21 (1) "Creditor" means a person making an extension of credit or a
22 person claiming by, under, or through a person making an extension of
23 credit.

24 (2) "Debtor" means a person to whom an extension of credit is made
25 or a person who guarantees the repayment of an extension of credit or
26 in any manner undertakes to indemnify the creditor against loss
27 resulting from the failure of a person to whom an extension is made to
28 repay the same.

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

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

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

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

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

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

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

24 (10) "Traffic" means to sell, transfer, distribute, dispense, or
25 otherwise dispose of stolen property to another person, or to buy,
26 receive, possess, or obtain control of stolen property, with intent to
27 sell, transfer, distribute, dispense, or otherwise dispose of the
28 property to another person.

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

1 (12) "Enterprise" includes any individual, sole proprietorship,
2 partnership, corporation, business trust, or other profit or nonprofit
3 legal entity, and includes any union, association, or group of
4 individuals associated in fact although not a legal entity, and both
5 illicit and licit enterprises and governmental and nongovernmental
6 entities.

7 (13) "Financial institution" means any bank, trust company, savings
8 and loan association, savings bank, mutual savings bank, credit union,
9 or loan company under the jurisdiction of the state or an agency of the
10 United States.

11 (14) "Criminal profiteering" means any act, including any
12 anticipatory or completed offense, committed for financial gain, that
13 is chargeable or indictable under the laws of the state in which the
14 act occurred and, if the act occurred in a state other than this state,
15 would be chargeable or indictable under the laws of this state had the
16 act occurred in this state and punishable as a felony and by
17 imprisonment for more than one year, regardless of whether the act is
18 charged or indicted, as any of the following:

- 19 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 20 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 21 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 22 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 23 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
24 9A.56.080;
- 25 (f) Child selling or child buying, as defined in RCW 9A.64.030;
- 26 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
27 9A.68.050;
- 28 (h) Gambling, as defined in RCW 9.46.220 and 9.46.230;
- 29 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 30 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;

1 (k) Advancing money for use in an extortionate extension of credit,
2 as defined in RCW 9A.82.030;

3 (l) Collection of an extortionate extension of credit, as defined
4 in RCW 9A.82.040;

5 (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;

6 (n) Delivery or manufacture of controlled substances or possession
7 with intent to deliver or manufacture controlled substances under
8 chapter 69.50 RCW;

9 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;

10 (p) Leading organized crime, as defined in RCW 9A.82.060;

11 (q) Obstructing criminal investigations or prosecutions in
12 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
13 9A.76.070, or 9A.76.180;

14 (r) Fraud in the purchase or sale of securities, as defined in RCW
15 21.20.010;

16 (s) Promoting pornography, as defined in RCW 9.68.140;

17 (t) Sexual exploitation of children, as defined in RCW 9.68A.040,
18 9.68A.050, and 9.68A.060;

19 (u) Promoting prostitution, as defined in RCW 9A.88.070 and
20 9A.88.080;

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

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

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

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

26 ~~((y))~~ (z) Commercial telephone solicitation in violation of RCW
27 19.158.040(1).

28 (15) "Pattern of criminal profiteering activity" means engaging in
29 at least three acts of criminal profiteering, one of which occurred
30 after July 1, 1985, and the last of which occurred within five years,

1 excluding any period of imprisonment, after the commission of the
2 earliest act of criminal profiteering. In order to constitute a
3 pattern, the three acts must have the same or similar intent, results,
4 accomplices, principals, victims, or methods of commission, or be
5 otherwise interrelated by distinguishing characteristics including a
6 nexus to the same enterprise, and must not be isolated events.
7 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
8 any person other than the attorney general or county prosecuting
9 attorney in which one or more acts of fraud in the purchase or sale of
10 securities are asserted as acts of criminal profiteering activity, it
11 is a condition to civil liability under RCW 9A.82.100 that the
12 defendant has been convicted in a criminal proceeding of fraud in the
13 purchase or sale of securities under RCW 21.20.400 or under the laws of
14 another state or of the United States requiring the same elements of
15 proof, but such conviction need not relate to any act or acts asserted
16 as acts of criminal profiteering activity in such civil action under
17 RCW 9A.82.100.

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

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

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

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

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

1 (ii) Chapter 9.46 RCW relating to gambling;
2 (b) In a gambling activity in violation of federal law; or
3 (c) In connection with the business of lending money or a thing of
4 value at a rate that is at least twice the permitted rate under the
5 applicable state or federal law relating to usury.

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

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

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

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

16 (b) "Beneficial interest" does not include the interest of a
17 stockholder in a corporation or the interest of a partner in a general
18 partnership or limited partnership.

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

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

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

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

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

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

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

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

5 (ii) A trustee of any testamentary trust;

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

8 (iv) A trustee under a deed of trust.

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

11 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now
12 or hereafter amended, it has been proven by a preponderance of the
13 evidence that the child is dependent within the meaning of RCW
14 13.34.030(2); after consideration of the predisposition report prepared
15 pursuant to RCW 13.34.110 and after a disposition hearing has been held
16 pursuant to RCW 13.34.110, the court shall enter an order of
17 disposition pursuant to this section.

18 (1) The court shall order one of the following dispositions of the
19 case:

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

27 (b) Order that the child be removed from his or her home and
28 ordered into the custody, control, and care of a relative or the
29 department of social and health services or a licensed child placing

1 agency for placement in a foster family home or group care facility
2 licensed pursuant to chapter 74.15 RCW or in a home not required to be
3 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
4 cause to believe that the safety or welfare of the child would be
5 jeopardized or that efforts to reunite the parent and child will be
6 hindered, such child shall be placed with a grandparent, brother,
7 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom
8 the child has a relationship and is comfortable, and who is willing and
9 available to care for the child. An order for out-of-home placement
10 may be made only if the court finds that reasonable efforts have been
11 made to prevent or eliminate the need for removal of the child from the
12 child's home and to make it possible for the child to return home,
13 specifying the services that have been provided to the child and the
14 child's parent, guardian, or legal custodian, and that:

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

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

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

22 (iv) The extent of the child's disability is such that the parent,
23 guardian, or legal custodian is unable to provide the necessary care
24 for the child and the parent, guardian, or legal custodian has
25 determined that the child would benefit from placement outside of the
26 home.

27 (2) If the court has ordered a child removed from his or her home
28 pursuant to ((RCW 13.34.130)) subsection (1)(b) of this section, the
29 court may order that a petition seeking termination of the parent and
30 child relationship be filed if the court finds it is recommended by the

1 supervising agency, that it is in the best interests of the child and
2 that it is not reasonable to provide further services to reunify the
3 family because the existence of aggravated circumstances make it
4 unlikely that services will effectuate the return of the child to the
5 child's parents in the near future. In determining whether aggravated
6 circumstances exist, the court shall consider one or more of the
7 following:

8 (a) Conviction of the parent of rape of the child in the first,
9 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
10 9A.44.079;

11 (b) Conviction of the parent of criminal mistreatment of the child
12 in the first or second degree as defined in RCW 9A.42.020 and
13 9A.42.030;

14 (c) Conviction of the parent of one of the following assault
15 crimes, when the child is the victim: Assault ((of the child)) in the
16 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or
17 assault of a child in the first or second degree as defined in RCW
18 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

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

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

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

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

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

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

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

15 (ii) The agency shall be required to encourage the maximum parent-
16 child contact possible, including regular visitation and participation
17 by the parents in the care of the child while the child is in
18 placement. Visitation may be limited or denied only if the court
19 determines that such limitation or denial is necessary to protect the
20 child's health, safety, or welfare.

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

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

1 (c) If the court has ordered, pursuant to ((RCW 13.34.130))
2 subsection (2) of this section, that a termination petition be filed,
3 a specific plan as to where the child will be placed, what steps will
4 be taken to achieve permanency for the child, services to be offered or
5 provided to the child, and, if visitation would be in the best
6 interests of the child, a recommendation to the court regarding
7 visitation between parent and child pending a fact-finding hearing on
8 the termination petition. The agency shall not be required to develop
9 a plan of services for the parents or provide services to the parents.

10 (4) If there is insufficient information at the time of the
11 disposition hearing upon which to base a determination regarding the
12 suitability of a proposed placement with a relative, the child shall
13 remain in foster care and the court shall direct the supervising agency
14 to conduct necessary background investigations as provided in chapter
15 74.15 RCW and report the results of such investigation to the court
16 within thirty days. However, if such relative appears otherwise
17 suitable and competent to provide care and treatment, the criminal
18 history background check need not be completed before placement, but as
19 soon as possible after placement. Any placements with relatives,
20 pursuant to this section, shall be contingent upon cooperation by the
21 relative with the agency case plan and compliance with court orders
22 related to the care and supervision of the child including, but not
23 limited to, court orders regarding parent-child contacts and any other
24 conditions imposed by the court. Noncompliance with the case plan or
25 court order shall be grounds for removal of the child from the
26 relative's home, subject to review by the court.

27 (5) Except for children whose cases are reviewed by a citizen
28 review board under chapter 13.70 RCW, the status of all children found
29 to be dependent shall be reviewed by the court at least every six
30 months from the beginning date of the placement episode or the date

1 dependency is established, whichever is first, at a hearing in which it
2 shall be determined whether court supervision should continue. The
3 review shall include findings regarding the agency and parental
4 completion of disposition plan requirements, and if necessary, revised
5 permanency time limits.

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

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

15 (i) Whether reasonable services have been provided to or offered to
16 the parties to facilitate reunion, specifying the services provided or
17 offered;

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

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

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

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

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

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

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

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

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

10 After hearings pursuant to RCW 13.34.110, the court may enter an
11 order terminating all parental rights to a child if the court finds
12 that:

13 (1) The allegations contained in the petition as provided in RCW
14 13.34.180 (1) through (6) are established by clear, cogent, and
15 convincing evidence; or

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

19 (~~((e) — [(3)]~~)) (3) The allegation under RCW 13.34.180(7) is
20 established beyond a reasonable doubt. In determining whether RCW
21 13.34.180 (5) and (6) are established beyond a reasonable doubt, the
22 court shall consider one or more of the following:

23 (a) Conviction of the parent of rape of the child in the first,
24 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
25 9A.44.079;

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

1 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or
2 assault of a child in the first or second degree as defined in RCW
3 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

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

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

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

13 (~~(3)-(4)~~) (4) Such an order is in the best interests of the
14 child.

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

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

19 (1) "Applicant" means:

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

24 (b) Any prospective volunteer who will have regularly scheduled
25 unsupervised access to children under sixteen years of age,
26 developmentally disabled persons, or vulnerable adults during the
27 course of his or her employment or involvement with the business or
28 organization under circumstances where such access will or may involve
29 groups of (i) five or fewer children under twelve years of age, (ii)

1 three or fewer children between twelve and sixteen years of age, (iii)
2 developmentally disabled persons, or (iv) vulnerable adults; or

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

4 (2) "Business or organization" means a business or organization
5 licensed in this state, any agency of the state, or other governmental
6 entity, that educates, trains, treats, supervises, or provides
7 recreation to developmentally disabled persons, vulnerable adults, or
8 children under sixteen years of age, including school districts and
9 educational service districts.

10 (3) "Civil adjudication" means a specific court finding of sexual
11 abuse or exploitation or physical abuse in a dependency action under
12 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In
13 the case of vulnerable adults, civil adjudication means a specific
14 court finding of abuse or financial exploitation in a protection
15 proceeding under chapter 74.34 RCW. It does not include administrative
16 proceedings. The term "civil adjudication" is further limited to court
17 findings that identify as the perpetrator of the abuse a named
18 individual, over the age of eighteen years, who was a party to the
19 dependency or dissolution proceeding or was a respondent in a
20 protection proceeding in which the finding was made and who contested
21 the allegation of abuse or exploitation.

22 (4) "Conviction record" means "conviction record" information as
23 defined in RCW 10.97.030(3) relating to a crime against children or
24 other persons committed by either an adult or a juvenile. It does not
25 include a conviction for an offense that has been the subject of an
26 expungement, pardon, annulment, certificate of rehabilitation, or other
27 equivalent procedure based on a finding of the rehabilitation of the
28 person convicted, or a conviction that has been the subject of a
29 pardon, annulment, or other equivalent procedure based on a finding of
30 innocence. It does include convictions for offenses for which the

1 defendant received a deferred or suspended sentence, unless the record
2 has been expunged according to law.

3 (5) "Crime against children or other persons" means a conviction of
4 any of the following offenses: Aggravated murder; first or second
5 degree murder; first or second degree kidnaping; first, second, or
6 third degree assault; first, second, or third degree assault of a
7 child; first, second, or third degree rape; first, second, or third
8 degree rape of a child; first or second degree robbery; first degree
9 arson; first degree burglary; first or second degree manslaughter;
10 first or second degree extortion; indecent liberties; incest; vehicular
11 homicide; first degree promoting prostitution; communication with a
12 minor; unlawful imprisonment; simple assault; sexual exploitation of
13 minors; first or second degree criminal mistreatment; child abuse or
14 neglect as defined in RCW 26.44.020; first or second degree custodial
15 interference; malicious harassment; first, second, or third degree
16 child molestation; first or second degree sexual misconduct with a
17 minor; first or second degree rape of a child; patronizing a juvenile
18 prostitute; child abandonment; promoting pornography; selling or
19 distributing erotic material to a minor; custodial assault; violation
20 of child abuse restraining order; child buying or selling;
21 prostitution; felony indecent exposure; or any of these crimes as they
22 may be renamed in the future.

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

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

30 (a) Chiropractic;

- 1 (b) Dentistry;
- 2 (c) Dental hygiene;
- 3 (d) Massage;
- 4 (e) Midwifery;
- 5 (f) Naturopathy;
- 6 (g) Osteopathy;
- 7 (h) Physical therapy;
- 8 (i) Physicians;
- 9 (j) Practical nursing;
- 10 (k) Registered nursing;
- 11 (l) Psychology; and
- 12 (m) Real estate brokers and salesmen.

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

14 (a) Another employee or volunteer from the same business or
15 organization as the applicant; or

16 (b) Any relative or guardian of any of the children or
17 developmentally disabled persons to which the applicant has access
18 during the course of his or her employment or involvement with the
19 business or organization.

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

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

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

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

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

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

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

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

16 (4) "Sexually violent offense" means an act committed on, before,
17 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
18 rape in the first degree, rape in the second degree by forcible
19 compulsion, rape of a child in the first or second degree, statutory
20 rape in the first or second degree, indecent liberties by forcible
21 compulsion, indecent liberties against a child under age fourteen,
22 incest against a child under age fourteen, or child molestation in the
23 first or second degree; (b) a felony offense in effect at any time
24 prior to July 1, 1990, that is comparable to a sexually violent offense
25 as defined in (a) of this subsection, or any federal or out-of-state
26 conviction for a felony offense that under the laws of this state would
27 be a sexually violent offense as defined in this subsection; (c) an act
28 of murder in the first or second degree, assault in the first or second
29 degree, assault of a child in the first or second degree, kidnapping in
30 the first or second degree, burglary in the first degree, residential

1 burglary, or unlawful imprisonment, which act, either at the time of
2 sentencing for the offense or subsequently during civil commitment
3 proceedings pursuant to chapter 71.09 RCW, has been determined beyond
4 a reasonable doubt to have been sexually motivated, as that term is
5 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
6 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
7 to commit one of the felonies designated in (a), (b), or (c) of this
8 subsection.