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SENATE BILL 6104

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State of Washington

52nd Legislature

1992 Regular Session

By Senators Nelson, Rasmussen, Thorsness, Hayner, Sellar, A. Smith and Erwin

Read first time 01/15/92. Referred to Committee on Law & Justice.

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 has previously  
4 engaged in a pattern or practice of assaulting the child or of causing  
5 the child pain or agony that is equivalent to that produced by torture.  
6 (2) Assault of a child in the first degree is a class A felony.

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

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

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

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

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

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

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

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

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

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

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

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

6 TABLE 2

7 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

8 XV Aggravated Murder 1 (RCW 10.95.020)

9 XIV Murder 1 (RCW 9A.32.030)

10 Homicide by abuse (RCW 9A.32.055)

11 XIII Murder 2 (RCW 9A.32.050)

12 XII Assault 1 (RCW 9A.36.011)

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

15 XI Rape 1 (RCW 9A.44.040)

16 Rape of a Child 1 (RCW 9A.44.073)

17 X Kidnapping 1 (RCW 9A.40.020)

18 Rape 2 (RCW 9A.44.050)

19 Rape of a Child 2 (RCW 9A.44.076)

20 Child Molestation 1 (RCW 9A.44.083)

21 Damaging building, etc., by explosion with threat to  
22 human being (RCW 70.74.280(1))

23 Over 18 and deliver heroin or narcotic from Schedule I  
24 or II to someone under 18 (RCW 69.50.406)

25 Leading Organized Crime (RCW 9A.82.060(1)(a))

26 IX Assault of a Child 2 (RCW 9A.36.--- (section 2 of this  
27 act))

28 Robbery 1 (RCW 9A.56.200)

1 Manslaughter 1 (RCW 9A.32.060)  
2 Explosive devices prohibited (RCW 70.74.180)  
3 Indecent Liberties (with forcible compulsion)  
4 (RCW 9A.44.100(1)(a))  
5 Endangering life and property by explosives with threat to  
6 human being (RCW 70.74.270)  
7 Over 18 and deliver narcotic from Schedule III, IV, or V  
8 or a nonnarcotic from Schedule I-V to someone under  
9 18 and 3 years junior (RCW 69.50.406)  
10 Controlled Substance Homicide (RCW 69.50.415)  
11 Sexual Exploitation (RCW 9.68A.040)  
12 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))  
13 VIII Arson 1 (RCW 9A.48.020)  
14 Promoting Prostitution 1 (RCW 9A.88.070)  
15 Selling for profit (controlled or counterfeit)  
16 any controlled substance (RCW 69.50.410)  
17 Manufacture, deliver, or possess with intent to deliver  
18 heroin or cocaine (RCW 69.50.401(a)(1)(i))  
19 Manufacture, deliver, or possess with intent to deliver  
20 methamphetamine (RCW 69.50.401(a)(1)(ii))  
21 Vehicular Homicide, by being under the influence of  
22 intoxicating liquor or any drug or by the operation of  
23 any vehicle in a reckless manner (RCW 46.61.520)  
24 VII Burglary 1 (RCW 9A.52.020)  
25 Vehicular Homicide, by disregard for the safety of others  
26 (RCW 46.61.520)  
27 Introducing Contraband 1 (RCW 9A.76.140)  
28 Indecent Liberties (without forcible compulsion)  
29 (RCW 9A.44.100(1) (b) and (c))  
30 Child Molestation 2 (RCW 9A.44.086)

1 Dealing in depictions of minor engaged in sexually explicit  
2 conduct (RCW 9.68A.050)  
3 Sending, bringing into state depictions of minor engaged  
4 in sexually explicit conduct (RCW 9.68A.060)  
5 Involving a minor in drug dealing (RCW 69.50.401(f))  
6 VI Bribery (RCW 9A.68.010)  
7 Manslaughter 2 (RCW 9A.32.070)  
8 Rape of a Child 3 (RCW 9A.44.079)  
9 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)  
10 Damaging building, etc., by explosion with no threat to  
11 human being (RCW 70.74.280(2))  
12 Endangering life and property by explosives with no threat  
13 to human being (RCW 70.74.270)  
14 Incest 1 (RCW 9A.64.020(1))  
15 Manufacture, deliver, or possess with intent to deliver  
16 narcotics from Schedule I or II (except heroin or  
17 cocaine) (RCW 69.50.401(a)(1)(i))  
18 Intimidating a Judge (RCW 9A.72.160)  
19 Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))  
20 V Criminal Mistreatment 1 (RCW 9A.42.020)  
21 Rape 3 (RCW 9A.44.060)  
22 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)  
23 Child Molestation 3 (RCW 9A.44.089)  
24 Kidnapping 2 (RCW 9A.40.030)  
25 Extortion 1 (RCW 9A.56.120)  
26 Incest 2 (RCW 9A.64.020(2))  
27 Perjury 1 (RCW 9A.72.020)  
28 Extortionate Extension of Credit (RCW 9A.82.020)  
29 Advancing money or property for extortionate extension of  
30 credit (RCW 9A.82.030)

1 Extortionate Means to Collect Extensions of Credit  
2 (RCW 9A.82.040)  
3 Rendering Criminal Assistance 1 (RCW 9A.76.070)  
4 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))  
5 Delivery of imitation controlled substance by person  
6 eighteen or over to person under eighteen  
7 (RCW 69.52.030(2))  
8 IV Residential Burglary (RCW 9A.52.025)  
9 Theft of Livestock 1 (RCW 9A.56.080)  
10 Robbery 2 (RCW 9A.56.210)  
11 Assault 2 (RCW 9A.36.021)  
12 Escape 1 (RCW 9A.76.110)  
13 Arson 2 (RCW 9A.48.030)  
14 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090,  
15 9A.72.100)  
16 Malicious Harassment (RCW 9A.36.080)  
17 Threats to Bomb (RCW 9.61.160)  
18 Willful Failure to Return from Furlough (RCW 72.66.060)  
19 Hit and Run -- Injury Accident (RCW 46.52.020(4))  
20 Vehicular Assault (RCW 46.61.522)  
21 Manufacture, deliver, or possess with intent to deliver  
22 narcotics from Schedule III, IV, or V or nonnarcotics  
23 from Schedule I-V (except marijuana or  
24 methamphetamines) (RCW 69.50.401(a)(1)(ii)  
25 through (iv))  
26 Influencing Outcome of Sporting Event (RCW 9A.82.070)  
27 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080  
28 (1) and (2))  
29 Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))  
30 III Criminal mistreatment 2 (RCW 9A.42.030)

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

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



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

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

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

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

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

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

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

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

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

28       Unless the context clearly requires otherwise, the definitions in  
29 this section apply throughout this chapter.

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

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

9 (3) "Community corrections officer" means an employee of the  
10 department who is responsible for carrying out specific duties in  
11 supervision of sentenced offenders and monitoring of sentence  
12 conditions.

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

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

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

27 (7) "Community supervision" means a period of time during which a  
28 convicted offender is subject to crime-related prohibitions and other  
29 sentence conditions imposed by a court pursuant to this chapter or RCW  
30 46.61.524. For first-time offenders, the supervision may include

1 crime-related prohibitions and other conditions imposed pursuant to RCW  
2 9.94A.120(5). For purposes of the interstate compact for out-of-state  
3 supervision of parolees and probationers, RCW 9.95.270, community  
4 supervision is the functional equivalent of probation and should be  
5 considered the same as probation by other states.

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

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

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

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

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

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

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

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

20 (15) "Disposable earnings" means that part of the earnings of an  
21 individual remaining after the deduction from those earnings of any  
22 amount required by law to be withheld. For the purposes of this  
23 definition, "earnings" means compensation paid or payable for personal  
24 services, whether denominated as wages, salary, commission, bonuses, or  
25 otherwise, and, notwithstanding any other provision of law making the  
26 payments exempt from garnishment, attachment, or other process to  
27 satisfy a court-ordered legal financial obligation, specifically  
28 includes periodic payments pursuant to pension or retirement programs,  
29 or insurance policies of any type, but does not include payments made

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
2 or Title 74 RCW.

3 (16) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of  
5 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
6 controlled substance (RCW 69.50.403);

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

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

13 (17) "Escape" means:

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

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

22 (18) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
24 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
25 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

17           (22) "Offender" means a person who has committed a felony  
18 established by state law and is eighteen years of age or older or is  
19 less than eighteen years of age but whose case has been transferred by  
20 the appropriate juvenile court to a criminal court pursuant to RCW  
21 13.40.110. Throughout this chapter, the terms "offender" and  
22 "defendant" are used interchangeably.

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

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

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

7 (26) "Serious traffic offense" means:

8 (a) Driving while under the influence of intoxicating liquor or any  
9 drug (RCW 46.61.502), actual physical control while under the influence  
10 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
11 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
12 or

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

16 (27) "Serious violent offense" is a subcategory of violent offense  
17 and means:

18 (a) Murder in the first degree, homicide by abuse, murder in the  
19 second degree, assault in the first degree, kidnapping in the first  
20 degree, or rape in the first degree, assault of a child in the first  
21 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
22 commit one of these felonies; or

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

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

28 (29) "Sex offense" means:

29 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
30 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal

1 attempt, criminal solicitation, or criminal conspiracy to commit such  
2 crimes;

3 (b) A felony with a finding of sexual motivation under RCW  
4 9.94A.127; or

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

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

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

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

18 (33) "Violent offense" means:

19 (a) Any of the following felonies, as now existing or hereafter  
20 amended: Any felony defined under any law as a class A felony or an  
21 attempt to commit a class A felony, criminal solicitation of or  
22 criminal conspiracy to commit a class A felony, manslaughter in the  
23 first degree, manslaughter in the second degree, indecent liberties if  
24 committed by forcible compulsion, kidnapping in the second degree,  
25 arson in the second degree, assault in the second degree, assault of a  
26 child in the second degree, extortion in the first degree, robbery in  
27 the second degree, vehicular assault, and vehicular homicide, when  
28 proximately caused by the driving of any vehicle by any person while  
29 under the influence of intoxicating liquor or any drug as defined by  
30 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;



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

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

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

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

28 (36) "Home detention" means a program of partial confinement  
29 available to offenders wherein the offender is confined in a private  
30 residence subject to electronic surveillance. Home detention may not

1 be imposed for offenders convicted of a violent offense, any sex  
2 offense, any drug offense, reckless burning in the first or second  
3 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
4 degree as defined in RCW 9A.36.031, assault of a child in the third  
5 degree, unlawful imprisonment as defined in RCW 9A.40.040, or  
6 harassment as defined in RCW 9A.46.020. Home detention may be imposed  
7 for offenders convicted of possession of a controlled substance (RCW  
8 69.50.401(d)) or forged prescription for a controlled substance (RCW  
9 69.50.403) if the offender fulfills the participation conditions set  
10 forth in this subsection and is monitored for drug use by treatment  
11 alternatives to street crime (TASC) or a comparable court or agency-  
12 referred program.

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

24 (b) Participation in a home detention program shall be conditioned  
25 upon: (i) The offender obtaining or maintaining current employment or  
26 attending a regular course of school study at regularly defined hours,  
27 or the offender performing parental duties to offspring or minors  
28 normally in the custody of the offender, (ii) abiding by the rules of  
29 the home detention program, and (iii) compliance with court-ordered  
30 legal financial obligations. The home detention program may also be

1 made available to offenders whose charges and convictions do not  
2 otherwise disqualify them if medical or health-related conditions,  
3 concerns or treatment would be better addressed under the home  
4 detention program, or where the health and welfare of the offender,  
5 other inmates, or staff would be jeopardized by the offender's  
6 incarceration. Participation in the home detention program for medical  
7 or health-related reasons is conditioned on the offender abiding by the  
8 rules of the home detention program and complying with court-ordered  
9 restitution.

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

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

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

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

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

25       (4) An offender convicted of the crime of murder in the first  
26 degree shall be sentenced to a term of total confinement not less than  
27 twenty years. An offender convicted of the crime of assault in the  
28 first degree or assault of a child in the first degree where the  
29 offender used force or means likely to result in death or intended to

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

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

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

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

23 (c) Pursue a prescribed, secular course of study or vocational  
24 training;

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

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

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

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

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

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

24 The examiner shall assess and report regarding the defendant's  
25 amenability to treatment and relative risk to the community. A  
26 proposed treatment plan shall be provided and shall include, at a  
27 minimum:

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

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

1 (C) Monitoring plans, including any requirements regarding living  
2 conditions, lifestyle requirements, and monitoring by family members  
3 and others;

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

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

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

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

24 (B) The court shall order treatment for any period up to three  
25 years in duration. The court in its discretion shall order outpatient  
26 sex offender treatment or inpatient sex offender treatment, if  
27 available. A community mental health center may not be used for such  
28 treatment unless it has an appropriate program designed for sex  
29 offender treatment. The offender shall not change sex offender  
30 treatment providers or treatment conditions without first notifying the

1 prosecutor, the community corrections officer, and the court, and shall  
2 not change providers without court approval after a hearing if the  
3 prosecutor or community corrections officer object to the change. In  
4 addition, as conditions of the suspended sentence, the court may impose  
5 other sentence conditions including up to six months of confinement,  
6 not to exceed the sentence range of confinement for that offense,  
7 crime-related prohibitions, and requirements that the offender perform  
8 any one or more of the following:

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

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

13 (III) Report as directed to the court and a community corrections  
14 officer;

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

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

20 (iii) The sex offender therapist shall submit quarterly reports on  
21 the defendant's progress in treatment to the court and the parties.  
22 The report shall reference the treatment plan and include at a minimum  
23 the following: Dates of attendance, defendant's compliance with  
24 requirements, treatment activities, the defendant's relative progress  
25 in treatment, and any other material as specified by the court at  
26 sentencing.

27 (iv) At the time of sentencing, the court shall set a treatment  
28 termination hearing for three months prior to the anticipated date for  
29 completion of treatment. Prior to the treatment termination hearing,  
30 the treatment professional and community corrections officer shall

1 submit written reports to the court and parties regarding the  
2 defendant's compliance with treatment and monitoring requirements, and  
3 recommendations regarding termination from treatment, including  
4 proposed community supervision conditions. Either party may request  
5 and the court may order another evaluation regarding the advisability  
6 of termination from treatment. The defendant shall pay the cost of any  
7 additional evaluation ordered unless the court finds the defendant to  
8 be indigent in which case the state shall pay the cost. At the  
9 treatment termination hearing the court may: (A) Modify conditions of  
10 community supervision, and either (B) terminate treatment, or (C)  
11 extend treatment for up to the remaining period of community  
12 supervision.

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

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

24 For purposes of this subsection, "victim" means any person who has  
25 sustained emotional, psychological, physical, or financial injury to  
26 person or property as a result of the crime charged. "Victim" also  
27 means a parent or guardian of a victim who is a minor child unless the  
28 parent or guardian is the perpetrator of the offense.

29 (b) When an offender is convicted of any felony sex offense  
30 committed before July 1, 1987, and is sentenced to a term of



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

19 If the offender does not comply with the conditions of the  
20 treatment program, the secretary of social and health services may  
21 refer the matter to the sentencing court. The sentencing court shall  
22 commit the offender to the department of corrections to serve the  
23 balance of the term of confinement.

24 If the offender successfully completes the treatment program before  
25 the expiration of the term of confinement, the court may convert the  
26 balance of confinement to community supervision and may place  
27 conditions on the offender including crime-related prohibitions and  
28 requirements that the offender perform any one or more of the  
29 following:

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

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

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

6 (iv) Undergo available outpatient treatment.

7 If the offender violates any of the terms of community supervision,  
8 the court may order the offender to serve out the balance of the  
9 community supervision term in confinement in the custody of the  
10 department of corrections.

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

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

20 Except for an offender who has been convicted of a violation of RCW  
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
22 before the expiration of his term of confinement, the department of  
23 corrections may request the court to convert the balance of confinement  
24 to community supervision and to place conditions on the offender  
25 including crime-related prohibitions and requirements that the offender  
26 perform any one or more of the following:

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

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

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

3 (iv) Undergo available outpatient treatment.

4 If the offender violates any of the terms of his community  
5 supervision, the court may order the offender to serve out the balance  
6 of his community supervision term in confinement in the custody of the  
7 department of corrections.

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

12 (d) Offenders convicted and sentenced for a sex offense committed  
13 prior to July 1, 1987, may, subject to available funds, request an  
14 evaluation by the department of corrections to determine whether they  
15 are amenable to treatment. If the offender is determined to be  
16 amenable to treatment, the offender may request placement in a  
17 treatment program within a correctional facility operated by the  
18 department. Placement in such treatment program is subject to  
19 available funds.

20 (8)(a) When a court sentences a person to a term of total  
21 confinement to the custody of the department of corrections for an  
22 offense categorized as a sex offense or a serious violent offense  
23 committed after July 1, 1988, but before July 1, 1990, assault in the  
24 second degree, assault of a child in the second degree, any crime  
25 against a person where it is determined in accordance with RCW  
26 9.94A.125 that the defendant or an accomplice was armed with a deadly  
27 weapon at the time of commission, or any felony offense under chapter  
28 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall  
29 in addition to the other terms of the sentence, sentence the offender  
30 to a one-year term of community placement beginning either upon

1 completion of the term of confinement or at such time as the offender  
2 is transferred to community custody in lieu of earned early release in  
3 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an  
4 offender under this subsection to the statutory maximum period of  
5 confinement then the community placement portion of the sentence shall  
6 consist entirely of such community custody to which the offender may  
7 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
8 period of community custody actually served shall be credited against  
9 the community placement portion of the sentence.

10 (b) When a court sentences a person to a term of total confinement  
11 to the custody of the department of corrections for an offense  
12 categorized as a sex offense or serious violent offense committed on or  
13 after July 1, 1990, the court shall in addition to other terms of the  
14 sentence, sentence the offender to community placement for two years or  
15 up to the period of earned early release awarded pursuant to RCW  
16 9.94A.150 (1) and (2), whichever is longer. The community placement  
17 shall begin either upon completion of the term of confinement or at  
18 such time as the offender is transferred to community custody in lieu  
19 of earned early release in accordance with RCW 9.94A.150 (1) and (2).  
20 When the court sentences an offender under this subsection to the  
21 statutory maximum period of confinement then the community placement  
22 portion of the sentence shall consist entirely of the community custody  
23 to which the offender may become eligible, in accordance with RCW  
24 9.94A.150 (1) and (2). Any period of community custody actually served  
25 shall be credited against the community placement portion of the  
26 sentence. Unless a condition is waived by the court, the terms of  
27 community placement for offenders sentenced pursuant to this section  
28 shall include the following conditions:

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

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

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

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

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

9 (c) The court may also order any of the following special  
10 conditions:

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

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

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

17 (iv) The offender shall not consume alcohol;

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

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

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

26 (9) If the court imposes a sentence requiring confinement of thirty  
27 days or less, the court may, in its discretion, specify that the  
28 sentence be served on consecutive or intermittent days. A sentence  
29 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered  
2 intermittent sentences as space permits.

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

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

28 (12) All offenders sentenced to terms involving community  
29 supervision, community service, community placement, or legal financial  
30 obligation shall be under the supervision of the secretary of the

1 department of corrections or such person as the secretary may designate  
2 and shall follow explicitly the instructions of the secretary including  
3 reporting as directed to a community corrections officer, remaining  
4 within prescribed geographical boundaries, notifying the community  
5 corrections officer of any change in the offender's address or  
6 employment, and paying the supervision fee assessment.

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

17 (14) The sentencing court shall give the offender credit for all  
18 confinement time served before the sentencing if that confinement was  
19 solely in regard to the offense for which the offender is being  
20 sentenced.

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

26 (16) The court shall order restitution whenever the offender is  
27 convicted of a felony that results in injury to any person or damage to  
28 or loss of property, whether the offender is sentenced to confinement  
29 or placed under community supervision, unless extraordinary  
30 circumstances exist that make restitution inappropriate in the court's

1 judgment. The court shall set forth the extraordinary circumstances in  
2 the record if it does not order restitution.

3 (17) As a part of any sentence, the court may impose and enforce an  
4 order that relates directly to the circumstances of the crime for which  
5 the offender has been convicted, prohibiting the offender from having  
6 any contact with other specified individuals or a specific class of  
7 individuals for a period not to exceed the maximum allowable sentence  
8 for the crime, regardless of the expiration of the offender's term of  
9 community supervision or community placement.

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

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

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

20 No person serving a sentence imposed pursuant to this chapter and  
21 committed to the custody of the department shall leave the confines of  
22 the correctional facility or be released prior to the expiration of the  
23 sentence except as follows:

24 (1) Except as otherwise provided for in subsection (2) of this  
25 section, the term of the sentence of an offender committed to a  
26 correctional facility operated by the department, may be reduced by  
27 earned early release time in accordance with procedures that shall be  
28 developed and promulgated by the correctional agency having  
29 jurisdiction in which the offender is confined. The earned early



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

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

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

29 (4) The governor, upon recommendation from the clemency and pardons  
30 board, may grant an extraordinary release for reasons of serious health

1 problems, senility, advanced age, extraordinary meritorious acts, or  
2 other extraordinary circumstances;

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

6 (6) The governor may pardon any offender;

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

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

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

15 (1) TABLE 1  
16 Sentencing Grid  
17 SERIOUSNESS  
18 SCORE OFFENDER SCORE 9  
19 0 1 2 3 4 5 6 7 8 or more  
20 \_\_\_\_\_  
21 XV Life Sentence without Parole/Death Penalty  
22 \_\_\_\_\_  
23 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y  
24 240- 250- 261- 271- 281 - 291- 312- 338- 370- 411-  
25 320 333 347 361 374 388 416 450 493 5 4 8  
26 \_\_\_\_\_  
27 XIII 12y 13y 14y 15y 16y 17y 19y 21y 25y 29y  
28 123- 134- 144- 154- 165- 175- 195- 216- 257- 298-

1		164	178	192	205	219	233	260	288	342	3	9	7
2		<hr/>											
3	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m		
4		93-	102-	111-	120-	129-	138-	162	-	178-	209-	240-	
5		123	136	147	160	171	184	216	236	277	318		
6		<hr/>											
7	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m		
8		78-	86-	95-	102-	111-	120-	146-	159-	185-	210	-	
9		102	114	125	136	147	158	194	211	245	280		
10		<hr/>											
11	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m		
12		51-	57-	62-	67-	72-	77-	98-	108-	129	-	149-	
13		68	75	82	89	96	102	130	144	171	198		
14		<hr/>											
15	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m		
16		31-	36-	41-	46-	51-	57-	77-	87-	108	-	129-	
17		41	48	54	61	68	75	102	116	144	171		
18		<hr/>											
19	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m		
20		21-	26-	31-	36-	41-	46-	67-	77-	87	-	108-	
21		27	34	41	48	54	61	89	102	116	144		
22		<hr/>											
23	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m		
24		15-	21-	26-	31-	36-	41-	57-	67-	77	-	87-	
25		20	27	34	41	48	54	75	89	102	116		
26		<hr/>											
27	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m		
28		12+-	15-	21-	26-	31-	36-	46-	57-	67	-	77-	
29		14	20	27	34	41	48	61	75	89	102		
30		<hr/>											

1	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
2		6-	12+-	13-	15-	22-	33-	41-	51-	62 -	72-
3		12	14	17	20	29	43	54	68	82	96
4	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
5		3-	6-	12+-	13-	15-	22-	33-	43-	53 -	63-
6		9	12	14	17	20	29	43	57	70	84
7	<hr/>										
8	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
9		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51 -
10		3	8	12	12	16	22	29	43	57	68
11	<hr/>										
12	II	4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m	
13		0-90	2-	3-	4-	12+-	14-	17-	22-	33 -	43-
14		Days	6	9	12	14	18	22	29	43	57
15	<hr/>										
16	I	3m	4m	5m	8m	13m	16m	20m	2y2m		
17		0-60	0-90	2-	2-	3-	4-	12+-	14-	17 -	22-
18		Days	Days	5	6	8	12	14	18	22	29

19

20 NOTE: Numbers in the first horizontal row of each seriousness category

21 represent sentencing midpoints in years(y) and months(m). Numbers in

22 the second and third rows represent presumptive sentencing ranges in

23 months, or in days if so designated. 12+ equals one year and one day.

24 (2) For persons convicted of the anticipatory offenses of criminal

25 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the

26 presumptive sentence is determined by locating the sentencing grid

27 sentence range defined by the appropriate offender score and the

28 seriousness level of the completed crime, and multiplying the range by

29 75 percent.

1 (3) The following additional times shall be added to the  
2 presumptive sentence if the offender or an accomplice was armed with a  
3 deadly weapon as defined in this chapter and the offender is being  
4 sentenced for one of the crimes listed in this subsection. If the  
5 offender or an accomplice was armed with a deadly weapon and the  
6 offender is being sentenced for an anticipatory offense under chapter  
7 9A.28 RCW to commit one of the crimes listed in this subsection, the  
8 following times shall be added to the presumptive range determined  
9 under subsection (2) of this section:

10 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW  
11 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

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

13 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault  
14 of a Child 2 (RCW 9A.36.--- (section 2 of this act)), Escape  
15 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2  
16 of a building other than a dwelling (RCW 9A.52.030), Theft  
17 of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

18 (4) The following additional times shall be added to the  
19 presumptive sentence if the offender or an accomplice committed the  
20 offense while in a county jail or state correctional facility as that  
21 term is defined in this chapter and the offender is being sentenced for  
22 one of the crimes listed in this subsection. If the offender or an  
23 accomplice committed one of the crimes listed in this subsection while  
24 in a county jail or state correctional facility as that term is defined  
25 in this chapter, and the offender is being sentenced for an  
26 anticipatory offense under chapter 9A.28 RCW to commit one of the  
27 crimes listed in this subsection, the following times shall be added to  
28 the presumptive sentence range determined under subsection (2) of this  
29 section:

1 (a) Eighteen months for offenses committed under RCW  
2 69.50.401(a)(1)(i) or 69.50.410;

3 (b) Fifteen months for offenses committed under RCW  
4 69.50.401(a)(1)(ii), (iii), and (iv);

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

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

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

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

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

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

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

23 (2) Except as provided in subsection (4) of this section, class A  
24 and sex prior felony convictions shall always be included in the  
25 offender score. Class B prior felony convictions other than sex  
26 offenses shall not be included in the offender score, if since the last  
27 date of release from confinement (including full-time residential  
28 treatment) pursuant to a felony conviction, if any, or entry of  
29 judgment and sentence, the offender had spent ten consecutive years in

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

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

17 (4) Always include juvenile convictions for sex offenses. Include  
18 other class A juvenile felonies only if the offender was 15 or older at  
19 the time the juvenile offense was committed. Include other class B and  
20 C juvenile felony convictions only if the offender was 15 or older at  
21 the time the juvenile offense was committed and the offender was less  
22 than 23 at the time the offense for which he or she is being sentenced  
23 was committed.

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

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

29 (a) Prior adult offenses which were found, under RCW  
30 9.94A.400(1)(a), to encompass the same criminal conduct, shall be

1 counted as one offense, the offense that yields the highest offender  
2 score. The current sentencing court shall determine with respect to  
3 other prior adult offenses for which sentences were served concurrently  
4 whether those offenses shall be counted as one offense or as separate  
5 offenses, and if the court finds that they shall be counted as one  
6 offense, then the offense that yields the highest offender score shall  
7 be used;

8 (b) Juvenile prior convictions entered or sentenced on the same  
9 date shall count as one offense, the offense that yields the highest  
10 offender score, except for juvenile prior convictions for violent  
11 offenses with separate victims, which shall count as separate offenses;  
12 and

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

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

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

27 (9) If the present conviction is for a violent offense and not  
28 covered in subsection (10), (11), (12), or (13) of this section, count  
29 two points for each prior adult and juvenile violent felony conviction,



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

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

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

15 (12) If the present conviction is for a felony traffic offense  
16 count two points for each adult or juvenile prior conviction for  
17 Vehicular Homicide or Vehicular Assault; for each felony offense or  
18 serious traffic offense, count one point for each adult and 1/2 point  
19 for each juvenile prior conviction.

20 (13) If the present conviction is for a drug offense count three  
21 points for each adult prior felony drug offense conviction and two  
22 points for each juvenile drug offense. All other adult and juvenile  
23 felonies are scored as in subsection (9) of this section if the current  
24 drug offense is violent, or as in subsection (8) of this section if the  
25 current drug offense is nonviolent.

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

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

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

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

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

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

17 (1) Decision not to prosecute.

18 STANDARD: A prosecuting attorney may decline to prosecute, even  
19 though technically sufficient evidence to prosecute exists, in  
20 situations where prosecution would serve no public purpose, would  
21 defeat the underlying purpose of the law in question or would result in  
22 decreased respect for the law.

23 GUIDELINE/COMMENTARY:

24 Examples

25 The following are examples of reasons not to prosecute which could  
26 satisfy the standard.

27 (a) Contrary to Legislative Intent - It may be proper to decline to  
28 charge where the application of criminal sanctions would be clearly

1 contrary to the intent of the legislature in enacting the particular  
2 statute.

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

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

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

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

10 (iv) The statute has not been recently reconsidered by the  
11 legislature.

12 This reason is not to be construed as the basis for declining cases  
13 because the law in question is unpopular or because it is difficult to  
14 enforce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) Assault cases where the victim has suffered little or no  
28 injury;

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

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

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

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

6 Notification

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

9 (2) Decision to prosecute.

10 STANDARD:

11 Crimes against persons will be filed if sufficient admissible  
12 evidence exists, which, when considered with the most plausible,  
13 reasonably foreseeable defense that could be raised under the evidence,  
14 would justify conviction by a reasonable and objective fact-finder.  
15 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
16 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
17 9A.64.020 the prosecutor should avoid prefiling agreements or  
18 diversions intended to place the accused in a program of treatment or  
19 counseling, so that treatment, if determined to be beneficial, can be  
20 provided pursuant to RCW 9.94A.120(7).

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

26 See table below for the crimes within these categories.

27 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

28 CRIMES AGAINST PERSONS

1 Aggravated Murder  
2 1st Degree Murder  
3 2nd Degree Murder  
4 1st Degree Kidnaping  
5 1st Degree Assault  
6 1st Degree Assault of a Child  
7 1st Degree Rape  
8 1st Degree Robbery  
9 1st Degree Rape of a Child  
10 1st Degree Arson  
11 2nd Degree Kidnaping  
12 2nd Degree Assault  
13 2nd Degree Assault of a Child  
14 2nd Degree Rape  
15 2nd Degree Robbery  
16 1st Degree Burglary  
17 1st Degree Manslaughter  
18 2nd Degree Manslaughter  
19 1st Degree Extortion  
20 Indecent Liberties  
21 Incest  
22 2nd Degree Rape of a Child  
23 Vehicular Homicide  
24 Vehicular Assault  
25 3rd Degree Rape  
26 3rd Degree Rape of a Child  
27 1st Degree Child Molestation  
28 2nd Degree Child Molestation  
29 3rd Degree Child Molestation  
30 2nd Degree Extortion

1 1st Degree Promoting Prostitution  
2 Intimidating a Juror  
3 Communication with a Minor  
4 Intimidating a Witness  
5 Intimidating a Public Servant  
6 Bomb Threat (if against person)  
7 3rd Degree Assault  
8 3rd Degree Assault of a Child  
9 Unlawful Imprisonment  
10 Promoting a Suicide Attempt  
11 Riot (if against person)

12 CRIMES AGAINST PROPERTY/OTHER CRIMES

13 2nd Degree Arson  
14 1st Degree Escape  
15 2nd Degree Burglary  
16 1st Degree Theft  
17 1st Degree Perjury  
18 1st Degree Introducing Contraband  
19 1st Degree Possession of Stolen Property  
20 Bribery  
21 Bribing a Witness  
22 Bribe received by a Witness  
23 Bomb Threat (if against property)  
24 1st Degree Malicious Mischief  
25 2nd Degree Theft  
26 2nd Degree Escape  
27 2nd Degree Introducing Contraband  
28 2nd Degree Possession of Stolen Property

1 2nd Degree Malicious Mischief  
2 1st Degree Reckless Burning  
3 Taking a Motor Vehicle without Authorization  
4 Forgery  
5 2nd Degree Perjury  
6 2nd Degree Promoting Prostitution  
7 Tampering with a Witness  
8 Trading in Public Office  
9 Trading in Special Influence  
10 Receiving/Granting Unlawful Compensation  
11 Bigamy  
12 Eluding a Pursuing Police Vehicle  
13 Willful Failure to Return from Furlough  
14 Riot (if against property)  
15 Thefts of Livestock

16 ALL OTHER UNCLASSIFIED FELONIES

17 Selection of Charges/Degree of Charge

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

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

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

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

25 Overcharging includes:

26 (a) Charging a higher degree;

27 (b) Charging additional counts.



1 This standard is intended to direct prosecutors to charge those  
2 crimes which demonstrate the nature and seriousness of a defendant's  
3 criminal conduct, but to decline to charge crimes which are not  
4 necessary to such an indication. Crimes which do not merge as a matter  
5 of law, but which arise from the same course of conduct, do not all  
6 have to be charged.

7 GUIDELINES/COMMENTARY:

8 Police Investigation

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

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

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

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

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

23 Exceptions

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

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

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

1 (3) The arrest of the suspect is necessary to complete the  
2 investigation of the crime.

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

#### 8 Investigation Techniques

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

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

#### 15 Pre-Filing Discussions with Defendant

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

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

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

- 23 (1) Harassment (RCW 9A.46.020);
- 24 (2) Malicious harassment (RCW 9A.36.080);
- 25 (3) Telephone harassment (RCW 9.61.230);
- 26 (4) Assault in the first degree (RCW 9A.36.011);
- 27 (5) Assault of a child in the first degree (RCW 9A.36.--- (section  
28 1 of this act));
- 29 (6) Assault in the second degree (RCW 9A.36.021);

1       (~~(6)~~) ~~Simple assault [Assault in the fourth degree]~~) (7) Assault  
2 of a child in the second degree (RCW 9A.36.--- (section 2 of this  
3 act)));  
4       (8) Assault in the fourth degree (RCW 9A.36.041));  
5       (~~(7)~~) (9) Reckless endangerment (~~(in the second degree)~~) in the  
6 second degree (RCW 9A.36.050));  
7       (~~(8)~~) (10) Extortion in the first degree (RCW 9A.56.120));  
8       (~~(9)~~) (11) Extortion in the second degree (RCW 9A.56.130));  
9       (~~(10)~~) (12) Coercion (RCW 9A.36.070));  
10       (~~(11)~~) (13) Burglary in the first degree (RCW 9A.52.020));  
11       (~~(12)~~) (14) Burglary in the second degree (RCW 9A.52.030));  
12       (~~(13)~~) (15) Criminal trespass in the first degree (RCW  
13 9A.52.070));  
14       (~~(14)~~) (16) Criminal trespass in the second degree (RCW  
15 9A.52.080));  
16       (~~(15)~~) (17) Malicious mischief in the first degree (RCW  
17 9A.48.070));  
18       (~~(16)~~) (18) Malicious mischief in the second degree (RCW  
19 9A.48.080));  
20       (~~(17)~~) (19) Malicious mischief in the third degree (RCW  
21 9A.48.090));  
22       (~~(18)~~) (20) Kidnapping in the first degree (RCW 9A.40.020));  
23       (~~(19)~~) (21) Kidnapping in the second degree (RCW 9A.40.030));  
24       (~~(20)~~) (22) Unlawful imprisonment (RCW 9A.40.040));  
25       (~~(21)~~) (23) Rape in the first degree (RCW 9A.44.040));  
26       (~~(22)~~) (24) Rape in the second degree (RCW 9A.44.050));  
27       (~~(23)~~) (25) Rape in the third degree (RCW 9A.44.060));  
28       (~~(24)~~) (26) Indecent liberties (RCW 9A.44.100));  
29       (~~(25)~~) (27) Rape of a child in the first degree (RCW 9A.44.073));  
30       (~~(26)~~) (28) Rape of a child in the second degree (RCW 9A.44.076));

1       (~~(27)~~) (29) Rape of a child in the third degree (RCW 9A.44.079);  
2       (~~(28)~~) (30) Child molestation in the first degree (RCW  
3 9A.44.083);  
4       (~~(29)~~) (31) Child molestation in the second degree (RCW  
5 9A.44.086); and  
6       (~~(30)~~) (32) Child molestation in the third degree (RCW  
7 9A.44.089).

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

10       Unless the context requires the contrary, the definitions in this  
11 section apply throughout this chapter.

12       (1) "Creditor" means a person making an extension of credit or a  
13 person claiming by, under, or through a person making an extension of  
14 credit.

15       (2) "Debtor" means a person to whom an extension of credit is made  
16 or a person who guarantees the repayment of an extension of credit or  
17 in any manner undertakes to indemnify the creditor against loss  
18 resulting from the failure of a person to whom an extension is made to  
19 repay the same.

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

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

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

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

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

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

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

15 (10) "Traffic" means to sell, transfer, distribute, dispense, or  
16 otherwise dispose of stolen property to another person, or to buy,  
17 receive, possess, or obtain control of stolen property, with intent to  
18 sell, transfer, distribute, dispense, or otherwise dispose of the  
19 property to another person.

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

22 (12) "Enterprise" includes any individual, sole proprietorship,  
23 partnership, corporation, business trust, or other profit or nonprofit  
24 legal entity, and includes any union, association, or group of  
25 individuals associated in fact although not a legal entity, and both  
26 illicit and licit enterprises and governmental and nongovernmental  
27 entities.

28 (13) "Financial institution" means any bank, trust company, savings  
29 and loan association, savings bank, mutual savings bank, credit union,

1 or loan company under the jurisdiction of the state or an agency of the  
2 United States.

3 (14) "Criminal profiteering" means any act, including any  
4 anticipatory or completed offense, committed for financial gain, that  
5 is chargeable or indictable under the laws of the state in which the  
6 act occurred and, if the act occurred in a state other than this state,  
7 would be chargeable or indictable under the laws of this state had the  
8 act occurred in this state and punishable as a felony and by  
9 imprisonment for more than one year, regardless of whether the act is  
10 charged or indicted, as any of the following:

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

12 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

13 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

14 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

15 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and  
16 9A.56.080;

17 (f) Child selling or child buying, as defined in RCW 9A.64.030;

18 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
19 9A.68.050;

20 (h) Gambling, as defined in RCW 9.46.220 and 9.46.230;

21 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

22 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;

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

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

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

28 (n) Delivery or manufacture of controlled substances or possession  
29 with intent to deliver or manufacture controlled substances under  
30 chapter 69.50 RCW;

1 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;  
2 (p) Leading organized crime, as defined in RCW 9A.82.060;  
3 (q) Obstructing criminal investigations or prosecutions in  
4 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
5 9A.76.070, or 9A.76.180;  
6 (r) Fraud in the purchase or sale of securities, as defined in RCW  
7 21.20.010;  
8 (s) Promoting pornography, as defined in RCW 9.68.140;  
9 (t) Sexual exploitation of children, as defined in RCW 9.68A.040,  
10 9.68A.050, and 9.68A.060;  
11 (u) Promoting prostitution, as defined in RCW 9A.88.070 and  
12 9A.88.080;  
13 (v) Arson, as defined in RCW 9A.48.020 and 9A.48.030;  
14 (w) Assault, as defined in RCW 9A.36.011 and 9A.36.021;  
15 (x) Assault of a child, as defined in RCW 9A.36.--- and 9A.36.---  
16 (sections 1 and 2 of this act);  
17 (y) A pattern of equity skimming, as defined in RCW 61.34.020; or  
18 ~~((y))~~ (z) Commercial telephone solicitation in violation of RCW  
19 19.158.040(1).  
20 (15) "Pattern of criminal profiteering activity" means engaging in  
21 at least three acts of criminal profiteering, one of which occurred  
22 after July 1, 1985, and the last of which occurred within five years,  
23 excluding any period of imprisonment, after the commission of the  
24 earliest act of criminal profiteering. In order to constitute a  
25 pattern, the three acts must have the same or similar intent, results,  
26 accomplices, principals, victims, or methods of commission, or be  
27 otherwise interrelated by distinguishing characteristics including a  
28 nexus to the same enterprise, and must not be isolated events.  
29 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by  
30 any person other than the attorney general or county prosecuting

1 attorney in which one or more acts of fraud in the purchase or sale of  
2 securities are asserted as acts of criminal profiteering activity, it  
3 is a condition to civil liability under RCW 9A.82.100 that the  
4 defendant has been convicted in a criminal proceeding of fraud in the  
5 purchase or sale of securities under RCW 21.20.400 or under the laws of  
6 another state or of the United States requiring the same elements of  
7 proof, but such conviction need not relate to any act or acts asserted  
8 as acts of criminal profiteering activity in such civil action under  
9 RCW 9A.82.100.

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

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

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

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

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

23 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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



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

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

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

10 (b) "Beneficial interest" does not include the interest of a  
11 stockholder in a corporation or the interest of a partner in a general  
12 partnership or limited partnership.

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

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

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

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

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

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

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

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

28 (ii) A trustee of any testamentary trust;

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

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

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

4 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now  
5 or hereafter amended, it has been proven by a preponderance of the  
6 evidence that the child is dependent within the meaning of RCW  
7 13.34.030(2); after consideration of the predisposition report prepared  
8 pursuant to RCW 13.34.110 and after a disposition hearing has been held  
9 pursuant to RCW 13.34.110, the court shall enter an order of  
10 disposition pursuant to this section.

11 (1) The court shall order one of the following dispositions of the  
12 case:

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

20 (b) Order that the child be removed from his or her home and  
21 ordered into the custody, control, and care of a relative or the  
22 department of social and health services or a licensed child placing  
23 agency for placement in a foster family home or group care facility  
24 licensed pursuant to chapter 74.15 RCW or in a home not required to be  
25 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable  
26 cause to believe that the safety or welfare of the child would be  
27 jeopardized or that efforts to reunite the parent and child will be  
28 hindered, such child shall be placed with a grandparent, brother,  
29 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom

1 the child has a relationship and is comfortable, and who is willing and  
2 available to care for the child. An order for out-of-home placement  
3 may be made only if the court finds that reasonable efforts have been  
4 made to prevent or eliminate the need for removal of the child from the  
5 child's home and to make it possible for the child to return home,  
6 specifying the services that have been provided to the child and the  
7 child's parent, guardian, or legal custodian, and that:

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

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

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

15 (iv) The extent of the child's disability is such that the parent,  
16 guardian, or legal custodian is unable to provide the necessary care  
17 for the child and the parent, guardian, or legal custodian has  
18 determined that the child would benefit from placement outside of the  
19 home.

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

1 (a) Conviction of the parent of rape of the child in the first,  
2 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
3 9A.44.079;

4 (b) Conviction of the parent of criminal mistreatment of the child  
5 in the first or second degree as defined in RCW 9A.42.020 and  
6 9A.42.030;

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

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

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

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

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

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

27 (b) Unless the court has ordered, pursuant to ((RCW 13.34.130))  
28 subsection (2) of this section, that a termination petition be filed,  
29 a specific plan as to where the child will be placed, what steps will  
30 be taken to return the child home, and what actions the agency will

1 take to maintain parent-child ties. All aspects of the plan shall  
2 include the goal of achieving permanence for the child.

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

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

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

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

22 (c) If the court has ordered, pursuant to (~~RCW 13.34.130~~)  
23 subsection (2) of this section, that a termination petition be filed,  
24 a specific plan as to where the child will be placed, what steps will  
25 be taken to achieve permanency for the child, services to be offered or  
26 provided to the child, and, if visitation would be in the best  
27 interests of the child, a recommendation to the court regarding  
28 visitation between parent and child pending a fact-finding hearing on  
29 the termination petition. The agency shall not be required to develop  
30 a plan of services for the parents or provide services to the parents.

1 (4) If there is insufficient information at the time of the  
2 disposition hearing upon which to base a determination regarding the  
3 suitability of a proposed placement with a relative, the child shall  
4 remain in foster care and the court shall direct the supervising agency  
5 to conduct necessary background investigations as provided in chapter  
6 74.15 RCW and report the results of such investigation to the court  
7 within thirty days. However, if such relative appears otherwise  
8 suitable and competent to provide care and treatment, the criminal  
9 history background check need not be completed before placement, but as  
10 soon as possible after placement. Any placements with relatives,  
11 pursuant to this section, shall be contingent upon cooperation by the  
12 relative with the agency case plan and compliance with court orders  
13 related to the care and supervision of the child including, but not  
14 limited to, court orders regarding parent-child contacts and any other  
15 conditions imposed by the court. Noncompliance with the case plan or  
16 court order shall be grounds for removal of the child from the  
17 relative's home, subject to review by the court.

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

27 (a) A child shall not be returned home at the review hearing unless  
28 the court finds that a reason for removal as set forth in this section  
29 no longer exists. The parents, guardian, or legal custodian shall  
30 report to the court the efforts they have made to correct the

1 conditions which led to removal. If a child is returned, casework  
2 supervision shall continue for a period of six months, at which time  
3 there shall be a hearing on the need for continued intervention.

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

6 (i) Whether reasonable services have been provided to or offered to  
7 the parties to facilitate reunion, specifying the services provided or  
8 offered;

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

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

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

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

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

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

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

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

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

1 After hearings pursuant to RCW 13.34.110, the court may enter an  
2 order terminating all parental rights to a child if the court finds  
3 that:

4 (1) The allegations contained in the petition as provided in RCW  
5 13.34.180 (1) through (6) are established by clear, cogent, and  
6 convincing evidence; or

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

10 (~~((e)---{(3)}))~~) (3) The allegation under RCW 13.34.180(7) is  
11 established beyond a reasonable doubt. In determining whether RCW  
12 13.34.180 (5) and (6) are established beyond a reasonable doubt, the  
13 court shall consider one or more of the following:

14 (a) Conviction of the parent of rape of the child in the first,  
15 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
16 9A.44.079;

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

19 (c) Conviction of the parent of one of the following assault  
20 crimes, when the child is the victim: Assault ((of the child)) in the  
21 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or  
22 assault of a child in the first or second degree as defined in RCW  
23 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

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

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

28 (f) Failure of the parent to complete available treatment ordered  
29 under this chapter or the equivalent laws of another state, where such  
30 failure has resulted in a prior termination of parental rights to



1 another child and the parent has failed to effect significant change in  
2 the interim; and

3 ~~((3) [(4)])~~ (4) Such an order is in the best interests of the  
4 child.

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

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

9 (1) "Applicant" means:

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

14 (b) Any prospective volunteer who will have regularly scheduled  
15 unsupervised access to children under sixteen years of age,  
16 developmentally disabled persons, or vulnerable adults during the  
17 course of his or her employment or involvement with the business or  
18 organization under circumstances where such access will or may involve  
19 groups of (i) five or fewer children under twelve years of age, (ii)  
20 three or fewer children between twelve and sixteen years of age, (iii)  
21 developmentally disabled persons, or (iv) vulnerable adults; or

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

23 (2) "Business or organization" means a business or organization  
24 licensed in this state, any agency of the state, or other governmental  
25 entity, that educates, trains, treats, supervises, or provides  
26 recreation to developmentally disabled persons, vulnerable adults, or  
27 children under sixteen years of age, including school districts and  
28 educational service districts.

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

13           (4) "Conviction record" means "conviction record" information as  
14 defined in RCW 10.97.030(3) relating to a crime against children or  
15 other persons committed by either an adult or a juvenile. It does not  
16 include a conviction for an offense that has been the subject of an  
17 expungement, pardon, annulment, certificate of rehabilitation, or other  
18 equivalent procedure based on a finding of the rehabilitation of the  
19 person convicted, or a conviction that has been the subject of a  
20 pardon, annulment, or other equivalent procedure based on a finding of  
21 innocence. It does include convictions for offenses for which the  
22 defendant received a deferred or suspended sentence, unless the record  
23 has been expunged according to law.

24           (5) "Crime against children or other persons" means a conviction of  
25 any of the following offenses: Aggravated murder; first or second  
26 degree murder; first or second degree kidnaping; first, second, or  
27 third degree assault; first, second, or third degree assault of a  
28 child; first, second, or third degree rape; first, second, or third  
29 degree rape of a child; first or second degree robbery; first degree  
30 arson; first degree burglary; first or second degree manslaughter;

1 first or second degree extortion; indecent liberties; incest; vehicular  
2 homicide; first degree promoting prostitution; communication with a  
3 minor; unlawful imprisonment; simple assault; sexual exploitation of  
4 minors; first or second degree criminal mistreatment; child abuse or  
5 neglect as defined in RCW 26.44.020; first or second degree custodial  
6 interference; malicious harassment; first, second, or third degree  
7 child molestation; first or second degree sexual misconduct with a  
8 minor; first or second degree rape of a child; patronizing a juvenile  
9 prostitute; child abandonment; promoting pornography; selling or  
10 distributing erotic material to a minor; custodial assault; violation  
11 of child abuse restraining order; child buying or selling;  
12 prostitution; felony indecent exposure; or any of these crimes as they  
13 may be renamed in the future.

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

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

- 21 (a) Chiropractic;
- 22 (b) Dentistry;
- 23 (c) Dental hygiene;
- 24 (d) Massage;
- 25 (e) Midwifery;
- 26 (f) Naturopathy;
- 27 (g) Osteopathy;
- 28 (h) Physical therapy;
- 29 (i) Physicians;
- 30 (j) Practical nursing;

1 (k) Registered nursing;

2 (l) Psychology; and

3 (m) Real estate brokers and salesmen.

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

5 (a) Another employee or volunteer from the same business or  
6 organization as the applicant; or

7 (b) Any relative or guardian of any of the children or  
8 developmentally disabled persons to which the applicant has access  
9 during the course of his or her employment or involvement with the  
10 business or organization.

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

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

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

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

23 Unless the context clearly requires otherwise, the definitions in  
24 this section apply throughout this chapter.

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

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

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

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