
HOUSE BILL 2509

State of Washington

56th Legislature

2000 Regular Session

By Representatives O'Brien, Ballasiotes, Dickerson, Lovick, Conway, Ogden, Ruderman, Kessler, McDonald, Regala, Stensen, Hurst, Veloria, Santos, Wood, Lantz, Edmonds, Keiser and Kenney; by request of Attorney General

Read first time 01/14/2000. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to dependent persons; amending RCW 9.94A.370,
2 9A.42.040, and 9A.42.045; reenacting and amending RCW 9.94A.030 and
3 9.94A.310; adding a new section to chapter 9A.42 RCW; adding a new
4 chapter to Title 5 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. The legislature finds
7 that the number of vulnerable adults is growing because of demographics
8 and longer life expectancies. Crimes against vulnerable adults, and
9 neglect, exploitation, abuse, and sexual abuse of vulnerable adults are
10 increasing. The state has a compelling interest in making it possible
11 for the courts to adequately and fairly conduct cases involving
12 vulnerable adult victims.

13 The legislature further finds that court proceedings involving
14 vulnerable adults may be hindered or precluded by memory problems
15 associated with the length of time between the act or crime and the
16 related court proceedings, even though the vulnerable adult made a
17 reliable statement about the crime or event shortly after it occurred.
18 Court proceedings involving vulnerable adults may also be hindered or
19 precluded by the unavailability of the vulnerable adults as witnesses

1 because of their shorter life expectancy, their physical or mental
2 condition, or because their participation in the trial or proceeding
3 has a substantial likelihood of resulting in significant emotional,
4 mental, or physical harm.

5 The legislature intends that this chapter make admissible as
6 evidence the reliable hearsay of vulnerable adults beyond what is
7 currently admissible, while respecting the constitutional rights of
8 other parties. The legislature recognizes that the courts have
9 implemented the child hearsay statute, RCW 9A.44.120, to balance
10 concerns about the reliability of children's hearsay statements with
11 the public interest in facilitating court cases involving the
12 protection of children. The legislature recognizes similar issues are
13 present in proceedings involving vulnerable adult victims. For that
14 reason, courts may find guidance in *State v. Ryan*, 103 Wn.2d 165
15 (1984), while recognizing the different factors set forth in this
16 chapter as well as other factors that may apply to vulnerable adults.
17 The legislature intends this chapter to facilitate fair and just
18 adjudication of criminal, juvenile, and civil cases involving
19 vulnerable adults in this state.

20 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions set forth in
21 this section apply throughout this chapter.

22 (1) "Abuse" means willfully or negligently causing any bodily
23 injury, pain, or mental anguish to a vulnerable adult.

24 (2) "Exploitation" means:

25 (a) Obtaining, using, or attempting to obtain or use, the property
26 or services of a vulnerable adult for the benefit of someone other than
27 the vulnerable adult, by:

28 (i) Deception, intimidation, or the use of undue influence; or

29 (ii) A person who knows or reasonably should know that the
30 vulnerable adult lacks the capacity to consent; or

31 (b) Forcing, compelling, or exerting undue influence over a
32 vulnerable adult causing the vulnerable adult to perform a service or
33 act, or to refrain from acting, in a way that benefits someone other
34 than the vulnerable adult.

35 (3) "Neglect" means the failure by one having a duty of care to a
36 vulnerable adult to provide the goods or services necessary to maintain
37 the physical or mental health of a vulnerable adult. Neglect may be
38 based on either repeated conduct, or on a single incident or omission

1 that demonstrates a serious disregard for the safety or welfare of a
2 vulnerable adult.

3 (4) "Sexual abuse" means any form of nonconsensual sexual contact,
4 including but not limited to indecent liberties, rape, sexual coercion,
5 sexually explicit photographing, and sexual harassment. Sexual abuse
6 also means any sexual contact, whether or not it is consensual,
7 between:

8 (a) Any person and a mentally incapacitated person or physically
9 helpless person, both as defined in RCW 9A.44.010; or

10 (b) A vulnerable adult living in a facility or receiving service
11 from a program authorized under chapter 71A.12 RCW, and a staff person
12 of the facility or employee of the program, unless the staff person is
13 also a resident or client of the facility or program.

14 (5) "Sexual contact" means any touching of the sexual or other
15 intimate parts of a person done for the purpose of gratifying the
16 sexual desire of either party or a third party.

17 (6) "Unavailable" means the vulnerable adult is unavailable under
18 ER 804.

19 (7) "Vulnerable adult" means a person:

20 (a) Sixty years of age or older who has the functional, mental, or
21 physical inability to care for himself or herself, or his or her
22 finances; or

23 (b) Who is eighteen years of age or older and has been found by a
24 court to be incapacitated under chapter 11.88 RCW; or

25 (c) Who is eighteen years of age or older and has a developmental
26 disability as defined under RCW 71A.10.020; or

27 (d) Who is eighteen years of age or older and a resident of a
28 facility for adults licensed or required to be licensed by the
29 department of social and health services, including but not limited to
30 nursing homes, adult family homes, and boarding homes; or

31 (e) Who is eighteen years of age or older and receives services
32 from a home health, hospice, or home care agency as defined in chapter
33 70.127 RCW, or receives similar services from an individual.

34 NEW SECTION. **Sec. 3.** HEARSAY ADMISSIBLE. An out-of-court
35 statement made by a vulnerable adult describing a crime committed
36 against, or neglect, exploitation, abuse, or sexual abuse of a
37 vulnerable adult declarant, is admissible in evidence in a civil,
38 criminal, or juvenile offense adjudication proceeding if:

1 (1) The court finds in a hearing conducted outside the presence of
2 the jury, if any, that the time, content, and circumstances of the
3 statement provide sufficient indicia of reliability. In making its
4 determination, the court may consider (a) the reliability of the
5 declarant; (b) the timing of the declaration; (c) whether the declarant
6 had an apparent motive to lie; (d) the relationship of the declarant to
7 the witness; (e) the relationship of the declarant to the actor; (f)
8 whether the declarant made the statement to more than one person; (g)
9 the mental and physical condition and cognitive ability of the
10 vulnerable adult; (h) the nature and duration of the crime, neglect,
11 abuse, sexual abuse, or exploitation; and (i) any other factor deemed
12 appropriate; and

13 (2) The vulnerable adult either:

14 (a) Testifies; or

15 (b) The court finds the vulnerable adult is unavailable as a
16 witness, but when the vulnerable adult is unavailable as a witness, the
17 statement may be admitted only if there is corroborative evidence of
18 the act.

19 NEW SECTION. **Sec. 4.** NOTICE REQUIRED. A statement may not be
20 admitted under this chapter unless the proponent of the statement gives
21 notice to the adverse party of his or her intention to offer the
22 statement and the particulars of the statement sufficiently in advance
23 of the proceedings to provide the adverse party with a fair opportunity
24 to challenge the admissibility of the statement at a hearing. The
25 court shall state the basis for its ruling by making specific findings
26 of fact on the record.

27 **Sec. 5.** RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999
28 c 196 s 2 are each reenacted and amended to read as follows:

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

31 (1) "Collect," or any derivative thereof, "collect and remit," or
32 "collect and deliver," when used with reference to the department of
33 corrections, means that the department, either directly or through a
34 collection agreement authorized by RCW 9.94A.145, is responsible for
35 monitoring and enforcing the offender's sentence with regard to the
36 legal financial obligation, receiving payment thereof from the
37 offender, and, consistent with current law, delivering daily the entire

1 payment to the superior court clerk without depositing it in a
2 departmental account.

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

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

8 (4) "Community custody" means that portion of an offender's
9 sentence of confinement in lieu of earned release time or imposed
10 pursuant to RCW 9.94A.120 (5), (6), (7), (8), (10), or (11), or RCW
11 9.94A.383, served in the community subject to controls placed on the
12 offender's movement and activities by the department of corrections.
13 For offenders placed on community custody for crimes committed on or
14 after July 1, 2000, the department shall assess the offender's risk of
15 reoffense and may establish and modify conditions of community custody,
16 in addition to those imposed by the court, based upon the risk to
17 community safety.

18 (5) "Community custody range" means the minimum and maximum period
19 of community custody included as part of a sentence under RCW
20 9.94A.120(11), as established by the sentencing guidelines commission
21 or the legislature under RCW 9.94A.040, for crimes committed on or
22 after July 1, 2000.

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

30 (7) "Community service" means compulsory service, without
31 compensation, performed for the benefit of the community by the
32 offender.

33 (8) "Community supervision" means a period of time during which a
34 convicted offender is subject to crime-related prohibitions and other
35 sentence conditions imposed by a court pursuant to this chapter or RCW
36 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
37 may include crime-related prohibitions and other conditions imposed
38 pursuant to RCW 9.94A.120(5). Where the court finds that any offender
39 has a chemical dependency that has contributed to his or her offense,

1 the conditions of supervision may, subject to available resources,
2 include treatment. For purposes of the interstate compact for out-of-
3 state supervision of parolees and probationers, RCW 9.95.270, community
4 supervision is the functional equivalent of probation and should be
5 considered the same as probation by other states.

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

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

11 (11) "Court-ordered legal financial obligation" means a sum of
12 money that is ordered by a superior court of the state of Washington
13 for legal financial obligations which may include restitution to the
14 victim, statutorily imposed crime victims' compensation fees as
15 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
16 drug funds, court-appointed attorneys' fees, and costs of defense,
17 fines, and any other financial obligation that is assessed to the
18 offender as a result of a felony conviction. Upon conviction for
19 vehicular assault while under the influence of intoxicating liquor or
20 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
21 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
22 legal financial obligations may also include payment to a public agency
23 of the expense of an emergency response to the incident resulting in
24 the conviction, subject to the provisions in RCW 38.52.430.

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

32 (13) "Criminal history" means the list of a defendant's prior
33 convictions and juvenile adjudications, whether in this state, in
34 federal court, or elsewhere. The history shall include, where known,
35 for each conviction (a) whether the defendant has been placed on
36 probation and the length and terms thereof; and (b) whether the
37 defendant has been incarcerated and the length of incarceration.

38 (14) "Day fine" means a fine imposed by the sentencing judge that
39 equals the difference between the offender's net daily income and the

1 reasonable obligations that the offender has for the support of the
2 offender and any dependents.

3 (15) "Day reporting" means a program of enhanced supervision
4 designed to monitor the defendant's daily activities and compliance
5 with sentence conditions, and in which the defendant is required to
6 report daily to a specific location designated by the department or the
7 sentencing judge.

8 (16) "Department" means the department of corrections.

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

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

29 (19) "Drug offense" means:

30 (a) Any felony violation of chapter 69.50 RCW except possession of
31 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
32 controlled substance (RCW 69.50.403);

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

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

39 (20) "Escape" means:

1 (a) Escape in the first degree (RCW 9A.76.110), escape in the
2 second degree (RCW 9A.76.120), willful failure to return from furlough
3 (RCW 72.66.060), willful failure to return from work release (RCW
4 72.65.070), or willful failure to be available for supervision by the
5 department while in community custody (RCW 72.09.310); or

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

9 (21) "Felony traffic offense" means:

10 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
11 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
12 and-run injury-accident (RCW 46.52.020(4)); or

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

16 (22) "Fines" means the requirement that the offender pay a specific
17 sum of money over a specific period of time to the court.

18 (23) "First-time offender" means any person who is convicted of a
19 felony (a) not classified as a violent offense or a sex offense under
20 this chapter, or (b) that is not the manufacture, delivery, or
21 possession with intent to manufacture or deliver a controlled substance
22 classified in Schedule I or II that is a narcotic drug or flunitrazepam
23 classified in Schedule IV, nor the manufacture, delivery, or possession
24 with intent to deliver methamphetamine, its salts, isomers, and salts
25 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
26 profit of any controlled substance or counterfeit substance classified
27 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
28 marihuana, who previously has never been convicted of a felony in this
29 state, federal court, or another state, and who has never participated
30 in a program of deferred prosecution for a felony offense.

31 (24) "Home detention" means a program of partial confinement
32 available to offenders wherein the offender is confined in a private
33 residence subject to electronic surveillance.

34 (25) "Most serious offense" means any of the following felonies or
35 a felony attempt to commit any of the following felonies, as now
36 existing or hereafter amended:

37 (a) Any felony defined under any law as a class A felony or
38 criminal solicitation of or criminal conspiracy to commit a class A
39 felony;

1 (b) Assault in the second degree;
2 (c) Assault of a child in the second degree;
3 (d) Child molestation in the second degree;
4 (e) Controlled substance homicide;
5 (f) Extortion in the first degree;
6 (g) Incest when committed against a child under age fourteen;
7 (h) Indecent liberties;
8 (i) Kidnapping in the second degree;
9 (j) Leading organized crime;
10 (k) Manslaughter in the first degree;
11 (l) Manslaughter in the second degree;
12 (m) Promoting prostitution in the first degree;
13 (n) Rape in the third degree;
14 (o) Robbery in the second degree;
15 (p) Sexual exploitation;
16 (q) Vehicular assault;
17 (r) Vehicular homicide, when proximately caused by the driving of
18 any vehicle by any person while under the influence of intoxicating
19 liquor or any drug as defined by RCW 46.61.502, or by the operation of
20 any vehicle in a reckless manner;
21 (s) Any other class B felony offense with a finding of sexual
22 motivation, as "sexual motivation" is defined under this section;
23 (t) Any other felony with a deadly weapon verdict under RCW
24 9.94A.125;
25 (u) Any felony offense in effect at any time prior to December 2,
26 1993, that is comparable to a most serious offense under this
27 subsection, or any federal or out-of-state conviction for an offense
28 that under the laws of this state would be a felony classified as a
29 most serious offense under this subsection;
30 (v)(i) A prior conviction for indecent liberties under RCW
31 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
32 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
33 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
34 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
35 (ii) A prior conviction for indecent liberties under RCW
36 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
37 if: (A) The crime was committed against a child under the age of
38 fourteen; or (B) the relationship between the victim and perpetrator is
39 included in the definition of indecent liberties under RCW

1 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
2 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
3 through July 27, 1997.

4 (26) "Nonviolent offense" means an offense which is not a violent
5 offense.

6 (27) "Offender" means a person who has committed a felony
7 established by state law and is eighteen years of age or older or is
8 less than eighteen years of age but whose case is under superior court
9 jurisdiction under RCW 13.04.030 or has been transferred by the
10 appropriate juvenile court to a criminal court pursuant to RCW
11 13.40.110. Throughout this chapter, the terms "offender" and
12 "defendant" are used interchangeably.

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

21 (29) "Persistent offender" is an offender who:

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

24 (ii) Has, before the commission of the offense under (a) of this
25 subsection, been convicted as an offender on at least two separate
26 occasions, whether in this state or elsewhere, of felonies that under
27 the laws of this state would be considered most serious offenses and
28 would be included in the offender score under RCW 9.94A.360; provided
29 that of the two or more previous convictions, at least one conviction
30 must have occurred before the commission of any of the other most
31 serious offenses for which the offender was previously convicted; or

32 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
33 of a child in the first degree, child molestation in the first degree,
34 rape in the second degree, rape of a child in the second degree, or
35 indecent liberties by forcible compulsion; (B) murder in the first
36 degree, murder in the second degree, homicide by abuse, kidnapping in
37 the first degree, kidnapping in the second degree, assault in the first
38 degree, assault in the second degree, assault of a child in the first
39 degree, or burglary in the first degree, with a finding of sexual

1 motivation; or (C) an attempt to commit any crime listed in this
2 subsection (29)(b)(i); and

3 (ii) Has, before the commission of the offense under (b)(i) of this
4 subsection, been convicted as an offender on at least one occasion,
5 whether in this state or elsewhere, of an offense listed in (b)(i) of
6 this subsection. A conviction for rape of a child in the first degree
7 constitutes a conviction under subsection (29)(b)(i) only when the
8 offender was sixteen years of age or older when the offender committed
9 the offense. A conviction for rape of a child in the second degree
10 constitutes a conviction under subsection (29)(b)(i) only when the
11 offender was eighteen years of age or older when the offender committed
12 the offense.

13 (30) "Postrelease supervision" is that portion of an offender's
14 community placement that is not community custody.

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

19 (32) "Risk assessment" means the application of an objective
20 instrument supported by research and adopted by the department for the
21 purpose of assessing an offender's risk of reoffense, taking into
22 consideration the nature of the harm done by the offender, place and
23 circumstances of the offender related to risk, the offender's
24 relationship to any victim, and any information provided to the
25 department by victims. The results of a risk assessment shall not be
26 based on unconfirmed or unconfirmable allegations.

27 (33) "Serious traffic offense" means:

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

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

36 (34) "Serious violent offense" is a subcategory of violent offense
37 and means:

38 (a) Murder in the first degree, homicide by abuse, murder in the
39 second degree, manslaughter in the first degree, assault in the first

1 degree, kidnapping in the first degree, or rape in the first degree,
2 assault of a child in the first degree, or an attempt, criminal
3 solicitation, or criminal conspiracy to commit one of these felonies;
4 or

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

8 (35) "Sentence range" means the sentencing court's discretionary
9 range in imposing a nonappealable sentence.

10 (36) "Sex offense" means:

11 (a) A felony that is a violation of chapter 9A.44 RCW, other than
12 RCW 9A.44.130(~~(+10)~~) (11), or RCW 9A.64.020 or 9.68A.090 or a felony
13 that is, under chapter 9A.28 RCW, a criminal attempt, criminal
14 solicitation, or criminal conspiracy to commit such crimes;

15 (b) Any conviction for a felony offense in effect at any time prior
16 to July 1, 1976, that is comparable to a felony classified as a sex
17 offense in (a) of this subsection;

18 (c) A felony with a finding of sexual motivation under RCW
19 9.94A.127 or 13.40.135; or

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

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

26 (38) "Total confinement" means confinement inside the physical
27 boundaries of a facility or institution operated or utilized under
28 contract by the state or any other unit of government for twenty-four
29 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

30 (39) "Transition training" means written and verbal instructions
31 and assistance provided by the department to the offender during the
32 two weeks prior to the offender's successful completion of the work
33 ethic camp program. The transition training shall include instructions
34 in the offender's requirements and obligations during the offender's
35 period of community custody.

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

39 (41) "Violent offense" 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, robbery in
9 the second degree, drive-by shooting, vehicular assault, and vehicular
10 homicide, when proximately caused by the driving of any vehicle by any
11 person while under the influence of intoxicating liquor or any drug as
12 defined by RCW 46.61.502, or by the operation of any vehicle in a
13 reckless manner;

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

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

20 (42) "Vulnerable adult" means a person:

21 (a) Sixty years of age or older who has the functional, mental, or
22 physical inability to care for himself or herself, or his or her
23 finances;

24 (b) Eighteen years of age or older and has been found by a court to
25 be incapacitated under chapter 11.88 RCW;

26 (c) Eighteen years of age or older and who has a developmental
27 disability as defined under RCW 71A.10.020;

28 (d) Eighteen years of age or older and who is a resident of a
29 facility for adults licensed or required to be licensed by the
30 department of social and health services, including but not limited to
31 nursing homes, adult family homes, and boarding homes; or

32 (e) Eighteen years of age or older and receives services from a
33 home health, hospice, or home care agency as defined in chapter 70.127
34 RCW, or receives similar services from an individual.

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

1 or labor is performed. The civic improvement tasks shall not affect
 2 employment opportunities for people with developmental disabilities
 3 contracted through sheltered workshops as defined in RCW 82.04.385.
 4 Only those offenders sentenced to a facility operated or utilized under
 5 contract by a county or the state, or sanctioned under RCW 9.94A.205,
 6 are eligible to participate on a work crew. Offenders sentenced for a
 7 sex offense as defined in subsection (36) of this section are not
 8 eligible for the work crew program.

9 ~~((43))~~ (44) "Work ethic camp" means an alternative incarceration
 10 program designed to reduce recidivism and lower the cost of corrections
 11 by requiring offenders to complete a comprehensive array of real-world
 12 job and vocational experiences, character-building work ethics
 13 training, life management skills development, substance abuse
 14 rehabilitation, counseling, literacy training, and basic adult
 15 education.

16 ~~((44))~~ (45) "Work release" means a program of partial confinement
 17 available to offenders who are employed or engaged as a student in a
 18 regular course of study at school. Participation in work release shall
 19 be conditioned upon the offender attending work or school at regularly
 20 defined hours and abiding by the rules of the work release facility.

21 **Sec. 6.** RCW 9.94A.310 and 1999 c 352 s 2 and 1999 c 324 s 3 are
 22 each reenacted and amended to read as follows:

23 (1) TABLE 1
 24 Sentencing Grid

25 SERIOUSNESS

26 LEVEL	27 OFFENDER SCORE									
	28 0	1	2	3	4	5	6	7	8	29 9 or more
30 XVI	Life Sentence without Parole/Death Penalty									
31 XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
32	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
33	320	333	347	361	374	388	416	450	493	548
34										
35										

1	XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
2		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
3		220	234	244	254	265	275	295	316	357	397
4											
5	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
6		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
7		164	178	192	205	219	233	260	288	342	397
8											
9	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
10		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
11		123	136	147	160	171	184	216	236	277	318
12											
13	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
14		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
15		102	114	125	136	147	158	194	211	245	280
16											
17	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
18		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
19		68	75	82	89	96	102	130	144	171	198
20											
21	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
22		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
23		41	48	54	61	68	75	102	116	144	171
24											
25	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
26		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
27		27	34	41	48	54	61	89	102	116	144
28											
29	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
30		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
31		20	27	34	41	48	54	75	89	102	116
32											
33	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
34		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
35		14	20	27	34	41	48	61	75	89	102
36											
37	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
38		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
39		12	14	17	20	29	43	54	68	82	96

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

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

22 (2) For persons convicted of the anticipatory offenses of criminal
23 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
24 presumptive sentence is determined by locating the sentencing grid
25 sentence range defined by the appropriate offender score and the
26 seriousness level of the completed crime, and multiplying the range by
27 75 percent.

28 (3) The following additional times shall be added to the
29 presumptive sentence for felony crimes committed after July 23, 1995,
30 if the offender or an accomplice was armed with a firearm as defined in
31 RCW 9.41.010 and the offender is being sentenced for one of the crimes
32 listed in this subsection as eligible for any firearm enhancements
33 based on the classification of the completed felony crime. If the
34 offender is being sentenced for more than one offense, the firearm
35 enhancement or enhancements must be added to the total period of
36 confinement for all offenses, regardless of which underlying offense is
37 subject to a firearm enhancement. If the offender or an accomplice was
38 armed with a firearm as defined in RCW 9.41.010 and the offender is

1 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
2 commit one of the crimes listed in this subsection as eligible for any
3 firearm enhancements, the following additional times shall be added to
4 the presumptive sentence determined under subsection (2) of this
5 section based on the felony crime of conviction as classified under RCW
6 9A.28.020:

7 (a) Five years for any felony defined under any law as a class A
8 felony or with a maximum sentence of at least twenty years, or both,
9 and not covered under (f) of this subsection.

10 (b) Three years for any felony defined under any law as a class B
11 felony or with a maximum sentence of ten years, or both, and not
12 covered under (f) of this subsection.

13 (c) Eighteen months for any felony defined under any law as a class
14 C felony or with a maximum sentence of five years, or both, and not
15 covered under (f) of this subsection.

16 (d) If the offender is being sentenced for any firearm enhancements
17 under (a), (b), and/or (c) of this subsection and the offender has
18 previously been sentenced for any deadly weapon enhancements after July
19 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
20 (4)(a), (b), and/or (c) of this section, or both, any and all firearm
21 enhancements under this subsection shall be twice the amount of the
22 enhancement listed.

23 (e) Notwithstanding any other provision of law, any and all firearm
24 enhancements under this section are mandatory, shall be served in total
25 confinement, and shall run consecutively to all other sentencing
26 provisions, including other firearm or deadly weapon enhancements, for
27 all offenses sentenced under this chapter. However, whether or not a
28 mandatory minimum term has expired, an offender serving a sentence
29 under this subsection may be granted an extraordinary medical placement
30 when authorized under RCW 9.94A.150(4).

31 (f) The firearm enhancements in this section shall apply to all
32 felony crimes except the following: Possession of a machine gun,
33 possessing a stolen firearm, drive-by shooting, theft of a firearm,
34 unlawful possession of a firearm in the first and second degree, and
35 use of a machine gun in a felony.

36 (g) If the presumptive sentence under this section exceeds the
37 statutory maximum for the offense, the statutory maximum sentence shall
38 be the presumptive sentence unless the offender is a persistent
39 offender as defined in RCW 9.94A.030. If the addition of a firearm

1 enhancement increases the sentence so that it would exceed the
2 statutory maximum for the offense, the portion of the sentence
3 representing the enhancement may not be reduced.

4 (4) The following additional times shall be added to the
5 presumptive sentence for felony crimes committed after July 23, 1995,
6 if the offender or an accomplice was armed with a deadly weapon as
7 defined in this chapter other than a firearm as defined in RCW 9.41.010
8 and the offender is being sentenced for one of the crimes listed in
9 this subsection as eligible for any deadly weapon enhancements based on
10 the classification of the completed felony crime. If the offender is
11 being sentenced for more than one offense, the deadly weapon
12 enhancement or enhancements must be added to the total period of
13 confinement for all offenses, regardless of which underlying offense is
14 subject to a deadly weapon enhancement. If the offender or an
15 accomplice was armed with a deadly weapon other than a firearm as
16 defined in RCW 9.41.010 and the offender is being sentenced for an
17 anticipatory offense under chapter 9A.28 RCW to commit one of the
18 crimes listed in this subsection as eligible for any deadly weapon
19 enhancements, the following additional times shall be added to the
20 presumptive sentence determined under subsection (2) of this section
21 based on the felony crime of conviction as classified under RCW
22 9A.28.020:

23 (a) Two years for any felony defined under any law as a class A
24 felony or with a maximum sentence of at least twenty years, or both,
25 and not covered under (f) of this subsection.

26 (b) One year for any felony defined under any law as a class B
27 felony or with a maximum sentence of ten years, or both, and not
28 covered under (f) of this subsection.

29 (c) Six months for any felony defined under any law as a class C
30 felony or with a maximum sentence of five years, or both, and not
31 covered under (f) of this subsection.

32 (d) If the offender is being sentenced under (a), (b), and/or (c)
33 of this subsection for any deadly weapon enhancements and the offender
34 has previously been sentenced for any deadly weapon enhancements after
35 July 23, 1995, under (a), (b), and/or (c) of this subsection or
36 subsection (3)(a), (b), and/or (c) of this section, or both, any and
37 all deadly weapon enhancements under this subsection shall be twice the
38 amount of the enhancement listed.

1 (e) Notwithstanding any other provision of law, any and all deadly
2 weapon enhancements under this section are mandatory, shall be served
3 in total confinement, and shall run consecutively to all other
4 sentencing provisions, including other firearm or deadly weapon
5 enhancements, for all offenses sentenced under this chapter. However,
6 whether or not a mandatory minimum term has expired, an offender
7 serving a sentence under this subsection may be granted an
8 extraordinary medical placement when authorized under RCW 9.94A.150(4).

9 (f) The deadly weapon enhancements in this section shall apply to
10 all felony crimes except the following: Possession of a machine gun,
11 possessing a stolen firearm, drive-by shooting, theft of a firearm,
12 unlawful possession of a firearm in the first and second degree, and
13 use of a machine gun in a felony.

14 (g) If the presumptive sentence under this section exceeds the
15 statutory maximum for the offense, the statutory maximum sentence shall
16 be the presumptive sentence unless the offender is a persistent
17 offender as defined in RCW 9.94A.030. If the addition of a deadly
18 weapon enhancement increases the sentence so that it would exceed the
19 statutory maximum for the offense, the portion of the sentence
20 representing the enhancement may not be reduced.

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

33 (a) Eighteen months for offenses committed under RCW
34 69.50.401(a)(1) (i) or (ii) or 69.50.410;

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

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

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

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

7 (7) An additional two years shall be added to the presumptive
8 sentence for vehicular homicide committed while under the influence of
9 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
10 prior offense as defined in RCW 46.61.5055.

11 (8) In a criminal case in which there has been a special allegation
12 and evidence establishing that the victim was a vulnerable adult at the
13 time of the commission of the crime, the court shall make a finding of
14 fact of whether the victim was a vulnerable adult at the time of the
15 commission of the crime, or if a jury trial is had, the jury shall, if
16 it finds the defendant guilty, also find a special verdict as to
17 whether the victim was a vulnerable adult at the time of the commission
18 of the crime.

19 (a) The following additional times must be added to the presumptive
20 sentence if the offender or an accomplice committed the offense against
21 a vulnerable adult:

22 (i) Twenty-four months for a felony defined by law as a class A
23 felony or with a maximum sentence of at least twenty years, or both;

24 (ii) Eighteen months for a felony defined by law as a class B
25 felony or with a maximum sentence or ten years, or both;

26 (iii) Twelve months for a felony defined by law as a class C felony
27 or with a maximum sentence of five years, or both.

28 (b) Notwithstanding any other provision of law, all enhancements
29 under this subsection are mandatory, must be served in total
30 confinement, and must not run concurrently with any other sentencing
31 provisions.

32 (c) Further, nothing in this subsection precludes the court from
33 considering the victim's vulnerability as an aggravating circumstance
34 under RCW 9.94A.390(2)(b) in imposing an exceptional sentence under RCW
35 9.94A.120(2).

36 **Sec. 7.** RCW 9.94A.370 and 1999 c 143 s 16 are each amended to read
37 as follows:

1 (1) The intersection of the column defined by the offender score
2 and the row defined by the offense seriousness score determines the
3 presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The
4 additional time for deadly weapon findings, for crimes committed
5 against vulnerable adults, or for those offenses enumerated in RCW
6 9.94A.310(4) that were committed in a state correctional facility or
7 county jail shall be added to the entire presumptive sentence range.
8 The court may impose any sentence within the range that it deems
9 appropriate. All presumptive sentence ranges are expressed in terms of
10 total confinement.

11 (2) In determining any sentence, the trial court may rely on no
12 more information than is admitted by the plea agreement, or admitted,
13 acknowledged, or proved in a trial or at the time of sentencing.
14 Acknowledgement includes not objecting to information stated in the
15 presentence reports. Where the defendant disputes material facts, the
16 court must either not consider the fact or grant an evidentiary hearing
17 on the point. The facts shall be deemed proved at the hearing by a
18 preponderance of the evidence. Facts that establish the elements of a
19 more serious crime or additional crimes may not be used to go outside
20 the presumptive sentence range except upon stipulation or when
21 specifically provided for in RCW 9.94A.390(2) (d), (e), (g), and (h).

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 9A.42 RCW
23 to read as follows:

24 (1) A person is guilty of the crime of criminal mistreatment in the
25 third degree if the person is the parent of a child, is a person
26 entrusted with the physical custody of a child or other dependent
27 person, or is a person employed to provide to the child or dependent
28 person the basic necessities of life, and either:

29 (a) With criminal negligence, creates an imminent and substantial
30 risk of substantial bodily harm to a child or dependent person by
31 withholding any of the basic necessities of life; or

32 (b) With criminal negligence, causes substantial bodily harm to a
33 child or dependent person by withholding any of the basic necessities
34 of life.

35 (2) Criminal mistreatment in the third degree is a gross
36 misdemeanor.

1 **Sec. 9.** RCW 9A.42.040 and 1986 c 250 s 4 are each amended to read
2 as follows:

3 RCW 9A.42.020 ~~((and))~~, 9A.42.030, and section 8 of this act do not
4 apply to ~~((a))~~ decisions to withdraw life support systems made in
5 accordance with ~~((law by a health care professional and family members~~
6 ~~or others with a legal duty to care for the patient))~~ chapter 7.70 or
7 70.122 RCW by the dependent person, his or her legal surrogate, or
8 others with a legal duty to care for the dependent person.

9 **Sec. 10.** RCW 9A.42.045 and 1997 c 392 s 512 are each amended to
10 read as follows:

11 RCW 9A.42.020 ~~((and))~~, 9A.42.030, and section 8 of this act do not
12 apply when a terminally ill or permanently unconscious person or his or
13 her ~~((designee))~~ legal surrogate, as set forth in chapter 7.70 RCW,
14 requests ~~((palliative care))~~, and the person receives, palliative care
15 from a licensed home health agency, hospice agency, nursing home, or
16 hospital ~~((who is))~~ providing care under the medical direction of a
17 physician. As used in this section, the terms "terminally ill" and
18 "permanently unconscious" have the same meaning as "terminal condition"
19 and "permanent unconscious condition" in chapter 70.122 RCW.

20 NEW SECTION. **Sec. 11.** Section captions used in sections 1 through
21 4 of this act are not part of the law.

22 NEW SECTION. **Sec. 12.** Sections 1 through 4 and 11 of this act
23 constitute a new chapter in Title 5 RCW.

--- END ---