
HOUSE BILL 2185

State of Washington

53rd Legislature

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By Representatives Flemming and Talcott

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1 AN ACT Relating to serious offenders; amending RCW 9.94A.310,
2 9A.20.021, 9A.36.045, 9A.36.050, 10.95.160, and 13.40.110; reenacting
3 and amending RCW 9.94A.120, 9.94A.030, 9.94A.320, and 9.94A.360;
4 repealing RCW 10.95.030, 10.95.040, 10.95.050, 10.95.060, 10.95.070,
5 10.95.080, 10.95.090, 10.95.100, 10.95.110, 10.95.120, 10.95.130,
6 10.95.140, and 10.95.150; and prescribing penalties.

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

8 **Sec. 1.** RCW 9.94A.120 and 1994 c 1 s 2 (Initiative Measure No.
9 593) and 1993 c 31 s 3 are each reenacted and amended to read as
10 follows:

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

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

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

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

5 (4) A persistent offender shall be sentenced to a term of total
6 confinement for life without the possibility of parole (~~or, when~~
7 ~~authorized by RCW 10.95.030 for the crime of aggravated murder in the~~
8 ~~first degree, sentenced to death, notwithstanding the maximum sentence~~
9 ~~under any other law)). An offender convicted of the crime of murder in~~
10 the first degree shall be sentenced to a term of total confinement not
11 less than twenty years. An offender convicted of the crime of assault
12 in the first degree or assault of a child in the first degree where the
13 offender used force or means likely to result in death or intended to
14 kill the victim shall be sentenced to a term of total confinement not
15 less than five years. An offender convicted of the crime of rape in
16 the first degree shall be sentenced to a term of total confinement not
17 less than five years. The foregoing minimum terms of total confinement
18 are mandatory and shall not be varied or modified as provided in
19 subsection (2) of this section. In addition, all offenders subject to
20 the provisions of this subsection shall not be eligible for community
21 custody, earned early release time, furlough, home detention, partial
22 confinement, work crew, work release, or any other form of early
23 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
24 or any other form of authorized leave of absence from the correctional
25 facility while not in the direct custody of a corrections officer or
26 officers during such minimum terms of total confinement except in the
27 case of an offender in need of emergency medical treatment or for the
28 purpose of commitment to an inpatient treatment facility in the case of
29 an offender convicted of the crime of rape in the first degree.

30 (5) In sentencing a first-time offender the court may waive the
31 imposition of a sentence within the sentence range and impose a
32 sentence which may include up to ninety days of confinement in a
33 facility operated or utilized under contract by the county and a
34 requirement that the offender refrain from committing new offenses.
35 The sentence may also include up to two years of community supervision,
36 which, in addition to crime-related prohibitions, may include
37 requirements that the offender perform any one or more of the
38 following:

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

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

4 (c) Pursue a prescribed, secular course of study or vocational
5 training;

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

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

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

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

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

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

34 The examiner shall assess and report regarding the defendant's
35 amenability to treatment and relative risk to the community. A
36 proposed treatment plan shall be provided and shall include, at a
37 minimum:

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

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

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

6 (D) Anticipated length of treatment; and

7 (E) Recommended crime-related prohibitions.

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

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

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

26 (B) The court shall order treatment for any period up to three
27 years in duration. The court in its discretion shall order outpatient
28 sex offender treatment or inpatient sex offender treatment, if
29 available. A community mental health center may not be used for such
30 treatment unless it has an appropriate program designed for sex
31 offender treatment. The offender shall not change sex offender
32 treatment providers or treatment conditions without first notifying the
33 prosecutor, the community corrections officer, and the court, and shall
34 not change providers without court approval after a hearing if the
35 prosecutor or community corrections officer object to the change. In
36 addition, as conditions of the suspended sentence, the court may impose
37 other sentence conditions including up to six months of confinement,
38 not to exceed the sentence range of confinement for that offense,

1 crime-related prohibitions, and requirements that the offender perform
2 any one or more of the following:

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

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

7 (III) Report as directed to the court and a community corrections
8 officer;

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

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

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

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

37 (v) The court may revoke the suspended sentence at any time during
38 the period of community supervision and order execution of the sentence
39 if: (A) The defendant violates the conditions of the suspended

1 sentence, or (B) the court finds that the defendant is failing to make
2 satisfactory progress in treatment. All confinement time served during
3 the period of community supervision shall be credited to the offender
4 if the suspended sentence is revoked.

5 (vi) Except as provided in (a)(vii) of this subsection, after July
6 1, 1991, examinations and treatment ordered pursuant to this subsection
7 shall only be conducted by sex offender treatment providers certified
8 by the department of health pursuant to chapter 18.155 RCW.

9 (vii) A sex offender therapist who examines or treats a sex
10 offender pursuant to this subsection (7) does not have to be certified
11 by the department of health pursuant to chapter 18.155 RCW if the court
12 finds that: (A) The offender has already moved to another state or
13 plans to move to another state for reasons other than circumventing the
14 certification requirements; (B) no certified providers are available
15 for treatment within a reasonable geographical distance of the
16 offender's home; and (C) the evaluation and treatment plan comply with
17 this subsection (7) and the rules adopted by the department of health.

18 For purposes of this subsection, "victim" means any person who has
19 sustained emotional, psychological, physical, or financial injury to
20 person or property as a result of the crime charged. "Victim" also
21 means a parent or guardian of a victim who is a minor child unless the
22 parent or guardian is the perpetrator of the offense.

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

1 state pending placement in the treatment program. Any offender who has
2 escaped from the treatment program shall be referred back to the
3 sentencing court.

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

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

- 15 (i) Devote time to a specific employment or occupation;
- 16 (ii) Remain within prescribed geographical boundaries and notify
17 the court or the community corrections officer prior to any change in
18 the offender's address or employment;
- 19 (iii) Report as directed to the court and a community corrections
20 officer;
- 21 (iv) Undergo available outpatient treatment.

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

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

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

35 Except for an offender who has been convicted of a violation of RCW
36 9A.44.040 or 9A.44.050, if the offender completes the treatment program
37 before the expiration of his or her term of confinement, the department
38 of corrections may request the court to convert the balance of
39 confinement to community supervision and to place conditions on the

1 offender including crime-related prohibitions and requirements that the
2 offender perform any one or more of the following:

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

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

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

9 (iv) Undergo available outpatient treatment.

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

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

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

26 (8)(a) When a court sentences a person to a term of total
27 confinement to the custody of the department of corrections for an
28 offense categorized as a sex offense or a serious violent offense
29 committed after July 1, 1988, but before July 1, 1990, assault in the
30 second degree, assault of a child in the second degree, any crime
31 against a person where it is determined in accordance with RCW
32 9.94A.125 that the defendant or an accomplice was armed with a deadly
33 weapon at the time of commission, or any felony offense under chapter
34 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
35 in addition to the other terms of the sentence, sentence the offender
36 to a one-year term of community placement beginning either upon
37 completion of the term of confinement or at such time as the offender
38 is transferred to community custody in lieu of earned early release in
39 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an

1 offender under this subsection to the statutory maximum period of
2 confinement then the community placement portion of the sentence shall
3 consist entirely of such community custody to which the offender may
4 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
5 period of community custody actually served shall be credited against
6 the community placement portion of the sentence.

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

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

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

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

32 (iv) An offender in community custody shall not unlawfully possess
33 controlled substances;

34 (v) The offender shall pay supervision fees as determined by the
35 department of corrections; and

36 (vi) The residence location and living arrangements are subject to
37 the prior approval of the department of corrections during the period
38 of community placement.

1 (c) The court may also order any of the following special
2 conditions:

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

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

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

9 (iv) The offender shall not consume alcohol; or

10 (v) The offender shall comply with any crime-related prohibitions.

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

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

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

1 restitution as one of the monetary assessments, the county clerk shall
2 make disbursements to victims named in the order.

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

7 (12) All offenders sentenced to terms involving community
8 supervision, community service, community placement, or legal financial
9 obligation shall be under the supervision of the secretary of the
10 department of corrections or such person as the secretary may designate
11 and shall follow explicitly the instructions of the secretary including
12 reporting as directed to a community corrections officer, remaining
13 within prescribed geographical boundaries, notifying the community
14 corrections officer of any change in the offender's address or
15 employment, and paying the supervision fee assessment. The department
16 may require offenders to pay for special services rendered on or after
17 July 25, 1993, including electronic monitoring, day reporting, and
18 telephone reporting, dependent upon the offender's ability to pay. The
19 department may pay for these services for offenders who are not able to
20 pay.

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

31 (14) The sentencing court shall give the offender credit for all
32 confinement time served before the sentencing if that confinement was
33 solely in regard to the offense for which the offender is being
34 sentenced.

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

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

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

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

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

23 **Sec. 2.** RCW 9.94A.030 and 1994 c 1 s 3 (Initiative Measure No.
24 593), 1993 c 338 s 2, 1993 c 251 s 4, and 1993 c 164 s 1 are each
25 reenacted and amended to read as follows:

26 Unless the context clearly requires otherwise, the definitions in
27 this section apply throughout this chapter.

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

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

36 (3) "Community corrections officer" means an employee of the
37 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

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

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

14 (6) "Community service" means compulsory service, without compensa-
15 tion, performed for the benefit of the community by the offender.

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

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

27 (9) "Conviction" means an adjudication of guilt pursuant to Titles
28 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
29 acceptance of a plea of guilty.

30 (10) "Court-ordered legal financial obligation" means a sum of
31 money that is ordered by a superior court of the state of Washington
32 for legal financial obligations which may include restitution to the
33 victim, statutorily imposed crime victims' compensation fees as
34 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
35 drug funds, court-appointed attorneys' fees, and costs of defense,
36 fines, and any other financial obligation that is assessed to the
37 offender as a result of a felony conviction. Upon conviction for
38 vehicular assault while under the influence of intoxicating liquor or
39 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the

1 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
2 legal financial obligations may also include payment to a public agency
3 of the expense of an emergency response to the incident resulting in
4 the conviction, subject to the provisions in RCW 38.52.430.

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

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

17 (b) "Criminal history" shall always include juvenile convictions
18 for sex offenses and shall also include a defendant's other prior
19 convictions in juvenile court if: (i) The conviction was for an
20 offense which is a felony or a serious traffic offense and is criminal
21 history as defined in RCW 13.40.020(~~(+6)~~)(9)(a); (ii) the defendant
22 was fifteen years of age or older at the time the offense was
23 committed; and (iii) with respect to prior juvenile class B and C
24 felonies or serious traffic offenses, the defendant was less than
25 twenty-three years of age at the time the offense for which he or she
26 is being sentenced was committed.

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

28 (14) "Determinate sentence" means a sentence that states with
29 exactitude the number of actual years, months, or days of total
30 confinement, of partial confinement, of community supervision, the
31 number of actual hours or days of community service work, or dollars or
32 terms of a legal financial obligation. The fact that an offender
33 through "earned early release" can reduce the actual period of
34 confinement shall not affect the classification of the sentence as a
35 determinate sentence.

36 (15) "Disposable earnings" means that part of the earnings of an
37 individual remaining after the deduction from those earnings of any
38 amount required by law to be withheld. For the purposes of this
39 definition, "earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonuses, or
2 otherwise, and, notwithstanding any other provision of law making the
3 payments exempt from garnishment, attachment, or other process to
4 satisfy a court-ordered legal financial obligation, specifically
5 includes periodic payments pursuant to pension or retirement programs,
6 or insurance policies of any type, but does not include payments made
7 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
8 or Title 74 RCW.

9 (16) "Drug offense" means:

10 (a) Any felony violation of chapter 69.50 RCW except possession of
11 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
12 controlled substance (RCW 69.50.403);

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

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

19 (17) "Escape" means:

20 (a) Escape in the first degree (RCW 9A.76.110), escape in the
21 second degree (RCW 9A.76.120), willful failure to return from furlough
22 (RCW 72.66.060), willful failure to return from work release (RCW
23 72.65.070), or willful failure to be available for supervision by the
24 department while in community custody (RCW 72.09.310); or

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

28 (18) "Felony traffic offense" means:

29 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
30 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
31 and-run injury-accident (RCW 46.52.020(4)); or

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

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

37 (20)(a) "First-time offender" means any person who is convicted of
38 a felony (i) not classified as a violent offense or a sex offense under
39 this chapter, or (ii) that is not the manufacture, delivery, or

1 possession with intent to manufacture or deliver a controlled substance
2 classified in schedule I or II that is a narcotic drug or the selling
3 for profit of any controlled substance or counterfeit substance
4 classified in schedule I, RCW 69.50.204, except leaves and flowering
5 tops of marihuana, and except as provided in (b) of this subsection,
6 who previously has never been convicted of a felony in this state,
7 federal court, or another state, and who has never participated in a
8 program of deferred prosecution for a felony offense.

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

12 (21) "Most serious offense-level one" means aggravated murder,
13 murder 1, murder 2, and reckless endangerment 1 involving a drive-by
14 shooting resulting in death.

15 (22) "Most serious offense-level two" means rape 1, rape of a child
16 1, kidnapping 1, assault 1, assault of a child 1, assault 2, controlled
17 substance homicide, burglary 1, robbery 1, and reckless endangerment 2
18 involving a drive-by shooting.

19 (23) "Most serious offense-level three" means any of the following
20 felonies or a felony attempt to commit any of the following felonies,
21 as now existing or hereafter amended:

22 (a) Any felony defined under any law as a class A felony, except
23 felonies under subsections (21) and (22) of this section, or criminal
24 solicitation of or criminal conspiracy to commit a class A felony;

25 (~~(b)~~) (~~Assault in the second degree;~~
26 (~~e~~)) Assault of a child in the second degree;
27 (~~(d)~~) (c) Child molestation in the second degree;
28 (~~(e) Controlled substance homicide;~~
29 (~~f~~)) (d) Extortion in the first degree;
30 (~~(g)~~) (e) Incest when committed against a child under age
31 fourteen;

32 (~~(h)~~) (f) Indecent liberties;
33 (~~(i)~~) (g) Kidnapping in the second degree;
34 (~~(j)~~) (h) Leading organized crime;
35 (~~(k)~~) (i) Manslaughter in the first degree;
36 (~~(l)~~) (j) Manslaughter in the second degree;
37 (~~(m)~~) (k) Promoting prostitution in the first degree;
38 (~~(n)~~) (l) Rape in the third degree;
39 (~~(o)~~) (m) Robbery in the second degree;

1 (~~(p)~~) (n) Sexual exploitation;

2 (~~(q)~~) (o) Vehicular assault;

3 (~~(r)~~) (p) Vehicular homicide, when proximately caused by the
4 driving of any vehicle by any person while under the influence of
5 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the
6 operation of any vehicle in a reckless manner;

7 (~~(s)~~) (q) Any other class B felony offense with a finding of
8 sexual motivation, as "sexual motivation" is defined under this
9 section;

10 (~~(t)~~) (r) Any other felony with a deadly weapon verdict under RCW
11 9.94A.125;

12 (~~(u)~~) (s) Any felony offense in effect at any time prior to
13 December 2, 1993, that is comparable to a most serious offense under
14 this subsection, or any federal or out-of-state conviction for an
15 offense that under the laws of this state would be a felony classified
16 as a most serious offense under this subsection.

17 (~~(22)~~) (24) "Nonviolent offense" means an offense which is not a
18 violent offense.

19 (~~(23)~~) (25) "Offender" means a person who has committed a felony
20 established by state law and is eighteen years of age or older or is
21 less than eighteen years of age but whose case has been transferred by
22 the appropriate juvenile court to a criminal court pursuant to RCW
23 13.40.110. Throughout this chapter, the terms "offender" and
24 "defendant" are used interchangeably.

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

33 (~~(25)~~) (27) "Persistent offender" is an offender who:

34 (a) Has been convicted in this state of any felony considered a
35 most serious offense-level three; and

36 (b) Has, before the commission of the offense under (a) of this
37 subsection, been convicted as an offender on at least two separate
38 occasions, whether in this state or elsewhere, of felonies that under
39 the laws of this state would be considered most serious offenses and

1 would be included in the offender score under RCW 9.94A.360; provided
2 that of the two or more previous convictions, at least one conviction
3 must have occurred before the commission of any of the other most
4 serious offenses for which the offender was previously convicted.

5 ~~((+26+))~~ (28) "Postrelease supervision" is that portion of an
6 offender's community placement that is not community custody.

7 ~~((+27+))~~ (29) "Restitution" means the requirement that the offender
8 pay a specific sum of money over a specific period of time to the court
9 as payment of damages. The sum may include both public and private
10 costs. The imposition of a restitution order does not preclude civil
11 redress.

12 ~~((+28+))~~ (30) "Serious traffic offense" means:

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

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

21 ~~((+29+))~~ (31) "Serious violent offense" is a subcategory of violent
22 offense and means:

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

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

31 ~~((+30+))~~ (32) "Sentence range" means the sentencing court's
32 discretionary range in imposing a nonappealable sentence.

33 ~~((+31+))~~ (33) "Sex offense" means:

34 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
35 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
36 attempt, criminal solicitation, or criminal conspiracy to commit such
37 crimes;

38 (b) A felony with a finding of sexual motivation under RCW
39 9.94A.127; or

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

4 (~~(32)~~) (34) "Sexual motivation" means that one of the purposes
5 for which the defendant committed the crime was for the purpose of his
6 or her sexual gratification.

7 (~~(33)~~) (35) "Total confinement" means confinement inside the
8 physical boundaries of a facility or institution operated or utilized
9 under contract by the state or any other unit of government for twenty-
10 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (~~(34)~~) (36) "Transition training" means written and verbal
12 instructions and assistance provided by the department to the offender
13 during the two weeks prior to the offender's successful completion of
14 the work ethic camp program. The transition training shall include
15 instructions in the offender's requirements and obligations during the
16 offender's period of community custody.

17 (~~(35)~~) (37) "Victim" means any person who has sustained
18 emotional, psychological, physical, or financial injury to person or
19 property as a direct result of the crime charged.

20 (~~(36)~~) (38) "Violent offense" means:

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

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

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

1 (~~(37)~~) (39) "Work crew" means a program of partial confinement
2 consisting of civic improvement tasks for the benefit of the community
3 of not less than thirty-five hours per week that complies with RCW
4 9.94A.135. The civic improvement tasks shall have minimal negative
5 impact on existing private industries or the labor force in the county
6 where the service or labor is performed. The civic improvement tasks
7 shall not affect employment opportunities for people with developmental
8 disabilities contracted through sheltered workshops as defined in RCW
9 82.04.385. Only those offenders sentenced to a facility operated or
10 utilized under contract by a county or the state are eligible to
11 participate on a work crew. Offenders sentenced for a sex offense as
12 defined in subsection (~~(31)~~) (33) of this section are not eligible
13 for the work crew program.

14 (~~(38)~~) (40) "Work ethic camp" means an alternative incarceration
15 program designed to reduce recidivism and lower the cost of corrections
16 by requiring offenders to complete a comprehensive array of real-world
17 job and vocational experiences, character-building work ethics
18 training, life management skills development, substance abuse
19 rehabilitation, counseling, literacy training, and basic adult
20 education.

21 (~~(39)~~) (41) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school. Participation in work release shall
24 be conditioned upon the offender attending work or school at regularly
25 defined hours and abiding by the rules of the work release facility.

26 (~~(40)~~) (42) "Home detention" means a program of partial
27 confinement available to offenders wherein the offender is confined in
28 a private residence subject to electronic surveillance. Home detention
29 may not be imposed for offenders convicted of a violent offense, any
30 sex offense, any drug offense, reckless burning in the first or second
31 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
32 degree as defined in RCW 9A.36.031, assault of a child in the third
33 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
34 harassment as defined in RCW 9A.46.020. Home detention may be imposed
35 for offenders convicted of possession of a controlled substance (RCW
36 69.50.401(d)) or forged prescription for a controlled substance (RCW
37 69.50.403) if the offender fulfills the participation conditions set
38 forth in this subsection and is monitored for drug use by treatment

1 alternatives to street crime (TASC) or a comparable court or agency-
2 referred program.

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

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

30 **Sec. 3.** RCW 9.94A.310 and 1992 c 145 s 9 are each amended to read
31 as follows:

1 (1)

TABLE 1

2

Sentencing Grid

3 SERIOUSNESS

4 SCORE

OFFENDER SCORE

5 9 or

6 0 1 2 3 4 5 6 7 8 more

7

8 XVI Death Penalty/Life Sentence without Parole

9

10 XV Life Sentence without Parole(~~(/Death Penalty)~~)

11

12 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y

13 240- 250- 261- 271- 281- 291- 312- 338- 370- 411-

14 320 333 347 361 374 388 416 450 493 548

15

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

17 123- 134- 144- 154- 165- 175- 195- 216- 257- 298-

18 164 178 192 205 219 233 260 288 342 397

19

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

21 93- 102- 111- 120- 129- 138- 162- 178- 209- 240-

22 123 136 147 160 171 184 216 236 277 318

23

24 XI 7y6m 8y4m 9y2m 9y11m 10y9m 11y7m 14y2m 15y5m 17y11m 20y5m

25 78- 86- 95- 102- 111- 120- 146- 159- 185- 210-

26 102 114 125 136 147 158 194 211 245 280

27

28 X 5y 5y6m 6y 6y6m 7y 7y6m 9y6m 10y6m 12y6m 14y6m

29 51- 57- 62- 67- 72- 77- 98- 108- 129- 149-

30 68 75 82 89 96 102 130 144 171 198

31

32 IX 3y 3y6m 4y 4y6m 5y 5y6m 7y6m 8y6m 10y6m 12y6m

33 31- 36- 41- 46- 51- 57- 77- 87- 108- 129-

34 41 48 54 61 68 75 102 116 144 171

35

36 VIII 2y 2y6m 3y 3y6m 4y 4y6m 6y6m 7y6m 8y6m 10y6m

37 21- 26- 31- 36- 41- 46- 67- 77- 87- 108-

38 27 34 41 48 54 61 89 102 116 144

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

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

34 (2) For persons convicted of the anticipatory offenses of criminal
35 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
36 presumptive sentence is determined by locating the sentencing grid
37 sentence range defined by the appropriate offender score and the

1 seriousness level of the completed crime, and multiplying the range by
2 75 percent.

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

12 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.-
13 200), or Kidnapping 1 (RCW 9A.40.020)

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

15 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault
16 of a Child 2 (RCW 9A.36.130), Escape 1 (RCW 9A.76.110), Kidnapping 2
17 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW
18 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug
19 offense.

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

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

34 (b) Fifteen months for offenses committed under RCW
35 69.50.401(a)(1)(ii), (iii), and (iv);

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

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

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

4 **Sec. 4.** RCW 9.94A.320 and 1992 c 145 s 4 and 1992 c 75 s 3 are
5 each reenacted and amended to read as follows:

6 TABLE 2

7 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

8 ((XV))
9 XVI Aggravated Murder 1 (RCW 10.95.020)

10 ((XIV)) Murder 1 (RCW 9A.32.030)
11 ((Homicide by abuse (RCW 9A.32.055)
12 ~~XIII~~) Murder 2 (RCW 9A.32.050)
13 Reckless Endangerment 1 - death resulting
14 from drive-by shooting

15 ((XII))
16 XV Assault 1 (RCW 9A.36.011)
17 Assault of a Child 1 (RCW 9A.36.120)

18 ((XI)) Rape 1 (RCW 9A.44.040)
19 Rape of a Child 1 (RCW 9A.44.073)
20 Assault 2 (RCW 9A.36.021)
21 Kidnapping 1 (RCW 9A.40.020)
22 Robbery 1 (RCW 9A.56.200)
23 Burglary 1 (RCW 9A.52.020)
24 Controlled Substance Homicide (RCW
25 69.50.415)
26 Reckless Endangerment 2 drive-by shooting -
27 no death

28 XIV Homicide by abuse (RCW 9A.32.055)

29 X ((Kidnapping 1 (RCW 9A.40.020)))
30 Rape 2 (RCW 9A.44.050)
31 Rape of a Child 2 (RCW 9A.44.076)
32 Child Molestation 1 (RCW 9A.44.083)

1 Damaging building, etc., by explosion with
2 threat to human being (RCW
3 70.74.280(1))
4 Over 18 and deliver heroin or narcotic from
5 Schedule I or II to someone under 18
6 (RCW 69.50.406)
7 Leading Organized Crime (RCW
8 9A.82.060(1)(a))

9 IX Assault of a Child 2 (RCW 9A.36.130)
10 (~~Robbery 1 (RCW 9A.56.200)~~)
11 Manslaughter 1 (RCW 9A.32.060)
12 Explosive devices prohibited (RCW 70.74.180)
13 Indecent Liberties (with forcible
14 compulsion) (RCW 9A.44.100(1)(a))
15 Endangering life and property by explosives
16 with threat to human being (RCW
17 70.74.270)
18 Over 18 and deliver narcotic from Schedule
19 III, IV, or V or a nonnarcotic from
20 Schedule I-V to someone under 18 and 3
21 years junior (RCW 69.50.406)
22 (~~Controlled Substance Homicide (RCW
23 69.50.415)~~)
24 Sexual Exploitation (RCW 9.68A.040)
25 Inciting Criminal Profiteering (RCW
26 9A.82.060(1)(b))

27 VIII Arson 1 (RCW 9A.48.020)
28 Promoting Prostitution 1 (RCW 9A.88.070)
29 Selling for profit (controlled or
30 counterfeit) any controlled substance
31 (RCW 69.50.410)
32 Manufacture, deliver, or possess with intent
33 to deliver heroin or cocaine (RCW
34 69.50.401(a)(1)(i))
35 Manufacture, deliver, or possess with intent
36 to deliver methamphetamine (RCW
37 69.50.401(a)(1)(ii))

1 Vehicular Homicide, by being under the
2 influence of intoxicating liquor or any
3 drug or by the operation of any vehicle
4 in a reckless manner (RCW 46.61.520)

5 VII ((~~Burglary 1 (RCW 9A.52.020)~~))
6 Vehicular Homicide, by disregard for the
7 safety of others (RCW 46.61.520)
8 Introducing Contraband 1 (RCW 9A.76.140)
9 Indecent Liberties (without forcible
10 compulsion) (RCW 9A.44.100(1) (b) and
11 (c))
12 Child Molestation 2 (RCW 9A.44.086)
13 Dealing in depictions of minor engaged in
14 sexually explicit conduct (RCW
15 9.68A.050)
16 Sending, bringing into state depictions of
17 minor engaged in sexually explicit
18 conduct (RCW 9.68A.060)
19 Involving a minor in drug dealing (RCW
20 69.50.401(f))

21 VI Bribery (RCW 9A.68.010)
22 Manslaughter 2 (RCW 9A.32.070)
23 Rape of a Child 3 (RCW 9A.44.079)
24 Intimidating a Juror/Witness (RCW 9A.72.110,
25 9A.72.130)
26 Damaging building, etc., by explosion with
27 no threat to human being (RCW
28 70.74.280(2))
29 Endangering life and property by explosives
30 with no threat to human being (RCW
31 70.74.270)
32 Incest 1 (RCW 9A.64.020(1))
33 Manufacture, deliver, or possess with intent
34 to deliver narcotics from Schedule I or
35 II (except heroin or cocaine) (RCW
36 69.50.401(a)(1)(i))

1 Intimidating a Judge (RCW 9A.72.160)
2 Bail Jumping with Murder 1 (RCW
3 9A.76.170(2)(a))
4 V Criminal Mistreatment 1 (RCW 9A.42.020)
5 Rape 3 (RCW 9A.44.060)
6 Sexual Misconduct with a Minor 1 (RCW
7 9A.44.093)
8 Child Molestation 3 (RCW 9A.44.089)
9 Kidnapping 2 (RCW 9A.40.030)
10 Extortion 1 (RCW 9A.56.120)
11 Incest 2 (RCW 9A.64.020(2))
12 Perjury 1 (RCW 9A.72.020)
13 Extortionate Extension of Credit (RCW
14 9A.82.020)
15 Advancing money or property for extortionate
16 extension of credit (RCW 9A.82.030)
17 Extortionate Means to Collect Extensions of
18 Credit (RCW 9A.82.040)
19 Rendering Criminal Assistance 1 (RCW
20 9A.76.070)
21 Bail Jumping with class A Felony (RCW
22 9A.76.170(2)(b))
23 Delivery of imitation controlled substance
24 by person eighteen or over to person
25 under eighteen (RCW 69.52.030(2))
26 IV Residential Burglary (RCW 9A.52.025)
27 Theft of Livestock 1 (RCW 9A.56.080)
28 Robbery 2 (RCW 9A.56.210)
29 (~~Assault 2 (RCW 9A.36.021)~~)
30 Escape 1 (RCW 9A.76.110)
31 Arson 2 (RCW 9A.48.030)
32 Bribing a Witness/Bribe Received by Witness
33 (RCW 9A.72.090, 9A.72.100)
34 Malicious Harassment (RCW 9A.36.080)
35 Threats to Bomb (RCW 9.61.160)
36 Willful Failure to Return from Furlough (RCW
37 72.66.060)

1 Hit and Run « Injury Accident (RCW
2 46.52.020(4))
3 Vehicular Assault (RCW 46.61.522)
4 Manufacture, deliver, or possess with intent
5 to deliver narcotics from Schedule III,
6 IV, or V or nonnarcotics from Schedule
7 I-V (except marijuana or
8 methamphetamines) (RCW
9 69.50.401(a)(1)(ii) through (iv))
10 Influencing Outcome of Sporting Event (RCW
11 9A.82.070)
12 Use of Proceeds of Criminal Profiteering
13 (RCW 9A.82.080 (1) and (2))
14 Knowingly Trafficking in Stolen Property
15 (RCW 9A.82.050(2))
16 III Criminal mistreatment 2 (RCW 9A.42.030)
17 Extortion 2 (RCW 9A.56.130)
18 Unlawful Imprisonment (RCW 9A.40.040)
19 Assault 3 (RCW 9A.36.031)
20 Assault of a Child 3 (RCW 9A.36.140)
21 Custodial Assault (RCW 9A.36.100)
22 Unlawful possession of firearm or pistol by felon (RCW
23 9.41.040)
24 Harassment (RCW 9A.46.020)
25 Promoting Prostitution 2 (RCW 9A.88.080)
26 Willful Failure to Return from Work Release
27 (RCW 72.65.070)
28 Burglary 2 (RCW 9A.52.030)
29 Introducing Contraband 2 (RCW 9A.76.150)
30 Communication with a Minor for Immoral
31 Purposes (RCW 9.68A.090)
32 Patronizing a Juvenile Prostitute (RCW
33 9.68A.100)
34 Escape 2 (RCW 9A.76.120)
35 Perjury 2 (RCW 9A.72.030)
36 Bail Jumping with class B or C Felony (RCW
37 9A.76.170(2)(c))
38 Intimidating a Public Servant (RCW
39 9A.76.180)

1 Tampering with a Witness (RCW 9A.72.120)
2 Manufacture, deliver, or possess with intent
3 to deliver marijuana (RCW
4 69.50.401(a)(1)(ii))
5 Delivery of a material in lieu of a
6 controlled substance (RCW 69.50.401(c))
7 Manufacture, distribute, or possess with
8 intent to distribute an imitation
9 controlled substance (RCW 69.52.030(1))
10 Recklessly Trafficking in Stolen Property
11 (RCW 9A.82.050(1))
12 Theft of livestock 2 (RCW 9A.56.080)
13 Securities Act violation (RCW 21.20.400)

14 II Malicious Mischief 1 (RCW 9A.48.070)
15 Possession of Stolen Property 1 (RCW
16 9A.56.150)
17 Theft 1 (RCW 9A.56.030)
18 Possession of controlled substance that is
19 either heroin or narcotics from
20 Schedule I or II (RCW 69.50.401(d))
21 Possession of phencyclidine (PCP) (RCW
22 69.50.401(d))
23 Create, deliver, or possess a counterfeit
24 controlled substance (RCW 69.50.401(b))
25 Computer Trespass 1 (RCW 9A.52.110)
26 Reckless Endangerment 1 - excludes drive-by
27 shooting death (RCW 9A.36.045)
28 Escape from Community Custody (RCW
29 72.09.310)

30 I Theft 2 (RCW 9A.56.040)
31 Possession of Stolen Property 2 (RCW
32 9A.56.160)
33 Forgery (RCW 9A.60.020)
34 Taking Motor Vehicle Without Permission (RCW
35 9A.56.070)
36 Vehicle Prowl 1 (RCW 9A.52.095)
37 Attempting to Elude a Pursuing Police
38 Vehicle (RCW 46.61.024)

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

16 **Sec. 5.** RCW 9.94A.360 and 1992 c 145 s 10 and 1992 c 75 s 4 are
17 each reenacted and amended to read as follows:

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

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

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

27 (2) Except as provided in subsection (4) of this section, class A
28 and sex prior felony convictions shall always be included in the
29 offender score. Class B prior felony convictions other than sex
30 offenses shall not be included in the offender score, if since the last
31 date of release from confinement (including full-time residential
32 treatment) pursuant to a felony conviction, if any, or entry of
33 judgment and sentence, the offender had spent ten consecutive years in
34 the community without being convicted of any felonies. Class C prior
35 felony convictions other than sex offenses shall not be included in the
36 offender score if, since the last date of release from confinement
37 (including full-time residential treatment) pursuant to a felony

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

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

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

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

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

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

34 (b) Juvenile prior convictions entered or sentenced on the same
35 date shall count as one offense, the offense that yields the highest
36 offender score, except for juvenile prior convictions for violent
37 offenses with separate victims, which shall count as separate offenses;
38 and

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

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

10 (8) If the present conviction is for a nonviolent offense and not
11 covered by subsection (~~((12) or (13))~~) (11) or (12) of this section,
12 count one point for each adult prior felony conviction and one point
13 for each juvenile prior violent felony conviction and 1/2 point for
14 each juvenile prior nonviolent felony conviction.

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

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

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

33 ~~(12))~~) If the present conviction is for a felony traffic offense
34 count two points for each adult or juvenile prior conviction for
35 Vehicular Homicide or Vehicular Assault; for each felony offense or
36 serious traffic offense, count one point for each adult and 1/2 point
37 for each juvenile prior conviction.

38 (~~((13))~~) (12) If the present conviction is for a drug offense
39 count three points for each adult prior felony drug offense conviction

1 and two points for each juvenile drug offense. All other adult and
2 juvenile felonies are scored as in subsection (9) of this section if
3 the current drug offense is violent, or as in subsection (8) of this
4 section if the current drug offense is nonviolent.

5 ~~((+14))~~ (13) If the present conviction is for Willful Failure to
6 Return from Furlough, RCW 72.66.060, Willful Failure to Return from
7 Work Release, RCW 72.65.070, or Escape from Community Custody, RCW
8 72.09.310, count only prior escape convictions in the offender score.
9 Count adult prior escape convictions as one point and juvenile prior
10 escape convictions as 1/2 point.

11 ~~((+15))~~ (14) If the present conviction is for Escape 1, RCW
12 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as
13 one point and juvenile prior convictions as 1/2 point.

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

20 ~~((+17))~~ (16) If the present conviction is for a sex offense,
21 count priors as in subsections (8) through ~~((+16))~~ (15) of this
22 section; however count three points for each adult and juvenile prior
23 sex offense conviction.

24 ~~((+18))~~ (17) If the present conviction is for an offense
25 committed while the offender was under community placement, add one
26 point.

27 **Sec. 6.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to
28 read as follows:

29 (1) Felony. Except for the felony crimes contained in subsection
30 (1)(a), (b), and (d) of this section, no person convicted of a
31 classified felony shall be punished by confinement or fine exceeding
32 the following:

33 (a) For a class A felony of aggravated murder, murder 1, murder 2,
34 and reckless endangerment 1, involving a death from a drive-by
35 shooting, life imprisonment without the possibility of release or the
36 death penalty;

1 (b) For a class A felony of rape 1, rape of a child 1, kidnapping
2 1, assault 1, burglary 1, and robbery 1, life imprisonment without the
3 possibility of release;

4 (c) For a class A felony, by confinement in a state correctional
5 institution for a term of life imprisonment, or by a fine in an amount
6 fixed by the court of fifty thousand dollars, or by both such
7 confinement and fine;

8 ~~((b))~~ (d) For a class B felony of assault 2, controlled
9 substance homicide, and reckless endangerment 2, involving a drive-by
10 shooting, life imprisonment without the possibility of release;

11 (e) For a class B felony, by confinement in a state correctional
12 institution for a term of ten years, or by a fine in an amount fixed by
13 the court of twenty thousand dollars, or by both such confinement and
14 fine;

15 ~~((e))~~ (f) For a class C felony, by confinement in a state
16 correctional institution for five years, or by a fine in an amount
17 fixed by the court of ten thousand dollars, or by both such confinement
18 and fine.

19 (2) Gross misdemeanor. Every person convicted of a gross
20 misdemeanor defined in Title 9A RCW shall be punished by imprisonment
21 in the county jail for a maximum term fixed by the court of not more
22 than one year, or by a fine in an amount fixed by the court of not more
23 than five thousand dollars, or by both such imprisonment and fine.

24 (3) Misdemeanor. Every person convicted of a misdemeanor defined
25 in Title 9A RCW shall be punished by imprisonment in the county jail
26 for a maximum term fixed by the court of not more than ninety days, or
27 by a fine in an amount fixed by the court of not more than one thousand
28 dollars, or by both such imprisonment and fine.

29 (4) This section applies to only those crimes committed on or
30 after July 1, 1984.

31 **Sec. 7.** RCW 9A.36.045 and 1989 c 271 s 109 are each amended to
32 read as follows:

33 (1) A person is guilty of reckless endangerment in the first
34 degree when he or she recklessly discharges a firearm in a manner which
35 creates a substantial risk of death or serious physical injury to
36 another person and the discharge is either from a motor vehicle or from
37 the immediate area of a motor vehicle that was used to transport the
38 shooter or the firearm to the scene of the discharge. If death results

1 from the discharge of a firearm from a motor vehicle during the
2 commission of a drive-by shooting, the shooter shall automatically be
3 subject to the death penalty.

4 (2) A person who unlawfully discharges a firearm from a moving
5 motor vehicle may be inferred to have engaged in reckless conduct,
6 unless the discharge is shown by evidence satisfactory to the trier of
7 fact to have been made without such recklessness.

8 (3) Except in situations involving death resulting from the
9 discharge of a firearm from a motor vehicle during the commission of a
10 drive-by shooting which is a class A felony, reckless endangerment in
11 the first degree is a class C felony.

12 **Sec. 8.** RCW 9A.36.050 and 1989 c 271 s 110 are each amended to
13 read as follows:

14 (1) A person is guilty of reckless endangerment in the second
15 degree when he recklessly engages in conduct not amounting to reckless
16 endangerment in the first degree but which creates a substantial risk
17 of death or serious physical injury to another person. In
18 circumstances involving the discharge of a firearm from a motor vehicle
19 during the commission of a drive-by shooting which does not result in
20 death, the shooter shall automatically be subject to life imprisonment
21 without the possibility of release.

22 (2) Except in situations involving the discharge of a firearm from
23 a motor vehicle during the commission of a drive-by shooting which is
24 a class B felony, reckless endangerment in the second degree is a gross
25 misdemeanor.

26 **Sec. 9.** RCW 10.95.160 and 1990 c 263 s 1 are each amended to read
27 as follows:

28 (1) (~~(If a death sentence is affirmed and the case remanded to the~~
29 ~~trial court as provided in RCW 10.95.140(2),)~~) A death warrant shall
30 forthwith be issued by the clerk of the trial court, which shall be
31 signed by a judge of the trial court and attested by the clerk thereof
32 under the seal of the court. The warrant shall be directed to the
33 superintendent of the state penitentiary and shall state the conviction
34 of the person named therein and the judgment and sentence of the court,
35 and shall appoint a day on which the judgment and sentence of the court
36 shall be executed by the superintendent, which day shall not be less

1 than thirty nor more than ninety days from the date the trial court
2 receives the remand from the supreme court of Washington.

3 (2) If the date set for execution under subsection (1) of this
4 section is stayed by a court of competent jurisdiction for any reason,
5 the new execution date is automatically set at thirty judicial days
6 after the entry of an order of termination or vacation of the stay by
7 such court unless the court invalidates the conviction, sentence, or
8 remands for further judicial proceedings. The presence of the inmate
9 under sentence of death shall not be required for the court to vacate
10 or terminate the stay according to this section.

11 **Sec. 10.** RCW 13.40.110 and 1990 c 3 s 303 are each amended to
12 read as follows:

13 (1) Adolescents age fourteen or older and under eighteen charged
14 with any of the following crimes shall be transferred for adult
15 criminal prosecution: Aggravated murder, murder 1, murder 2, homicide,
16 rape 1, assault 1, and burglary 1.

17 (2) The prosecutor, respondent, or the court on its own motion
18 may, before a hearing on the information on its merits, file a motion
19 requesting the court to transfer the respondent for adult criminal
20 prosecution and the matter shall be set for a hearing on the question
21 of declining jurisdiction. Unless waived by the court, the parties,
22 and their counsel, a decline hearing shall be held where:

23 (a) The respondent is fifteen, sixteen, or seventeen years of age
24 and the information alleges a class A felony or an attempt,
25 solicitation, or conspiracy to commit a class A felony; or

26 (b) The respondent is seventeen years of age and the information
27 alleges assault in the second degree, extortion in the first degree,
28 indecent liberties, child molestation in the second degree, kidnapping
29 in the second degree, or robbery in the second degree.

30 ~~((+2))~~ (3) The court after a decline hearing may order the case
31 transferred for adult criminal prosecution upon a finding that the
32 declination would be in the best interest of the juvenile or the
33 public. The court shall consider the relevant reports, facts,
34 opinions, and arguments presented by the parties and their counsel.

35 ~~((+3))~~ (4) When the respondent is transferred for criminal
36 prosecution or retained for prosecution in juvenile court, the court
37 shall set forth in writing its finding which shall be supported by
38 relevant facts and opinions produced at the hearing.

1 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
2 each repealed:

- 3 (1) RCW 10.95.030 and 1993 c 479 s 1 & 1981 c 138 s 3;
- 4 (2) RCW 10.95.040 and 1981 c 138 s 4;
- 5 (3) RCW 10.95.050 and 1981 c 138 s 5;
- 6 (4) RCW 10.95.060 and 1981 c 138 s 6;
- 7 (5) RCW 10.95.070 and 1993 c 479 s 2 & 1981 c 138 s 7;
- 8 (6) RCW 10.95.080 and 1981 c 138 s 8;
- 9 (7) RCW 10.95.090 and 1981 c 138 s 9;
- 10 (8) RCW 10.95.100 and 1981 c 138 s 10;
- 11 (9) RCW 10.95.110 and 1981 c 138 s 11;
- 12 (10) RCW 10.95.120 and 1981 c 138 s 12;
- 13 (11) RCW 10.95.130 and 1993 c 479 s 3 & 1981 c 138 s 13;
- 14 (12) RCW 10.95.140 and 1993 c 479 s 4 & 1981 c 138 s 14; and
- 15 (13) RCW 10.95.150 and 1988 c 202 s 17 & 1981 c 138 s 15.

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