
SENATE BILL 6518

State of Washington

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By Senators Roach, Benton, Long, Oke, Zarelli, Rossi, Sellar, Snyder, Johnson, Horn, McDonald, Hale, Strannigan, McCaslin, Prentice, Schow, Fraser, Deccio, Swecker, Morton, Goings, Bauer, Rasmussen and Haugen

Read first time 01/20/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to rape; amending RCW 9A.44.045, 9A.44.060,
2 9.41.010, 9.94A.440, 9.95.062, 9A.32.030, 9A.46.060, 10.64.025,
3 10.99.020, 13.40.077, 13.40.210, 43.43.830, and 71.09.020; reenacting
4 and amending RCW 9A.44.040, 9.94A.030, 9.94A.320, 9A.04.080, 9A.44.010,
5 10.95.020, and 13.40.0357; repealing RCW 9A.44.050; prescribing
6 penalties; and providing an effective date.

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

8 **Sec. 1.** RCW 9A.44.040 and 1983 c 118 s 1 and 1983 c 73 s 1 are
9 each reenacted and amended to read as follows:

10 ~~((1))~~ A person is guilty of rape in the first degree when such
11 person engages in sexual intercourse with another person:

12 (1) By forcible compulsion where the perpetrator or an accessory:

13 (a) Uses or threatens to use a deadly weapon or what appears to be
14 a deadly weapon; or

15 (b) Kidnaps the victim; or

16 (c) Inflicts serious physical injury; or

17 (d) Feloniously enters into the building or vehicle where the
18 victim is situated.

1 (2) Under circumstances not constituting an offense under
2 subsection (1) of this section:

3 (a) By forcible compulsion;

4 (b) When the victim is incapable of consent by reason of being
5 physically helpless or mentally incapacitated;

6 (c) When the victim is developmentally disabled and the perpetrator
7 is a person who is not married to the victim and who has supervisory
8 authority over the victim;

9 (d) When the perpetrator is a health care provider, the victim is
10 a client or patient, and the sexual intercourse occurs during a
11 treatment session, consultation, interview, or examination. It is an
12 affirmative defense that the defendant must prove by a preponderance of
13 the evidence that the client or patient consented to the sexual
14 intercourse with the knowledge that the sexual intercourse was not for
15 the purpose of treatment; or

16 (e) When the victim is a resident of a facility for mentally
17 disordered or chemically dependent persons and the perpetrator is a
18 person who is not married to the victim and has supervisory authority
19 over the victim.

20 (3) Rape in the first degree is a class A felony.

21 **Sec. 2.** RCW 9A.44.045 and 1982 c 192 s 12 are each amended to read
22 as follows:

23 No person convicted of rape in the first degree shall be granted a
24 deferred or suspended sentence except for the purpose of commitment to
25 an inpatient treatment facility: PROVIDED, That every person convicted
26 of rape in the first degree shall be confined for a minimum of
27 ~~((three))~~ five years: PROVIDED FURTHER, That the indeterminate
28 sentence review board ~~((of prison terms and paroles))~~ shall have
29 authority to set a period of confinement greater than ~~((three))~~ five
30 years but shall never reduce the minimum ~~((three-year))~~ five-year
31 period of confinement; nor shall the board release the convicted person
32 ~~((during the first three years of confinement))~~ as a result of any type
33 of good time calculation; nor shall the department of corrections
34 permit the convicted person to participate in any work release program
35 or furlough program ~~((during the first three years of confinement))~~.
36 ~~((This section applies only to offenses committed prior to July 1,~~
37 ~~1984.))~~

1 **Sec. 3.** RCW 9A.44.060 and 1979 ex.s. c 244 s 3 are each amended to
2 read as follows:

3 (1) A person is guilty of rape in the (~~third~~) second degree when,
4 under circumstances not constituting rape in the first (~~or second~~)
5 degree(~~s~~), such person engages in sexual intercourse with another
6 person, not married to the perpetrator:

7 (a) Where the victim did not consent as defined in RCW
8 9A.44.010(~~(+6)~~), to sexual intercourse with the perpetrator and such
9 lack of consent was clearly expressed by the victim's words or conduct,
10 or

11 (b) Where there is threat of substantial unlawful harm to property
12 rights of the victim.

13 (2) Rape in the (~~third~~) second degree is a class C felony.

14 **Sec. 4.** RCW 9.41.010 and 1997 c 338 s 46 are each amended to read
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Firearm" means a weapon or device from which a projectile or
19 projectiles may be fired by an explosive such as gunpowder.

20 (2) "Pistol" means any firearm with a barrel less than sixteen
21 inches in length, or is designed to be held and fired by the use of a
22 single hand.

23 (3) "Rifle" means a weapon designed or redesigned, made or remade,
24 and intended to be fired from the shoulder and designed or redesigned,
25 made or remade, and intended to use the energy of the explosive in a
26 fixed metallic cartridge to fire only a single projectile through a
27 rifled bore for each single pull of the trigger.

28 (4) "Short-barreled rifle" means a rifle having one or more barrels
29 less than sixteen inches in length and any weapon made from a rifle by
30 any means of modification if such modified weapon has an overall length
31 of less than twenty-six inches.

32 (5) "Shotgun" means a weapon with one or more barrels, designed or
33 redesigned, made or remade, and intended to be fired from the shoulder
34 and designed or redesigned, made or remade, and intended to use the
35 energy of the explosive in a fixed shotgun shell to fire through a
36 smooth bore either a number of ball shot or a single projectile for
37 each single pull of the trigger.

1 (6) "Short-barreled shotgun" means a shotgun having one or more
2 barrels less than eighteen inches in length and any weapon made from a
3 shotgun by any means of modification if such modified weapon has an
4 overall length of less than twenty-six inches.

5 (7) "Machine gun" means any firearm known as a machine gun,
6 mechanical rifle, submachine gun, or any other mechanism or instrument
7 not requiring that the trigger be pressed for each shot and having a
8 reservoir clip, disc, drum, belt, or other separable mechanical device
9 for storing, carrying, or supplying ammunition which can be loaded into
10 the firearm, mechanism, or instrument, and fired therefrom at the rate
11 of five or more shots per second.

12 (8) "Antique firearm" means a firearm or replica of a firearm not
13 designed or redesigned for using rim fire or conventional center fire
14 ignition with fixed ammunition and manufactured in or before 1898,
15 including any matchlock, flintlock, percussion cap, or similar type of
16 ignition system and also any firearm using fixed ammunition
17 manufactured in or before 1898, for which ammunition is no longer
18 manufactured in the United States and is not readily available in the
19 ordinary channels of commercial trade.

20 (9) "Loaded" means:

21 (a) There is a cartridge in the chamber of the firearm;

22 (b) Cartridges are in a clip that is locked in place in the
23 firearm;

24 (c) There is a cartridge in the cylinder of the firearm, if the
25 firearm is a revolver;

26 (d) There is a cartridge in the tube or magazine that is inserted
27 in the action; or

28 (e) There is a ball in the barrel and the firearm is capped or
29 primed if the firearm is a muzzle loader.

30 (10) "Dealer" means a person engaged in the business of selling
31 firearms at wholesale or retail who has, or is required to have, a
32 federal firearms license under 18 U.S.C. Sec. 923(a). A person who
33 does not have, and is not required to have, a federal firearms license
34 under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only
35 occasional sales, exchanges, or purchases of firearms for the
36 enhancement of a personal collection or for a hobby, or sells all or
37 part of his or her personal collection of firearms.

38 (11) "Crime of violence" means:

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

11 (b) Any conviction for a felony offense in effect at any time prior
12 to June 6, 1996, which is comparable to a felony classified as a crime
13 of violence in (a) of this subsection; and

14 (c) Any federal or out-of-state conviction for an offense
15 comparable to a felony classified as a crime of violence under (a) or
16 (b) of this subsection.

17 (12) "Serious offense" means any of the following felonies or a
18 felony attempt to commit any of the following felonies, as now existing
19 or hereafter amended:

20 (a) Any crime of violence;

21 (b) Any felony violation of the uniform controlled substances act,
22 chapter 69.50 RCW, that is classified as a class B felony or that has
23 a maximum term of imprisonment of at least ten years;

24 (c) Child molestation in the second degree;

25 (d) Incest when committed against a child under age fourteen;

26 (e) Indecent liberties;

27 (f) Leading organized crime;

28 (g) Promoting prostitution in the first degree;

29 (h) Rape in the (~~third~~) second degree;

30 (i) Drive-by shooting;

31 (j) Sexual exploitation;

32 (k) Vehicular assault;

33 (l) Vehicular homicide, when proximately caused by the driving of
34 any vehicle by any person while under the influence of intoxicating
35 liquor or any drug as defined by RCW 46.61.502, or by the operation of
36 any vehicle in a reckless manner;

37 (m) Any other class B felony offense with a finding of sexual
38 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

1 (n) Any other felony with a deadly weapon verdict under RCW
2 9.94A.125; or

3 (o) Any felony offense in effect at any time prior to June 6, 1996,
4 that is comparable to a serious offense, or any federal or out-of-state
5 conviction for an offense that under the laws of this state would be a
6 felony classified as a serious offense.

7 (13) "Law enforcement officer" includes a general authority
8 Washington peace officer as defined in RCW 10.93.020, or a specially
9 commissioned Washington peace officer as defined in RCW 10.93.020.
10 "Law enforcement officer" also includes a limited authority Washington
11 peace officer as defined in RCW 10.93.020 if such officer is duly
12 authorized by his or her employer to carry a concealed pistol.

13 (14) "Felony" means any felony offense under the laws of this state
14 or any federal or out-of-state offense comparable to a felony offense
15 under the laws of this state.

16 (15) "Sell" refers to the actual approval of the delivery of a
17 firearm in consideration of payment or promise of payment of a certain
18 price in money.

19 (16) "Barrel length" means the distance from the bolt face of a
20 closed action down the length of the axis of the bore to the crown of
21 the muzzle, or in the case of a barrel with attachments to the end of
22 any legal device permanently attached to the end of the muzzle.

23 (17) "Family or household member" means "family" or "household
24 member" as used in RCW 10.99.020.

25 **Sec. 5.** RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c
26 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each
27 reenacted and amended to read as follows:

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

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

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

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

5 (4) "Community custody" means that portion of an inmate's sentence
6 of confinement in lieu of earned early release time or imposed pursuant
7 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
8 controls placed on the inmate's movement and activities by the
9 department of corrections.

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

17 (6) "Community service" means compulsory service, without
18 compensation, performed for the benefit of the community by the
19 offender.

20 (7) "Community supervision" means a period of time during which a
21 convicted offender is subject to crime-related prohibitions and other
22 sentence conditions imposed by a court pursuant to this chapter or RCW
23 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
24 may include crime-related prohibitions and other conditions imposed
25 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
26 for out-of-state supervision of parolees and probationers, RCW
27 9.95.270, community supervision is the functional equivalent of
28 probation and should be considered the same as probation by other
29 states.

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

32 (9) "Conviction" means an adjudication of guilt pursuant to Titles
33 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
34 acceptance of a plea of guilty.

35 (10) "Court-ordered legal financial obligation" means a sum of
36 money that is ordered by a superior court of the state of Washington
37 for legal financial obligations which may include restitution to the
38 victim, statutorily imposed crime victims' compensation fees as
39 assessed pursuant to RCW 7.68.035, court costs, county or interlocal

1 drug funds, court-appointed attorneys' fees, and costs of defense,
2 fines, and any other financial obligation that is assessed to the
3 offender as a result of a felony conviction. Upon conviction for
4 vehicular assault while under the influence of intoxicating liquor or
5 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
6 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
7 legal financial obligations may also include payment to a public agency
8 of the expense of an emergency response to the incident resulting in
9 the conviction, subject to the provisions in RCW 38.52.430.

10 (11) "Crime-related prohibition" means an order of a court
11 prohibiting conduct that directly relates to the circumstances of the
12 crime for which the offender has been convicted, and shall not be
13 construed to mean orders directing an offender affirmatively to
14 participate in rehabilitative programs or to otherwise perform
15 affirmative conduct. However, affirmative acts necessary to monitor
16 compliance with the order of a court may be required by the department.

17 (12) "Criminal history" means the list of a defendant's prior
18 convictions and juvenile adjudications, whether in this state, in
19 federal court, or elsewhere. The history shall include, where known,
20 for each conviction (a) whether the defendant has been placed on
21 probation and the length and terms thereof; and (b) whether the
22 defendant has been incarcerated and the length of incarceration.

23 (13) "Day fine" means a fine imposed by the sentencing judge that
24 equals the difference between the offender's net daily income and the
25 reasonable obligations that the offender has for the support of the
26 offender and any dependents.

27 (14) "Day reporting" means a program of enhanced supervision
28 designed to monitor the defendant's daily activities and compliance
29 with sentence conditions, and in which the defendant is required to
30 report daily to a specific location designated by the department or the
31 sentencing judge.

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

33 (16) "Determinate sentence" means a sentence that states with
34 exactitude the number of actual years, months, or days of total
35 confinement, of partial confinement, of community supervision, the
36 number of actual hours or days of community service work, or dollars or
37 terms of a legal financial obligation. The fact that an offender
38 through "earned early release" can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a
2 determinate sentence.

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

15 (18) "Drug offense" means:

16 (a) Any felony violation of chapter 69.50 RCW except possession of
17 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
18 controlled substance (RCW 69.50.403);

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

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

25 (19) "Escape" means:

26 (a) Escape in the first degree (RCW 9A.76.110), escape in the
27 second degree (RCW 9A.76.120), willful failure to return from furlough
28 (RCW 72.66.060), willful failure to return from work release (RCW
29 72.65.070), or willful failure to be available for supervision by the
30 department while in community custody (RCW 72.09.310); or

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

34 (20) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
37 and-run injury-accident (RCW 46.52.020(4)); or

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

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

6 (22) "First-time offender" means any person who is convicted of a
7 felony (a) not classified as a violent offense or a sex offense under
8 this chapter, or (b) that is not the manufacture, delivery, or
9 possession with intent to manufacture or deliver a controlled substance
10 classified in schedule I or II that is a narcotic drug, nor the
11 manufacture, delivery, or possession with intent to deliver
12 methamphetamine, its salts, isomers, and salts of its isomers as
13 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
14 controlled substance or counterfeit substance classified in schedule I,
15 RCW 69.50.204, except leaves and flowering tops of marihuana, who
16 previously has never been convicted of a felony in this state, federal
17 court, or another state, and who has never participated in a program of
18 deferred prosecution for a felony offense.

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

22 (a) Any felony defined under any law as a class A felony or
23 criminal solicitation of or criminal conspiracy to commit a class A
24 felony;

25 (b) Assault in the second degree;

26 (c) Assault of a child in the second degree;

27 (d) Child molestation in the second degree;

28 (e) Controlled substance homicide;

29 (f) Extortion in the first degree;

30 (g) Incest when committed against a child under age fourteen;

31 (h) Indecent liberties;

32 (i) Kidnapping in the second degree;

33 (j) Leading organized crime;

34 (k) Manslaughter in the first degree;

35 (l) Manslaughter in the second degree;

36 (m) Promoting prostitution in the first degree;

37 (n) Rape in the (~~third~~) second degree;

38 (o) Robbery in the second degree;

39 (p) Sexual exploitation;

1 (q) Vehicular assault;

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

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

8 (t) Any other felony with a deadly weapon verdict under RCW
9 9.94A.125;

10 (u) Any felony offense in effect at any time prior to December 2,
11 1993, that is comparable to a most serious offense under this
12 subsection, or any federal or out-of-state conviction for an offense
13 that under the laws of this state would be a felony classified as a
14 most serious offense under this subsection;

15 (v)(i) A prior conviction for indecent liberties under RCW
16 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
17 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
18 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
19 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

20 (ii) A prior conviction for indecent liberties under RCW
21 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
22 if: (A) The crime was committed against a child under the age of
23 fourteen; or (B) the relationship between the victim and perpetrator is
24 included in the definition of indecent liberties under RCW
25 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
26 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
27 through July 27, 1997.

28 (24) "Nonviolent offense" means an offense which is not a violent
29 offense.

30 (25) "Offender" means a person who has committed a felony
31 established by state law and is eighteen years of age or older or is
32 less than eighteen years of age but whose case is under superior court
33 jurisdiction under RCW 13.04.030 or has been transferred by the
34 appropriate juvenile court to a criminal court pursuant to RCW
35 13.40.110. Throughout this chapter, the terms "offender" and
36 "defendant" are used interchangeably.

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

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

6 (27) "Persistent offender" is an offender who:

7 (a)(i) Has been convicted in this state of any felony considered a
8 most serious offense; and

9 (ii) Has, before the commission of the offense under (a) of this
10 subsection, been convicted as an offender on at least two separate
11 occasions, whether in this state or elsewhere, of felonies that under
12 the laws of this state would be considered most serious offenses and
13 would be included in the offender score under RCW 9.94A.360; provided
14 that of the two or more previous convictions, at least one conviction
15 must have occurred before the commission of any of the other most
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
18 of a child in the first degree, child molestation in the first degree,
19 (~~rape in the second degree,~~) rape of a child in the second degree, or
20 indecent liberties by forcible compulsion; (B) murder in the first
21 degree, murder in the second degree, homicide by abuse, kidnapping in
22 the first degree, kidnapping in the second degree, assault in the first
23 degree, assault in the second degree, assault of a child in the first
24 degree, or burglary in the first degree, with a finding of sexual
25 motivation; or (C) an attempt to commit any crime listed in this
26 subsection (27)(b)(i); and

27 (ii) Has, before the commission of the offense under (b)(i) of this
28 subsection, been convicted as an offender on at least one occasion,
29 whether in this state or elsewhere, of an offense listed in (b)(i) of
30 this subsection. A conviction for rape of a child in the first degree
31 constitutes a conviction under subsection (27)(b)(i) only when the
32 offender was sixteen years of age or older when the offender committed
33 the offense. (~~A conviction for rape of a child in the second degree
34 constitutes a conviction under subsection (27)(b)(i) only when the
35 offender was eighteen years of age or older when the offender committed
36 the offense.~~)

37 (28) "Postrelease supervision" is that portion of an offender's
38 community placement that is not community custody.

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

5 (30) "Serious traffic offense" means:

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

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

14 (31) "Serious violent offense" is a subcategory of violent offense
15 and means:

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

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

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

27 (33) "Sex offense" means:

28 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
29 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
30 criminal attempt, criminal solicitation, or criminal conspiracy to
31 commit such crimes;

32 (b) A felony with a finding of sexual motivation under RCW
33 9.94A.127 or 13.40.135; or

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

37 (34) "Sexual motivation" means that one of the purposes for which
38 the defendant committed the crime was for the purpose of his or her
39 sexual gratification.

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

5 (36) "Transition training" means written and verbal instructions
6 and assistance provided by the department to the offender during the
7 two weeks prior to the offender's successful completion of the work
8 ethic camp program. The transition training shall include instructions
9 in the offender's requirements and obligations during the offender's
10 period of community custody.

11 (37) "Victim" means any person who has sustained emotional,
12 psychological, physical, or financial injury to person or property as
13 a direct result of the crime charged.

14 (38) "Violent offense" means:

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

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

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

34 (39) "Work crew" means a program of partial confinement consisting
35 of civic improvement tasks for the benefit of the community of not less
36 than thirty-five hours per week that complies with RCW 9.94A.135. The
37 civic improvement tasks shall have minimal negative impact on existing
38 private industries or the labor force in the county where the service
39 or labor is performed. The civic improvement tasks shall not affect

1 employment opportunities for people with developmental disabilities
2 contracted through sheltered workshops as defined in RCW 82.04.385.
3 Only those offenders sentenced to a facility operated or utilized under
4 contract by a county or the state are eligible to participate on a work
5 crew. Offenders sentenced for a sex offense as defined in subsection
6 (33) of this section are not eligible for the work crew program.

7 (40) "Work ethic camp" means an alternative incarceration program
8 designed to reduce recidivism and lower the cost of corrections by
9 requiring offenders to complete a comprehensive array of real-world job
10 and vocational experiences, character-building work ethics training,
11 life management skills development, substance abuse rehabilitation,
12 counseling, literacy training, and basic adult education.

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

18 (42) "Home detention" means a program of partial confinement
19 available to offenders wherein the offender is confined in a private
20 residence subject to electronic surveillance.

21 **Sec. 6.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c
22 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each
23 reenacted and amended to read as follows:

24 TABLE 2

25 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

26	XV	Aggravated Murder 1 (RCW 10.95.020)
27	XIV	Murder 1 (RCW 9A.32.030)
28		Homicide by abuse (RCW 9A.32.055)
29		Malicious explosion 1 (RCW 70.74.280(1))
30	XIII	Murder 2 (RCW 9A.32.050)
31		Malicious explosion 2 (RCW 70.74.280(2))
32		Malicious placement of an explosive 1 (RCW
33		70.74.270(1))
34	XII	Assault 1 (RCW 9A.36.011)
35		Assault of a Child 1 (RCW 9A.36.120)

1 Rape 1 (RCW 9A.44.040)
2 Rape of a Child 1 (RCW 9A.44.073)
3 Malicious placement of an imitation device
4 1 (RCW 70.74.272(1)(a))
5 XI ((~~Rape 2 (RCW 9A.44.050)~~))
6 Rape of a Child 2 (RCW 9A.44.076)
7 Manslaughter 1 (RCW 9A.32.060)
8 X Kidnapping 1 (RCW 9A.40.020)
9 Child Molestation 1 (RCW 9A.44.083)
10 Malicious explosion 3 (RCW 70.74.280(3))
11 Over 18 and deliver heroin or narcotic from
12 Schedule I or II to someone under 18
13 (RCW 69.50.406)
14 Leading Organized Crime (RCW
15 9A.82.060(1)(a))
16 Indecent Liberties (with forcible
17 compulsion) (RCW 9A.44.100(1)(a))
18 IX Assault of a Child 2 (RCW 9A.36.130)
19 Robbery 1 (RCW 9A.56.200)
20 Explosive devices prohibited (RCW
21 70.74.180)
22 Malicious placement of an explosive 2 (RCW
23 70.74.270(2))
24 Over 18 and deliver narcotic from Schedule
25 III, IV, or V or a nonnarcotic from
26 Schedule I-V to someone under 18 and 3
27 years junior (RCW 69.50.406)
28 Controlled Substance Homicide (RCW
29 69.50.415)
30 Sexual Exploitation (RCW 9.68A.040)
31 Inciting Criminal Profiteering (RCW
32 9A.82.060(1)(b))
33 Vehicular Homicide, by being under the
34 influence of intoxicating liquor or
35 any drug (RCW 46.61.520)

1 VIII Arson 1 (RCW 9A.48.020)
2 Promoting Prostitution 1 (RCW 9A.88.070)
3 Selling for profit (controlled or
4 counterfeit) any controlled substance
5 (RCW 69.50.410)
6 Manufacture, deliver, or possess with
7 intent to deliver heroin or cocaine
8 (RCW 69.50.401(a)(1)(i))
9 Manufacture, deliver, or possess with
10 intent to deliver methamphetamine (RCW
11 69.50.401(a)(1)(ii))
12 Possession of ephedrine or pseudoephedrine
13 with intent to manufacture
14 methamphetamine (RCW 69.50.440)
15 Vehicular Homicide, by the operation of any
16 vehicle in a reckless manner (RCW
17 46.61.520)
18 Manslaughter 2 (RCW 9A.32.070)

19 VII Burglary 1 (RCW 9A.52.020)
20 Vehicular Homicide, by disregard for the
21 safety of others (RCW 46.61.520)
22 Introducing Contraband 1 (RCW 9A.76.140)
23 Indecent Liberties (without forcible
24 compulsion) (RCW 9A.44.100(1) (b) and
25 (c))
26 Child Molestation 2 (RCW 9A.44.086)
27 Dealing in depictions of minor engaged in
28 sexually explicit conduct (RCW
29 9.68A.050)
30 Sending, bringing into state depictions of
31 minor engaged in sexually explicit
32 conduct (RCW 9.68A.060)
33 Involving a minor in drug dealing (RCW
34 69.50.401(f))
35 Drive-by Shooting (RCW 9A.36.045)
36 Unlawful Possession of a Firearm in the
37 first degree (RCW 9.41.040(1)(a))

1 Malicious placement of an explosive 3 (RCW
2 70.74.270(3))

3 VI Bribery (RCW 9A.68.010)
4 Rape of a Child 3 (RCW 9A.44.079)
5 Intimidating a Juror/Witness (RCW
6 9A.72.110, 9A.72.130)
7 Malicious placement of an imitation device
8 2 (RCW 70.74.272(1)(b))
9 Incest 1 (RCW 9A.64.020(1))
10 Manufacture, deliver, or possess with
11 intent to deliver narcotics from
12 Schedule I or II (except heroin or
13 cocaine) (RCW 69.50.401(a)(1)(i))
14 Intimidating a Judge (RCW 9A.72.160)
15 Bail Jumping with Murder 1 (RCW
16 9A.76.170(2)(a))
17 Theft of a Firearm (RCW 9A.56.300)

18 V Persistent prison misbehavior (RCW
19 9.94.070)
20 Criminal Mistreatment 1 (RCW 9A.42.020)
21 Abandonment of dependent person 1 (RCW
22 9A.42.060)
23 Rape ((3)) 2 (RCW 9A.44.060)
24 Sexual Misconduct with a Minor 1 (RCW
25 9A.44.093)
26 Child Molestation 3 (RCW 9A.44.089)
27 Kidnapping 2 (RCW 9A.40.030)
28 Extortion 1 (RCW 9A.56.120)
29 Incest 2 (RCW 9A.64.020(2))
30 Perjury 1 (RCW 9A.72.020)
31 Extortionate Extension of Credit (RCW
32 9A.82.020)
33 Advancing money or property for
34 extortionate extension of credit (RCW
35 9A.82.030)
36 Extortionate Means to Collect Extensions of
37 Credit (RCW 9A.82.040)

1 Rendering Criminal Assistance 1 (RCW
2 9A.76.070)
3 Bail Jumping with class A Felony (RCW
4 9A.76.170(2)(b))
5 Sexually Violating Human Remains (RCW
6 9A.44.105)
7 Delivery of imitation controlled substance
8 by person eighteen or over to person
9 under eighteen (RCW 69.52.030(2))
10 Possession of a Stolen Firearm (RCW
11 9A.56.310)

12 IV Residential Burglary (RCW 9A.52.025)
13 Theft of Livestock 1 (RCW 9A.56.080)
14 Robbery 2 (RCW 9A.56.210)
15 Assault 2 (RCW 9A.36.021)
16 Escape 1 (RCW 9A.76.110)
17 Arson 2 (RCW 9A.48.030)
18 Commercial Bribery (RCW 9A.68.060)
19 Bribing a Witness/Bribe Received by Witness
20 (RCW 9A.72.090, 9A.72.100)
21 Malicious Harassment (RCW 9A.36.080)
22 Threats to Bomb (RCW 9.61.160)
23 Willful Failure to Return from Furlough
24 (RCW 72.66.060)
25 Hit and Run--Injury Accident (RCW
26 46.52.020(4))
27 Hit and Run with Vessel--Injury Accident
28 (RCW 88.12.155(3))
29 Vehicular Assault (RCW 46.61.522)
30 Manufacture, deliver, or possess with
31 intent to deliver narcotics from
32 Schedule III, IV, or V or nonnarcotics
33 from Schedule I-V (except marijuana or
34 methamphetamines) (RCW 69.50.401
35 (a)(1) (iii) through (v))
36 Influencing Outcome of Sporting Event (RCW
37 9A.82.070)

1 Use of Proceeds of Criminal Profiteering
2 (RCW 9A.82.080 (1) and (2))
3 Knowingly Trafficking in Stolen Property
4 (RCW 9A.82.050(2))
5 III Criminal Gang Intimidation (RCW 9A.46.120)
6 Criminal Mistreatment 2 (RCW 9A.42.030)
7 Abandonment of dependent person 2 (RCW
8 9A.42.070)
9 Extortion 2 (RCW 9A.56.130)
10 Unlawful Imprisonment (RCW 9A.40.040)
11 Assault 3 (RCW 9A.36.031)
12 Assault of a Child 3 (RCW 9A.36.140)
13 Custodial Assault (RCW 9A.36.100)
14 Unlawful possession of firearm in the
15 second degree (RCW 9.41.040(1)(b))
16 Harassment (RCW 9A.46.020)
17 Promoting Prostitution 2 (RCW 9A.88.080)
18 Willful Failure to Return from Work Release
19 (RCW 72.65.070)
20 Burglary 2 (RCW 9A.52.030)
21 Introducing Contraband 2 (RCW 9A.76.150)
22 Communication with a Minor for Immoral
23 Purposes (RCW 9.68A.090)
24 Patronizing a Juvenile Prostitute (RCW
25 9.68A.100)
26 Escape 2 (RCW 9A.76.120)
27 Perjury 2 (RCW 9A.72.030)
28 Bail Jumping with class B or C Felony (RCW
29 9A.76.170(2)(c))
30 Intimidating a Public Servant (RCW
31 9A.76.180)
32 Tampering with a Witness (RCW 9A.72.120)
33 Manufacture, deliver, or possess with
34 intent to deliver marijuana (RCW
35 69.50.401(a)(1)(iii))
36 Delivery of a material in lieu of a
37 controlled substance (RCW
38 69.50.401(c))

1 Manufacture, distribute, or possess with
2 intent to distribute an imitation
3 controlled substance (RCW
4 69.52.030(1))
5 Recklessly Trafficking in Stolen Property
6 (RCW 9A.82.050(1))
7 Theft of livestock 2 (RCW 9A.56.080)
8 Securities Act violation (RCW 21.20.400)

9 II Unlawful Practice of Law (RCW 2.48.180)
10 Malicious Mischief 1 (RCW 9A.48.070)
11 Possession of Stolen Property 1 (RCW
12 9A.56.150)
13 Theft 1 (RCW 9A.56.030)
14 Class B Felony Theft of Rental, Leased, or
15 Lease-purchased Property (RCW
16 9A.56.096(4))
17 Trafficking in Insurance Claims (RCW
18 48.30A.015)
19 Unlicensed Practice of a Profession or
20 Business (RCW 18.130.190(7))
21 Health Care False Claims (RCW 48.80.030)
22 Possession of controlled substance that is
23 either heroin or narcotics from
24 Schedule I or II (RCW 69.50.401(d))
25 Possession of phencyclidine (PCP) (RCW
26 69.50.401(d))
27 Create, deliver, or possess a counterfeit
28 controlled substance (RCW
29 69.50.401(b))
30 Computer Trespass 1 (RCW 9A.52.110)
31 Escape from Community Custody (RCW
32 72.09.310)

33 I Theft 2 (RCW 9A.56.040)
34 Class C Felony Theft of Rental, Leased, or
35 Lease-purchased Property (RCW
36 9A.56.096(4))
37 Possession of Stolen Property 2 (RCW
38 9A.56.160)

1 Forgery (RCW 9A.60.020)
2 Taking Motor Vehicle Without Permission
3 (RCW 9A.56.070)
4 Vehicle Prowl 1 (RCW 9A.52.095)
5 Attempting to Elude a Pursuing Police
6 Vehicle (RCW 46.61.024)
7 Malicious Mischief 2 (RCW 9A.48.080)
8 Reckless Burning 1 (RCW 9A.48.040)
9 Unlawful Issuance of Checks or Drafts (RCW
10 9A.56.060)
11 Unlawful Use of Food Stamps (RCW 9.91.140
12 (2) and (3))
13 False Verification for Welfare (RCW
14 74.08.055)
15 Forged Prescription (RCW 69.41.020)
16 Forged Prescription for a Controlled
17 Substance (RCW 69.50.403)
18 Possess Controlled Substance that is a
19 Narcotic from Schedule III, IV, or V
20 or Non-narcotic from Schedule I-V
21 (except phencyclidine) (RCW
22 69.50.401(d))

23 **Sec. 7.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read
24 as follows:

25 (1) Decision not to prosecute.

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

31 GUIDELINE/COMMENTARY:

32 Examples

33 The following are examples of reasons not to prosecute which could
34 satisfy the standard.

35 (a) Contrary to Legislative Intent - It may be proper to decline to
36 charge where the application of criminal sanctions would be clearly
37 contrary to the intent of the legislature in enacting the particular
38 statute.

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

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

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

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

8 (iv) The statute has not been recently reconsidered by the
9 legislature.

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

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

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

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

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

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

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

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

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

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

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

35 (f) High Disproportionate Cost of Prosecution - It may be proper to
36 decline to charge where the cost of locating or transporting, or the
37 burden on, prosecution witnesses is highly disproportionate to the
38 importance of prosecuting the offense in question. This reason should

1 be limited to minor cases and should not be relied upon in serious
2 cases.

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

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

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

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

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

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

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

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

25 Notification

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

28 (2) Decision to prosecute.

29 STANDARD:

30 Crimes against persons will be filed if sufficient admissible
31 evidence exists, which, when considered with the most plausible,
32 reasonably foreseeable defense that could be raised under the evidence,
33 would justify conviction by a reasonable and objective fact-finder.
34 With regard to offenses prohibited by RCW 9A.44.040, ((9A.44.050,))
35 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
36 9A.64.020 the prosecutor should avoid prefiling agreements or
37 diversions intended to place the accused in a program of treatment or
38 counseling, so that treatment, if determined to be beneficial, can be
39 provided pursuant to RCW 9.94A.120(8).

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

6 See table below for the crimes within these categories.

7 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

8 CRIMES AGAINST PERSONS

9 Aggravated Murder
10 1st Degree Murder
11 2nd Degree Murder
12 1st Degree Kidnaping
13 1st Degree Assault
14 1st Degree Assault of a Child
15 1st Degree Rape
16 1st Degree Robbery
17 1st Degree Rape of a Child
18 1st Degree Arson
19 2nd Degree Kidnaping
20 2nd Degree Assault
21 2nd Degree Assault of a Child
22 2nd Degree Rape
23 2nd Degree Robbery
24 1st Degree Burglary
25 1st Degree Manslaughter
26 2nd Degree Manslaughter
27 1st Degree Extortion
28 Indecent Liberties
29 Incest
30 2nd Degree Rape of a Child
31 Vehicular Homicide
32 Vehicular Assault
33 (~~3rd Degree Rape~~)
34 3rd Degree Rape of a Child
35 1st Degree Child Molestation
36 2nd Degree Child Molestation
37 3rd Degree Child Molestation
38 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
29 2nd Degree Malicious Mischief
30 1st Degree Reckless Burning
31 Taking a Motor Vehicle without Authorization
32 Forgery
33 2nd Degree Perjury
34 2nd Degree Promoting Prostitution
35 Tampering with a Witness
36 Trading in Public Office
37 Trading in Special Influence
38 Receiving/Granting Unlawful Compensation
39 Bigamy

1 Eluding a Pursuing Police Vehicle
2 Willful Failure to Return from Furlough
3 Escape from Community Custody
4 Riot (if against property)
5 Thefts of Livestock

6 ALL OTHER UNCLASSIFIED FELONIES

7 Selection of Charges/Degree of Charge

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

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

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

14 (2) The prosecutor should not overcharge to obtain a guilty plea.
15 Overcharging includes:

16 (a) Charging a higher degree;

17 (b) Charging additional counts.

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

24 GUIDELINES/COMMENTARY:

25 Police Investigation

26 A prosecuting attorney is dependent upon law enforcement agencies
27 to conduct the necessary factual investigation which must precede the
28 decision to prosecute. The prosecuting attorney shall ensure that a
29 thorough factual investigation has been conducted before a decision to
30 prosecute is made. In ordinary circumstances the investigation should
31 include the following:

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

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

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

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

4 Exceptions

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

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

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

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

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

17 Investigation Techniques

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

20 (1) Polygraph testing;

21 (2) Hypnosis;

22 (3) Electronic surveillance;

23 (4) Use of informants.

24 Pre-Filing Discussions with Defendant

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

28 Pre-Filing Discussions with Victim(s)

29 Discussions with the victim(s) or victims' representatives
30 regarding the selection or disposition of charges may occur before the
31 filing of charges. The discussions may be considered by the prosecutor
32 in charging and disposition decisions, and should be considered before
33 reaching any agreement with the defendant regarding these decisions.

34 **Sec. 8.** RCW 9.95.062 and 1996 c 275 s 9 are each amended to read
35 as follows:

36 (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in
37 a criminal action shall not stay the execution of the judgment of

1 conviction, if the court determines by a preponderance of the evidence
2 that:

3 (a) The defendant is likely to flee or to pose a danger to the
4 safety of any other person or the community if the judgment is stayed;
5 or

6 (b) The delay resulting from the stay will unduly diminish the
7 deterrent effect of the punishment; or

8 (c) A stay of the judgment will cause unreasonable trauma to the
9 victims of the crime or their families; or

10 (d) The defendant has not undertaken to the extent of the
11 defendant's financial ability to pay the financial obligations under
12 the judgment or has not posted an adequate performance bond to assure
13 payment.

14 (2) An appeal by a defendant convicted of one of the following
15 offenses shall not stay execution of the judgment of conviction: Rape
16 in the first (~~or second~~) degree (RCW 9A.44.040 (~~and 9A.44.050~~));
17 rape of a child in the first, second, or third degree (RCW 9A.44.073,
18 9A.44.076, and 9A.44.079); child molestation in the first, second, or
19 third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual
20 misconduct with a minor in the first or second degree (RCW 9A.44.093
21 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW
22 9A.64.020); luring (RCW 9A.40.090); any class A or B felony that is a
23 sexually motivated offense as defined in RCW 9.94A.030; a felony
24 violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28
25 RCW, a criminal attempt, solicitation, or conspiracy to commit one of
26 those offenses.

27 (3) In case the defendant has been convicted of a felony, and has
28 been unable to obtain release pending the appeal by posting an appeal
29 bond, cash, adequate security, release on personal recognizance, or any
30 other conditions imposed by the court, the time the defendant has been
31 imprisoned pending the appeal shall be deducted from the term for which
32 the defendant was sentenced, if the judgment is affirmed.

33 **Sec. 9.** RCW 9A.04.080 and 1997 c 174 s 1 and 1997 c 97 s 1 are
34 each reenacted and amended to read as follows:

35 (1) Prosecutions for criminal offenses shall not be commenced after
36 the periods prescribed in this section.

37 (a) The following offenses may be prosecuted at any time after
38 their commission:

1 (i) Murder;
2 (ii) Homicide by abuse;
3 (iii) Arson if a death results;
4 (iv) Vehicular homicide;
5 (v) Vehicular assault if a death results;
6 (vi) Hit-and-run injury-accident if a death results (RCW
7 46.52.020(4)).

8 (b) The following offenses shall not be prosecuted more than ten
9 years after their commission:

10 (i) Any felony committed by a public officer if the commission is
11 in connection with the duties of his or her office or constitutes a
12 breach of his or her public duty or a violation of the oath of office;

13 (ii) Arson if no death results; or

14 (iii) Violations of RCW 9A.44.040 (~~or 9A.44.050~~) if the rape is
15 reported to a law enforcement agency within one year of its commission;
16 except that if the victim is under fourteen years of age when the rape
17 is committed and the rape is reported to a law enforcement agency
18 within one year of its commission, the violation may be prosecuted up
19 to three years after the victim's eighteenth birthday or up to ten
20 years after the rape's commission, whichever is later. If a violation
21 of RCW 9A.44.040 (~~or 9A.44.050~~) is not reported within one year, the
22 rape may not be prosecuted: (A) More than three years after its
23 commission if the violation was committed against a victim fourteen
24 years of age or older; or (B) more than three years after the victim's
25 eighteenth birthday or more than seven years after the rape's
26 commission, whichever is later, if the violation was committed against
27 a victim under fourteen years of age.

28 (c) Violations of the following statutes shall not be prosecuted
29 more than three years after the victim's eighteenth birthday or more
30 than seven years after their commission, whichever is later: RCW
31 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
32 9A.44.100(1)(b), or 9A.64.020.

33 (d) The following offenses shall not be prosecuted more than six
34 years after their commission: Violations of RCW 9A.82.060 or
35 9A.82.080.

36 (e) The following offenses shall not be prosecuted more than five
37 years after their commission: Any class C felony under chapter 74.09,
38 82.36, or 82.38 RCW.

1 (f) Bigamy shall not be prosecuted more than three years after the
2 time specified in RCW 9A.64.010.

3 (g) A violation of RCW 9A.56.030 must not be prosecuted more than
4 three years after the discovery of the offense when the victim is a tax
5 exempt corporation under 26 U.S.C. Sec. 501(c)(3).

6 (h) No other felony may be prosecuted more than three years after
7 its commission.

8 (i) No gross misdemeanor may be prosecuted more than two years
9 after its commission.

10 (j) No misdemeanor may be prosecuted more than one year after its
11 commission.

12 (2) The periods of limitation prescribed in subsection (1) of this
13 section do not run during any time when the person charged is not
14 usually and publicly resident within this state.

15 (3) If, before the end of a period of limitation prescribed in
16 subsection (1) of this section, an indictment has been found or a
17 complaint or an information has been filed, and the indictment,
18 complaint, or information is set aside, then the period of limitation
19 is extended by a period equal to the length of time from the finding or
20 filing to the setting aside.

21 **Sec. 10.** RCW 9A.32.030 and 1990 c 200 s 1 are each amended to read
22 as follows:

23 (1) A person is guilty of murder in the first degree when:

24 (a) With a premeditated intent to cause the death of another
25 person, he or she causes the death of such person or of a third person;
26 or

27 (b) Under circumstances manifesting an extreme indifference to
28 human life, he or she engages in conduct which creates a grave risk of
29 death to any person, and thereby causes the death of a person; or

30 (c) He or she commits or attempts to commit the crime of either (1)
31 robbery in the first or second degree, (2) rape in the first (~~or~~
32 ~~second~~) degree, (3) burglary in the first degree, (4) arson in the
33 first or second degree, or (5) kidnapping in the first or second
34 degree, and in the course of or in furtherance of such crime or in
35 immediate flight therefrom, he or she, or another participant, causes
36 the death of a person other than one of the participants: Except that
37 in any prosecution under this subdivision (1)(c) in which the defendant
38 was not the only participant in the underlying crime, if established by

1 the defendant by a preponderance of the evidence, it is a defense that
2 the defendant:

3 (i) Did not commit the homicidal act or in any way solicit,
4 request, command, importune, cause, or aid the commission thereof; and

5 (ii) Was not armed with a deadly weapon, or any instrument,
6 article, or substance readily capable of causing death or serious
7 physical injury; and

8 (iii) Had no reasonable grounds to believe that any other
9 participant was armed with such a weapon, instrument, article, or
10 substance; and

11 (iv) Had no reasonable grounds to believe that any other
12 participant intended to engage in conduct likely to result in death or
13 serious physical injury.

14 (2) Murder in the first degree is a class A felony.

15 **Sec. 11.** RCW 9A.44.010 and 1997 c 392 s 513 and 1997 c 112 s 37
16 are each reenacted and amended to read as follows:

17 As used in this chapter:

18 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs
19 upon any penetration, however slight, and

20 (b) Also means any penetration of the vagina or anus however
21 slight, by an object, when committed on one person by another, whether
22 such persons are of the same or opposite sex, except when such
23 penetration is accomplished for medically recognized treatment or
24 diagnostic purposes, and

25 (c) Also means any act of sexual contact between persons involving
26 the sex organs of one person and the mouth or anus of another whether
27 such persons are of the same or opposite sex.

28 (2) "Sexual contact" means any touching of the sexual or other
29 intimate parts of a person done for the purpose of gratifying sexual
30 desire of either party or a third party.

31 (3) "Married" means one who is legally married to another, but does
32 not include a person who is living separate and apart from his or her
33 spouse and who has filed in an appropriate court for legal separation
34 or for dissolution of his or her marriage.

35 (4) "Mental incapacity" is that condition existing at the time of
36 the offense which prevents a person from understanding the nature or
37 consequences of the act of sexual intercourse whether that condition is

1 produced by illness, defect, the influence of a substance or from some
2 other cause.

3 (5) "Physically helpless" means a person who is unconscious or for
4 any other reason is physically unable to communicate unwillingness to
5 an act.

6 (6) "Forcible compulsion" means physical force which overcomes
7 resistance, or a threat, express or implied, that places a person in
8 fear of death or physical injury to herself or himself or another
9 person, or in fear that she or he or another person will be kidnapped.

10 (7) "Consent" means that at the time of the act of sexual
11 intercourse or sexual contact there are actual words or conduct
12 indicating freely given agreement to have sexual intercourse or sexual
13 contact.

14 (8) "Significant relationship" means a situation in which the
15 perpetrator is:

16 (a) A person who undertakes the responsibility, professionally or
17 voluntarily, to provide education, health, welfare, or organized
18 recreational activities principally for minors;

19 (b) A person who in the course of his or her employment supervises
20 minors; or

21 (c) A person who provides welfare, health or residential
22 assistance, personal care, or organized recreational activities to
23 frail elders or vulnerable adults, including a provider, employee,
24 temporary employee, volunteer, or independent contractor who supplies
25 services to long-term care facilities licensed or required to be
26 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home
27 health, hospice, or home care agencies licensed or required to be
28 licensed under chapter 70.127 RCW, but not including a consensual
29 sexual partner.

30 (9) "Abuse of a supervisory position" means a direct or indirect
31 threat or promise to use authority to the detriment or benefit of a
32 minor.

33 (10) "Developmentally disabled," for purposes of RCW
34 (~~9A.44.050(1)(e)~~) 9A.44.040(2)(c) and 9A.44.100(1)(c), means a person
35 with a developmental disability as defined in RCW 71A.10.020.

36 (11) "Person with supervisory authority," for purposes of RCW
37 (~~9A.44.050(1)~~) 9A.44.040(2) (c) or (e) and 9A.44.100(1) (c) or (e),
38 means any proprietor or employee of any public or private care or

1 treatment facility who directly supervises developmentally disabled,
2 mentally disordered, or chemically dependent persons at the facility.

3 (12) "Mentally disordered person" for the purposes of RCW
4 (~~9A.44.050(1)(e)~~) 9A.44.040(2)(e) and 9A.44.100(1)(e) means a person
5 with a "mental disorder" as defined in RCW 71.05.020.

6 (13) "Chemically dependent person" for purposes of RCW
7 (~~9A.44.050(1)(e)~~) 9A.44.040(2)(e) and 9A.44.100(1)(e) means a person
8 who is "chemically dependent" as defined in RCW 70.96A.020(4).

9 (14) "Health care provider" for purposes of RCW (~~9A.44.050~~)
10 9A.44.040 and 9A.44.100 means a person who is, holds himself or herself
11 out to be, or provides services as if he or she were: (a) A member of
12 a health care profession under chapter 18.130 RCW; or (b) registered or
13 certified under chapter 18.19 RCW, regardless of whether the health
14 care provider is licensed, certified, or registered by the state.

15 (15) "Treatment" for purposes of RCW (~~9A.44.050~~) 9A.44.040 and
16 9A.44.100 means the active delivery of professional services by a
17 health care provider which the health care provider holds himself or
18 herself out to be qualified to provide.

19 (16) "Frail elder or vulnerable adult" means a person sixty years
20 of age or older who has the functional, mental, or physical inability
21 to care for himself or herself. "Frail elder or vulnerable adult" also
22 includes a person found incapacitated under chapter 11.88 RCW, a person
23 over eighteen years of age who has a developmental disability under
24 chapter 71A.10 RCW, a person admitted to a long-term care facility that
25 is licensed or required to be licensed under chapter 18.20, 18.51,
26 72.36, or 70.128 RCW, and a person receiving services from a home
27 health, hospice, or home care agency licensed or required to be
28 licensed under chapter 70.127 RCW.

29 **Sec. 12.** RCW 9A.46.060 and 1997 c 338 s 52 are each amended to
30 read as follows:

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

- 33 (1) Harassment (RCW 9A.46.020);
- 34 (2) Malicious harassment (RCW 9A.36.080);
- 35 (3) Telephone harassment (RCW 9.61.230);
- 36 (4) Assault in the first degree (RCW 9A.36.011);
- 37 (5) Assault of a child in the first degree (RCW 9A.36.120);
- 38 (6) Assault in the second degree (RCW 9A.36.021);

1 (7) Assault of a child in the second degree (RCW 9A.36.130);
2 (8) Assault in the fourth degree (RCW 9A.36.041);
3 (9) Reckless endangerment (RCW 9A.36.050);
4 (10) Extortion in the first degree (RCW 9A.56.120);
5 (11) Extortion in the second degree (RCW 9A.56.130);
6 (12) Coercion (RCW 9A.36.070);
7 (13) Burglary in the first degree (RCW 9A.52.020);
8 (14) Burglary in the second degree (RCW 9A.52.030);
9 (15) Criminal trespass in the first degree (RCW 9A.52.070);
10 (16) Criminal trespass in the second degree (RCW 9A.52.080);
11 (17) Malicious mischief in the first degree (RCW 9A.48.070);
12 (18) Malicious mischief in the second degree (RCW 9A.48.080);
13 (19) Malicious mischief in the third degree (RCW 9A.48.090);
14 (20) Kidnapping in the first degree (RCW 9A.40.020);
15 (21) Kidnapping in the second degree (RCW 9A.40.030);
16 (22) Unlawful imprisonment (RCW 9A.40.040);
17 (23) Rape in the first degree (RCW 9A.44.040);
18 (24) (~~Rape in the second degree (RCW 9A.44.050);~~
19 ~~(25))~~) Rape in the (~~(third)~~) second degree (RCW 9A.44.060);
20 (~~(26))~~) (25) Indecent liberties (RCW 9A.44.100);
21 (~~(27))~~) (26) Rape of a child in the first degree (RCW 9A.44.073);
22 (~~(28))~~) (27) Rape of a child in the second degree (RCW 9A.44.076);
23 (~~(29))~~) (28) Rape of a child in the third degree (RCW 9A.44.079);
24 (~~(30))~~) (29) Child molestation in the first degree (RCW
25 9A.44.083);
26 (~~(31))~~) (30) Child molestation in the second degree (RCW
27 9A.44.086);
28 (~~(32))~~) (31) Child molestation in the third degree (RCW
29 9A.44.089);
30 (~~(33))~~) (32) Stalking (RCW 9A.46.110);
31 (~~(34))~~) (33) Residential burglary (RCW 9A.52.025); and
32 (~~(35))~~) (34) Violation of a temporary or permanent protective
33 order issued pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50
34 RCW.

35 **Sec. 13.** RCW 10.64.025 and 1996 c 275 s 10 are each amended to
36 read as follows:

37 (1) A defendant who has been found guilty of a felony and is
38 awaiting sentencing shall be detained unless the court finds by clear

1 and convincing evidence that the defendant is not likely to flee or to
2 pose a danger to the safety of any other person or the community if
3 released. Any bail bond that was posted on behalf of a defendant
4 shall, upon the defendant's conviction, be exonerated.

5 (2) A defendant who has been found guilty of one of the following
6 offenses shall be detained pending sentencing: Rape in the first ((~~or~~
7 ~~second~~)) degree (RCW 9A.44.040 ((~~and 9A.44.050~~))); rape of a child in
8 the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and
9 9A.44.079); child molestation in the first, second, or third degree
10 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a
11 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);
12 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW
13 9A.40.090); any class A or B felony that is a sexually motivated
14 offense as defined in RCW 9.94A.030; a felony violation of RCW
15 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal
16 attempt, solicitation, or conspiracy to commit one of those offenses.

17 **Sec. 14.** RCW 10.95.020 and 1995 c 129 s 17 and 1994 c 121 s 3 are
18 each reenacted and amended to read as follows:

19 A person is guilty of aggravated first degree murder if he or she
20 commits first degree murder as defined by RCW 9A.32.030(1)(a), as now
21 or hereafter amended, and one or more of the following aggravating
22 circumstances exist:

23 (1) The victim was a law enforcement officer, corrections officer,
24 or fire fighter who was performing his or her official duties at the
25 time of the act resulting in death and the victim was known or
26 reasonably should have been known by the person to be such at the time
27 of the killing;

28 (2) At the time of the act resulting in the death, the person was
29 serving a term of imprisonment, had escaped, or was on authorized or
30 unauthorized leave in or from a state facility or program for the
31 incarceration or treatment of persons adjudicated guilty of crimes;

32 (3) At the time of the act resulting in death, the person was in
33 custody in a county or county-city jail as a consequence of having been
34 adjudicated guilty of a felony;

35 (4) The person committed the murder pursuant to an agreement that
36 he or she would receive money or any other thing of value for
37 committing the murder;

1 (5) The person solicited another person to commit the murder and
2 had paid or had agreed to pay money or any other thing of value for
3 committing the murder;

4 (6) The person committed the murder to obtain or maintain his or
5 her membership or to advance his or her position in the hierarchy of an
6 organization, association, or identifiable group;

7 (7) The murder was committed during the course of or as a result of
8 a shooting where the discharge of the firearm, as defined in RCW
9 9.41.010, is either from a motor vehicle or from the immediate area of
10 a motor vehicle that was used to transport the shooter or the firearm,
11 or both, to the scene of the discharge;

12 (8) The victim was:

13 (a) A judge; juror or former juror; prospective, current, or former
14 witness in an adjudicative proceeding; prosecuting attorney; deputy
15 prosecuting attorney; defense attorney; a member of the indeterminate
16 sentence review board; or a probation or parole officer; and

17 (b) The murder was related to the exercise of official duties
18 performed or to be performed by the victim;

19 (9) The person committed the murder to conceal the commission of a
20 crime or to protect or conceal the identity of any person committing a
21 crime, including, but specifically not limited to, any attempt to avoid
22 prosecution as a persistent offender as defined in RCW 9.94A.030;

23 (10) There was more than one victim and the murders were part of a
24 common scheme or plan or the result of a single act of the person;

25 (11) The murder was committed in the course of, in furtherance of,
26 or in immediate flight from one of the following crimes:

27 (a) Robbery in the first or second degree;

28 (b) Rape in the first (~~or second~~) degree;

29 (c) Burglary in the first or second degree or residential burglary;

30 (d) Kidnapping in the first degree; or

31 (e) Arson in the first degree;

32 (12) The victim was regularly employed or self-employed as a
33 newsreporter and the murder was committed to obstruct or hinder the
34 investigative, research, or reporting activities of the victim.

35 **Sec. 15.** RCW 10.99.020 and 1997 c 338 s 53 are each amended to
36 read as follows:

37 Unless the context clearly requires otherwise, the definitions in
38 this section apply throughout this chapter.

1 (1) "Family or household members" means spouses, former spouses,
2 persons who have a child in common regardless of whether they have been
3 married or have lived together at any time, adult persons related by
4 blood or marriage, adult persons who are presently residing together or
5 who have resided together in the past, persons sixteen years of age or
6 older who are presently residing together or who have resided together
7 in the past and who have or have had a dating relationship, persons
8 sixteen years of age or older with whom a person sixteen years of age
9 or older has or has had a dating relationship, and persons who have a
10 biological or legal parent-child relationship, including stepparents
11 and stepchildren and grandparents and grandchildren.

12 (2) "Dating relationship" has the same meaning as in RCW 26.50.010.

13 (3) "Domestic violence" includes but is not limited to any of the
14 following crimes when committed by one family or household member
15 against another:

16 (a) Assault in the first degree (RCW 9A.36.011);

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

18 (c) Assault in the third degree (RCW 9A.36.031);

19 (d) Assault in the fourth degree (RCW 9A.36.041);

20 (e) Drive-by shooting (RCW 9A.36.045);

21 (f) Reckless endangerment (RCW 9A.36.050);

22 (g) Coercion (RCW 9A.36.070);

23 (h) Burglary in the first degree (RCW 9A.52.020);

24 (i) Burglary in the second degree (RCW 9A.52.030);

25 (j) Criminal trespass in the first degree (RCW 9A.52.070);

26 (k) Criminal trespass in the second degree (RCW 9A.52.080);

27 (l) Malicious mischief in the first degree (RCW 9A.48.070);

28 (m) Malicious mischief in the second degree (RCW 9A.48.080);

29 (n) Malicious mischief in the third degree (RCW 9A.48.090);

30 (o) Kidnapping in the first degree (RCW 9A.40.020);

31 (p) Kidnapping in the second degree (RCW 9A.40.030);

32 (q) Unlawful imprisonment (RCW 9A.40.040);

33 (r) Violation of the provisions of a restraining order restraining
34 the person or restraining the person from going onto the grounds of or
35 entering a residence, workplace, school, or day care (RCW 26.09.300,
36 26.10.220, or 26.26.138);

37 (s) Violation of the provisions of a protection order or no-contact
38 order restraining the person or restraining the person from going onto

1 the grounds of or entering a residence, workplace, school, or day care
 2 (RCW 26.50.060, 26.50.070, 26.50.130, 10.99.040, or 10.99.050);
 3 (t) Rape in the first degree (RCW 9A.44.040);
 4 (u) (~~Rape in the second degree (RCW 9A.44.050);~~
 5 ~~(v)~~) Residential burglary (RCW 9A.52.025);
 6 (~~(w)~~) (v) Stalking (RCW 9A.46.110); and
 7 (~~(x)~~) (w) Interference with the reporting of domestic violence
 8 (RCW 9A.36.150).

9 (4) "Victim" means a family or household member who has been
 10 subjected to domestic violence.

11 **Sec. 16.** RCW 13.40.0357 and 1997 c 338 s 12 and 1997 c 66 s 6 are
 12 each reenacted and amended to read as follows:

13 **DESCRIPTION AND OFFENSE CATEGORY**

14	JUVENILE		JUVENILE DISPOSITION
15	DISPOSITION		CATEGORY FOR ATTEMPT,
16	OFFENSE		BAILJUMP, CONSPIRACY,
17	CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
18		

19 **Arson and Malicious Mischief**

20	A	Arson 1 (9A.48.020)	B+
21	B	Arson 2 (9A.48.030)	C
22	C	Reckless Burning 1 (9A.48.040)	D
23	D	Reckless Burning 2 (9A.48.050)	E
24	B	Malicious Mischief 1 (9A.48.070)	C
25	C	Malicious Mischief 2 (9A.48.080)	D
26	D	Malicious Mischief 3 (<\$50 is	
27		E class) (9A.48.090)	E
28	E	Tampering with Fire Alarm	
29		Apparatus (9.40.100)	E
30	A	Possession of Incendiary Device	
31		(9.40.120)	B+

32 **Assault and Other Crimes**

33 **Involving Physical Harm**

34	A	Assault 1 (9A.36.011)	B+
35	B+	Assault 2 (9A.36.021)	C+
36	C+	Assault 3 (9A.36.031)	D+

1	D+	Assault 4 (9A.36.041)	E
2	B+	Drive-By Shooting	
3		(9A.36.045)	C+
4	D+	Reckless Endangerment	
5		(9A.36.050)	E
6	C+	Promoting Suicide Attempt	
7		(9A.36.060)	D+
8	D+	Coercion (9A.36.070)	E
9	C+	Custodial Assault (9A.36.100)	D+
10		Burglary and Trespass	
11	B+	Burglary 1 (9A.52.020)	C+
12	B	Residential Burglary	
13		(9A.52.025)	C
14	B	Burglary 2 (9A.52.030)	C
15	D	Burglary Tools (Possession of)	
16		(9A.52.060)	E
17	D	Criminal Trespass 1 (9A.52.070)	E
18	E	Criminal Trespass 2 (9A.52.080)	E
19	C	Vehicle Prowling 1 (9A.52.095)	D
20	D	Vehicle Prowling 2 (9A.52.100)	E
21		Drugs	
22	E	Possession/Consumption of Alcohol	
23		(66.44.270)	E
24	C	Illegally Obtaining Legend Drug	
25		(69.41.020)	D
26	C+	Sale, Delivery, Possession of Legend	
27		Drug with Intent to Sell	
28		(69.41.030)	D+
29	E	Possession of Legend Drug	
30		(69.41.030)	E
31	B+	Violation of Uniform Controlled	
32		Substances Act - Narcotic or	
33		Methamphetamine Sale	
34		(69.50.401(a)(1)(i) or (ii))	B+
35	C	Violation of Uniform Controlled	
36		Substances Act - Nonnarcotic Sale	
37		(69.50.401(a)(1)(iii))	C

1	E	Possession of Marihuana <40 grams	
2		(69.50.401(e))	E
3	C	Fraudulently Obtaining Controlled	
4		Substance (69.50.403)	C
5	C+	Sale of Controlled Substance	
6		for Profit (69.50.410)	C+
7	E	Unlawful Inhalation (9.47A.020)	E
8	B	Violation of Uniform Controlled	
9		Substances Act - Narcotic or	
10		Methamphetamine	
11		Counterfeit Substances	
12		(69.50.401(b)(1)(i) or (ii))	B
13	C	Violation of Uniform Controlled	
14		Substances Act - Nonnarcotic	
15		Counterfeit Substances	
16		(69.50.401(b)(1) (iii), (iv), (v))	C
17	C	Violation of Uniform Controlled	
18		Substances Act - Possession of a	
19		Controlled Substance	
20		(69.50.401(d))	C
21	C	Violation of Uniform Controlled	
22		Substances Act - Possession of a	
23		Controlled Substance	
24		(69.50.401(c))	C
25		Firearms and Weapons	
26	B	Theft of Firearm (9A.56.300)	C
27	B	Possession of Stolen Firearm	
28		(9A.56.310)	C
29	E	Carrying Loaded Pistol Without	
30		Permit (9.41.050)	E
31	C	Possession of Firearms by Minor (<18)	
32		(9.41.040(1) (b) (iii))	C
33	D+	Possession of Dangerous Weapon	
34		(9.41.250)	E
35	D	Intimidating Another Person by use	
36		of Weapon (9.41.270)	E
37		Homicide	
38	A+	Murder 1 (9A.32.030)	A

1	A+	Murder 2 (9A.32.050)	B+
2	B+	Manslaughter 1 (9A.32.060)	C+
3	C+	Manslaughter 2 (9A.32.070)	D+
4	B+	Vehicular Homicide (46.61.520)	C+
5		Kidnapping	
6	A	Kidnap 1 (9A.40.020)	B+
7	B+	Kidnap 2 (9A.40.030)	C+
8	C+	Unlawful Imprisonment	
9		(9A.40.040)	D+
10		Obstructing Governmental Operation	
11	D	Obstructing a Law Enforcement	
12		Officer (9A.76.020)	E
13	E	Resisting Arrest (9A.76.040)	E
14	B	Introducing Contraband 1	
15		(9A.76.140)	C
16	C	Introducing Contraband 2	
17		(9A.76.150)	D
18	E	Introducing Contraband 3	
19		(9A.76.160)	E
20	B+	Intimidating a Public Servant	
21		(9A.76.180)	C+
22	B+	Intimidating a Witness	
23		(9A.72.110)	C+
24		Public Disturbance	
25	C+	Riot with Weapon (9A.84.010)	D+
26	D+	Riot Without Weapon	
27		(9A.84.010)	E
28	E	Failure to Disperse (9A.84.020)	E
29	E	Disorderly Conduct (9A.84.030)	E
30		Sex Crimes	
31	A	Rape 1 (9A.44.040)	B+
32	(A	Rape 2 (9A.44.050)	B+)
33	C+	Rape ((3)) 2 (9A.44.060)	D+
34	A-	Rape of a Child 1 (9A.44.073)	B+
35	B+	Rape of a Child 2 (9A.44.076)	C+
36	B	Incest 1 (9A.64.020(1))	C
37	C	Incest 2 (9A.64.020(2))	D

1	D+	Indecent Exposure	
2		(Victim <14) (9A.88.010)	E
3	E	Indecent Exposure	
4		(Victim 14 or over) (9A.88.010)	E
5	B+	Promoting Prostitution 1	
6		(9A.88.070)	C+
7	C+	Promoting Prostitution 2	
8		(9A.88.080)	D+
9	E	O & A (Prostitution) (9A.88.030)	E
10	B+	Indecent Liberties (9A.44.100)	C+
11	A-	Child Molestation 1 (9A.44.083)	B+
12	B	Child Molestation 2 (9A.44.086)	C+
13		Theft, Robbery, Extortion, and Forgery	
14	B	Theft 1 (9A.56.030)	C
15	C	Theft 2 (9A.56.040)	D
16	D	Theft 3 (9A.56.050)	E
17	B	Theft of Livestock (9A.56.080)	C
18	C	Forgery (9A.60.020)	D
19	A	Robbery 1 (9A.56.200)	B+
20	B+	Robbery 2 (9A.56.210)	C+
21	B+	Extortion 1 (9A.56.120)	C+
22	C+	Extortion 2 (9A.56.130)	D+
23	B	Possession of Stolen Property 1	
24		(9A.56.150)	C
25	C	Possession of Stolen Property 2	
26		(9A.56.160)	D
27	D	Possession of Stolen Property 3	
28		(9A.56.170)	E
29	C	Taking Motor Vehicle Without	
30		Owner's Permission (9A.56.070)	D
31		Motor Vehicle Related Crimes	
32	E	Driving Without a License	
33		(46.20.005)	E
34	C	Hit and Run - Injury	
35		(46.52.020(4))	D
36	D	Hit and Run-Attended	
37		(46.52.020(5))	E

1	E	Hit and Run-Unattended	
2		(46.52.010)	E
3	C	Vehicular Assault (46.61.522)	D
4	C	Attempting to Elude Pursuing	
5		Police Vehicle (46.61.024)	D
6	E	Reckless Driving (46.61.500)	E
7	D	Driving While Under the Influence	
8		(46.61.502 and 46.61.504)	E
9		Other	
10	B	Bomb Threat (9.61.160)	C
11	C	Escape 1 (9A.76.110)	C
12	C	Escape 2 (9A.76.120)	C
13	D	Escape 3 (9A.76.130)	E
14	E	Obscene, Harassing, Etc.,	
15		Phone Calls (9.61.230)	E
16	A	Other Offense Equivalent to an	
17		Adult Class A Felony	B+
18	B	Other Offense Equivalent to an	
19		Adult Class B Felony	C
20	C	Other Offense Equivalent to an	
21		Adult Class C Felony	D
22	D	Other Offense Equivalent to an	
23		Adult Gross Misdemeanor	E
24	E	Other Offense Equivalent to an	
25		Adult Misdemeanor	E
26	V	Violation of Order of Restitution,	
27		Community Supervision, or	
28		Confinement (13.40.200)	V

29 Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
30 and the standard range is established as follows:

31 1st escape or attempted escape during 12-month period - 4 weeks
32 confinement

33 2nd escape or attempted escape during 12-month period - 8 weeks
34 confinement

35 3rd and subsequent escape or attempted escape during 12-month
36 period - 12 weeks confinement

1 if the court finds that a respondent has violated terms of an order,
 2 it may impose a penalty of up to 30 days of confinement.

3 **JUVENILE SENTENCING STANDARDS**

4 This schedule must be used for juvenile offenders. The court may
 5 select sentencing option A, B, or C.

6 **OPTION A**
 7 **JUVENILE OFFENDER SENTENCING GRID**
 8 **STANDARD RANGE**

9		<hr/>				
10	A+	180 WEEKS TO AGE 21 YEARS				
11		<hr/>				
12	A	103 WEEKS TO 129 WEEKS				
13		<hr/>				
14	A-	15-36	52-65	80-100	103-129	
15		WEEKS	WEEKS	WEEKS	WEEKS	
16		EXCEPT				
17		30-40				
18		WEEKS FOR				
19		15-17				
20		YEAR OLDS				
21		<hr/>				
22	Current	B+	15-36	52-65	80-100 103-129	
23	Offense		WEEKS	WEEKS	WEEKS WEEKS	
24	Category		<hr/>			
25		B	LOCAL		52-65	
26			SANCTIONS (LS)	15-36 WEEKS	WEEKS	
27			<hr/>		<hr/>	
28		C+	LS			
29				15-36 WEEKS		
30			<hr/>			
31		C	LS		15-36 WEEKS	
32			Local Sanctions:			
33			0 to 30 Days			
34		D+	LS	0 to 12 Months Community Supervision		
35				0 to 150 Hours Community Service		
36		D	LS	\$0 to \$500 Fine		
37		E	LS			
38			<hr/>			
39			0	1	2 3 4 or more	
40			PRIOR ADJUDICATIONS			

1 NOTE: References in the grid to days or weeks mean periods of
2 confinement.

3 (1) The vertical axis of the grid is the current offense category.
4 The current offense category is determined by the offense of
5 adjudication.

6 (2) The horizontal axis of the grid is the number of prior
7 adjudications included in the juvenile's criminal history. Each prior
8 felony adjudication shall count as one point. Each prior violation,
9 misdemeanor, and gross misdemeanor adjudication shall count as 1/4
10 point. Fractional points shall be rounded down.

11 (3) The standard range disposition for each offense is determined
12 by the intersection of the column defined by the prior adjudications
13 and the row defined by the current offense category.

14 (4) RCW 13.40.180 applies if the offender is being sentenced for
15 more than one offense.

16 (5) A current offense that is a violation is equivalent to an
17 offense category of E. However, a disposition for a violation shall
18 not include confinement.

19 OR

20 OPTION B

21 CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

22 If the juvenile offender is subject to a standard range
23 disposition of local sanctions or 15 to 36 weeks of confinement and has
24 not committed an A- or B+ offense, the court may impose a disposition
25 under RCW 13.40.160(5) and 13.40.165.

26 OR

27 OPTION C

28 MANIFEST INJUSTICE

29 If the court determines that a disposition under option A or B would
30 effectuate a manifest injustice, the court shall impose a disposition
31 outside the standard range under RCW 13.40.160(2).

32 **Sec. 17.** RCW 13.40.077 and 1997 c 338 s 18 are each amended to
33 read as follows:

34 RECOMMENDED PROSECUTING STANDARDS
35 FOR CHARGING AND PLEA DISPOSITIONS

1 INTRODUCTION: These standards are intended solely for the
2 guidance of prosecutors in the state of Washington. They are not
3 intended to, do not, and may not be relied upon to create a right or
4 benefit, substantive or procedural, enforceable at law by a party in
5 litigation with the state.

6 Evidentiary sufficiency.

7 (1) Decision not to prosecute.

8 STANDARD: A prosecuting attorney may decline to prosecute, even
9 though technically sufficient evidence to prosecute exists, in
10 situations where prosecution would serve no public purpose, would
11 defeat the underlying purpose of the law in question, or would result
12 in decreased respect for the law. The decision not to prosecute or
13 divert shall not be influenced by the race, gender, religion, or creed
14 of the suspect.

15 GUIDELINES/COMMENTARY:

16 Examples

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

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

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

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

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

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

30 (iv) The statute has not been recently reconsidered by the
31 legislature.

32 This reason is not to be construed as the basis for declining
33 cases because the law in question is unpopular or because it is
34 difficult to enforce.

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

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

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

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

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

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

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

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

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

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

20 (f) High Disproportionate Cost of Prosecution - It may be proper
21 to decline to charge where the cost of locating or transporting, or the
22 burden on, prosecution witnesses is highly disproportionate to the
23 importance of prosecuting the offense in question. The reason should
24 be limited to minor cases and should not be relied upon in serious
25 cases.

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

31 (h) Immunity - It may be proper to decline to charge where
32 immunity is to be given to an accused in order to prosecute another
33 where the accused information or testimony will reasonably lead to the
34 conviction of others who are responsible for more serious criminal
35 conduct or who represent a greater danger to the public interest.

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

1 (i) Assault cases where the victim has suffered little or no
2 injury;

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

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

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

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

10 Notification

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

13 (2) Decision to prosecute.

14 STANDARD:

15 Crimes against persons will be filed if sufficient admissible
16 evidence exists, which, when considered with the most plausible,
17 reasonably foreseeable defense that could be raised under the evidence,
18 would justify conviction by a reasonable and objective fact-finder.
19 With regard to offenses prohibited by RCW 9A.44.040, ((9A.44.050,))
20 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
21 9A.64.020 the prosecutor should avoid prefiling agreements or
22 diversions intended to place the accused in a program of treatment or
23 counseling, so that treatment, if determined to be beneficial, can be
24 proved under RCW 13.40.160(4).

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

30 The categorization of crimes for these charging standards shall be
31 the same as found in RCW 9.94A.440(2).

32 The decision to prosecute or use diversion shall not be influenced
33 by the race, gender, religion, or creed of the respondent.

34 (3) Selection of Charges/Degree of Charge

35 (a) The prosecutor should file charges which adequately describe
36 the nature of the respondent's conduct. Other offenses may be charged
37 only if they are necessary to ensure that the charges:

38 (i) Will significantly enhance the strength of the state's case at
39 trial; or

1 (ii) Will result in restitution to all victims.

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

3 Overcharging includes:

4 (i) Charging a higher degree;

5 (ii) Charging additional counts.

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

12 (4) Police Investigation

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

19 (a) The interviewing of all material witnesses, together with the
20 obtaining of written statements whenever possible;

21 (b) The completion of necessary laboratory tests; and

22 (c) The obtaining, in accordance with constitutional requirements,
23 of the suspect's version of the events.

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

27 (5) Exceptions

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

30 (a) Probable cause exists to believe the suspect is guilty; and

31 (b) The suspect presents a danger to the community or is likely to
32 flee if not apprehended; or

33 (c) The arrest of the suspect is necessary to complete the
34 investigation of the crime.

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

1 (6) Investigation Techniques

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

4 (a) Polygraph testing;

5 (b) Hypnosis;

6 (c) Electronic surveillance;

7 (d) Use of informants.

8 (7) Prefiling Discussions with Defendant

9 Discussions with the defendant or his or her representative
10 regarding the selection or disposition of charges may occur prior to
11 the filing of charges, and potential agreements can be reached.

12 (8) Plea dispositions:

13 STANDARD

14 (a) Except as provided in subsection (2) of this section, a
15 respondent will normally be expected to plead guilty to the charge or
16 charges which adequately describe the nature of his or her criminal
17 conduct or go to trial.

18 (b) In certain circumstances, a plea agreement with a respondent
19 in exchange for a plea of guilty to a charge or charges that may not
20 fully describe the nature of his or her criminal conduct may be
21 necessary and in the public interest. Such situations may include the
22 following:

23 (i) Evidentiary problems which make conviction of the original
24 charges doubtful;

25 (ii) The respondent's willingness to cooperate in the
26 investigation or prosecution of others whose criminal conduct is more
27 serious or represents a greater public threat;

28 (iii) A request by the victim when it is not the result of
29 pressure from the respondent;

30 (iv) The discovery of facts which mitigate the seriousness of the
31 respondent's conduct;

32 (v) The correction of errors in the initial charging decision;

33 (vi) The respondent's history with respect to criminal activity;

34 (vii) The nature and seriousness of the offense or offenses
35 charged;

36 (viii) The probable effect of witnesses.

37 (c) No plea agreement shall be influenced by the race, gender,
38 religion, or creed of the respondent. This includes but is not limited
39 to the prosecutor's decision to utilize such disposition alternatives

1 as the Special Sex Offender Disposition Alternative, the Chemical
2 Dependency Disposition Alternative, and manifest injustice.

3 (9) Disposition recommendations:

4 STANDARD

5 The prosecutor may reach an agreement regarding disposition
6 recommendations.

7 The prosecutor shall not agree to withhold relevant information
8 from the court concerning the plea agreement.

9 **Sec. 18.** RCW 13.40.210 and 1997 c 338 s 32 are each amended to
10 read as follows:

11 (1) The secretary shall, except in the case of a juvenile
12 committed by a court to a term of confinement in a state institution
13 outside the appropriate standard range for the offense(s) for which the
14 juvenile was found to be guilty established pursuant to RCW 13.40.030,
15 set a release or discharge date for each juvenile committed to its
16 custody. The release or discharge date shall be within the prescribed
17 range to which a juvenile has been committed except as provided in RCW
18 13.40.320 concerning offenders the department determines are eligible
19 for the juvenile offender basic training camp program. Such dates
20 shall be determined prior to the expiration of sixty percent of a
21 juvenile's minimum term of confinement included within the prescribed
22 range to which the juvenile has been committed. The secretary shall
23 release any juvenile committed to the custody of the department within
24 four calendar days prior to the juvenile's release date or on the
25 release date set under this chapter. Days spent in the custody of the
26 department shall be tolled by any period of time during which a
27 juvenile has absented himself or herself from the department's
28 supervision without the prior approval of the secretary or the
29 secretary's designee.

30 (2) The secretary shall monitor the average daily population of
31 the state's juvenile residential facilities. When the secretary
32 concludes that in-residence population of residential facilities
33 exceeds one hundred five percent of the rated bed capacity specified in
34 statute, or in absence of such specification, as specified by the
35 department in rule, the secretary may recommend reductions to the
36 governor. On certification by the governor that the recommended
37 reductions are necessary, the secretary has authority to
38 administratively release a sufficient number of offenders to reduce in-

1 residence population to one hundred percent of rated bed capacity. The
2 secretary shall release those offenders who have served the greatest
3 proportion of their sentence. However, the secretary may deny release
4 in a particular case at the request of an offender, or if the secretary
5 finds that there is no responsible custodian, as determined by the
6 department, to whom to release the offender, or if the release of the
7 offender would pose a clear danger to society. The department shall
8 notify the committing court of the release at the time of release if
9 any such early releases have occurred as a result of excessive in-
10 residence population. In no event shall an offender adjudicated of a
11 violent offense be granted release under the provisions of this
12 subsection.

13 (3)(a) Following the juvenile's release under subsection (1) of
14 this section, the secretary may require the juvenile to comply with a
15 program of parole to be administered by the department in his or her
16 community which shall last no longer than eighteen months, except that
17 in the case of a juvenile sentenced for rape in the first (~~or second~~)
18 degree, rape of a child in the first or second degree, child
19 molestation in the first degree, or indecent liberties with forcible
20 compulsion, the period of parole shall be twenty-four months and, in
21 the discretion of the secretary, may be up to thirty-six months when
22 the secretary finds that an additional period of parole is necessary
23 and appropriate in the interests of public safety or to meet the
24 ongoing needs of the juvenile. A parole program is mandatory for
25 offenders released under subsection (2) of this section. The decision
26 to place an offender on parole shall be based on an assessment by the
27 department of the offender's risk for reoffending upon release. The
28 department shall prioritize available parole resources to provide
29 supervision and services to offenders at moderate to high risk for
30 reoffending.

31 (b) The secretary shall, for the period of parole, facilitate the
32 juvenile's reintegration into his or her community and to further this
33 goal shall require the juvenile to refrain from possessing a firearm or
34 using a deadly weapon and refrain from committing new offenses and may
35 require the juvenile to: (i) Undergo available medical, psychiatric,
36 drug and alcohol, sex offender, mental health, and other offense-
37 related treatment services; (ii) report as directed to a parole officer
38 and/or designee; (iii) pursue a course of study, vocational training,
39 or employment; (iv) notify the parole officer of the current address

1 where he or she resides; (v) be present at a particular address during
2 specified hours; (vi) remain within prescribed geographical boundaries;
3 (vii) submit to electronic monitoring; (viii) refrain from using
4 illegal drugs and alcohol, and submit to random urinalysis when
5 requested by the assigned parole officer; (ix) refrain from contact
6 with specific individuals or a specified class of individuals; (x) meet
7 other conditions determined by the parole officer to further enhance
8 the juvenile's reintegration into the community; (xi) pay any court-
9 ordered fines or restitution; and (xii) perform community service.
10 Community service for the purpose of this section means compulsory
11 service, without compensation, performed for the benefit of the
12 community by the offender. Community service may be performed through
13 public or private organizations or through work crews.

14 (c) The secretary may further require up to twenty-five percent of
15 the highest risk juvenile offenders who are placed on parole to
16 participate in an intensive supervision program. Offenders
17 participating in an intensive supervision program shall be required to
18 comply with all terms and conditions listed in (b) of this subsection
19 and shall also be required to comply with the following additional
20 terms and conditions: (i) Obey all laws and refrain from any conduct
21 that threatens public safety; (ii) report at least once a week to an
22 assigned community case manager; and (iii) meet all other requirements
23 imposed by the community case manager related to participating in the
24 intensive supervision program. As a part of the intensive supervision
25 program, the secretary may require day reporting.

26 (d) After termination of the parole period, the juvenile shall be
27 discharged from the department's supervision.

28 (4)(a) The department may also modify parole for violation
29 thereof. If, after affording a juvenile all of the due process rights
30 to which he or she would be entitled if the juvenile were an adult, the
31 secretary finds that a juvenile has violated a condition of his or her
32 parole, the secretary shall order one of the following which is
33 reasonably likely to effectuate the purpose of the parole and to
34 protect the public: (i) Continued supervision under the same
35 conditions previously imposed; (ii) intensified supervision with
36 increased reporting requirements; (iii) additional conditions of
37 supervision authorized by this chapter; (iv) except as provided in
38 (a)(v) of this subsection, imposition of a period of confinement not to
39 exceed thirty days in a facility operated by or pursuant to a contract

1 with the state of Washington or any city or county for a portion of
2 each day or for a certain number of days each week with the balance of
3 the days or weeks spent under supervision; and (v) the secretary may
4 order any of the conditions or may return the offender to confinement
5 for the remainder of the sentence range if the offense for which the
6 offender was sentenced is rape in the first (~~or second~~) degree, rape
7 of a child in the first or second degree, child molestation in the
8 first degree, indecent liberties with forcible compulsion, or a sex
9 offense that is also a serious violent offense as defined by RCW
10 9.94A.030.

11 (b) If the department finds that any juvenile in a program of
12 parole has possessed a firearm or used a deadly weapon during the
13 program of parole, the department shall modify the parole under (a) of
14 this subsection and confine the juvenile for at least thirty days.
15 Confinement shall be in a facility operated by or pursuant to a
16 contract with the state or any county.

17 (5) A parole officer of the department of social and health
18 services shall have the power to arrest a juvenile under his or her
19 supervision on the same grounds as a law enforcement officer would be
20 authorized to arrest the person.

21 (6) If so requested and approved under chapter 13.06 RCW, the
22 secretary shall permit a county or group of counties to perform
23 functions under subsections (3) through (5) of this section.

24 **Sec. 19.** RCW 43.43.830 and 1996 c 178 s 12 are each amended to
25 read as follows:

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

28 (1) "Applicant" means:

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

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

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

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

4 (2) "Business or organization" means a business or organization
5 licensed in this state, any agency of the state, or other governmental
6 entity, that educates, trains, treats, supervises, houses, or provides
7 recreation to developmentally disabled persons, vulnerable adults, or
8 children under sixteen years of age, including but not limited to
9 public housing authorities, school districts, and educational service
10 districts.

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

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

34 (5) "Crime against children or other persons" means a conviction
35 of any of the following offenses: Aggravated murder; first or second
36 degree murder; first or second degree kidnaping; first, second, or
37 third degree assault; first, second, or third degree assault of a
38 child; first(~~(7)~~) or second(~~(7-or-third)~~) degree rape; first, second,
39 or third degree rape of a child; first or second degree robbery; first

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

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

20 (7) "Disciplinary board final decision" means any final decision
21 issued by a disciplining authority under chapter 18.130 RCW or the
22 secretary of the department of health for the following businesses or
23 professions:

- 24 (a) Chiropractic;
- 25 (b) Dentistry;
- 26 (c) Dental hygiene;
- 27 (d) Massage;
- 28 (e) Midwifery;
- 29 (f) Naturopathy;
- 30 (g) Osteopathic medicine and surgery;
- 31 (h) Physical therapy;
- 32 (i) Physicians;
- 33 (j) Practical nursing;
- 34 (k) Registered nursing; and
- 35 (l) Psychology.

36 "Disciplinary board final decision," for real estate brokers and
37 salespersons, means any final decision issued by the director of the
38 department of licensing for real estate brokers and salespersons.

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

1 (a) Another employee or volunteer from the same business or
2 organization as the applicant; or

3 (b) Any relative or guardian of any of the children or
4 developmentally disabled persons or vulnerable adults to which the
5 applicant has access during the course of his or her employment or
6 involvement with the business or organization.

7 (9) "Vulnerable adult" means "vulnerable adult" as defined in
8 chapter 74.34 RCW, except that for the purposes of requesting and
9 receiving background checks pursuant to RCW 43.43.832, it shall also
10 include adults of any age who lack the functional, mental, or physical
11 ability to care for themselves.

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

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

18 **Sec. 20.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to
19 read as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) "Sexually violent predator" means any person who has been
23 convicted of or charged with a crime of sexual violence and who suffers
24 from a mental abnormality or personality disorder which makes the
25 person likely to engage in predatory acts of sexual violence if not
26 confined in a secure facility.

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

31 (3) "Likely to engage in predatory acts of sexual violence" means
32 that the person more probably than not will engage in such acts. Such
33 likelihood must be evidenced by a recent overt act if the person is not
34 totally confined at the time the petition is filed under RCW 71.09.030.

35 (4) "Predatory" means acts directed towards strangers or
36 individuals with whom a relationship has been established or promoted
37 for the primary purpose of victimization.

1 (5) "Recent overt act" means any act that has either caused harm
2 of a sexually violent nature or creates a reasonable apprehension of
3 such harm.

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

27 (7) "Less restrictive alternative" means court-ordered treatment
28 in a setting less restrictive than total confinement.

29 (8) "Secretary" means the secretary of social and health services
30 or his or her designee.

31 NEW SECTION. **Sec. 21.** RCW 9A.44.050 and 1997 c 392 s 514, 1993
32 c 477 s 2, 1990 c 3 s 901, 1988 c 146 s 1, 1983 c 118 s 2, 1979 ex.s.
33 c 244 s 2, & 1975 1st ex.s. c 14 s 5 are each repealed.

34 NEW SECTION. **Sec. 22.** This act takes effect July 1, 1998.

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