
ENGROSSED SENATE BILL 5790

State of Washington

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By Senators Kline, Costa, Shin, Sheahan, McCaslin, Deccio, Winsley and Constantine

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1 AN ACT Relating to vehicular assault; amending RCW 46.61.522,
2 9.41.010, 9.94A.030, 9.94A.150, 13.40.0357, 38.52.430, and 46.61.524;
3 reenacting and amending RCW 9.94A.320, 9.94A.440, and 46.20.391; and
4 prescribing penalties.

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

6 **Sec. 1.** RCW 46.61.522 and 1996 c 199 s 8 are each amended to read
7 as follows:

8 (1)(a) A person is guilty of vehicular assault in the first degree
9 if he or she operates or drives any vehicle:

10 (~~(a)~~) (i) In a reckless manner(~~(7)~~) and (~~this conduct is the~~
11 ~~proximate cause of serious~~) causes substantial bodily (~~injury~~) harm
12 to another; or

13 (~~(b)~~) (ii) While under the influence of intoxicating liquor or
14 any drug, as defined by RCW 46.61.502, and (~~this conduct is the~~
15 ~~proximate cause of serious~~) causes substantial bodily (~~injury~~) harm
16 to another.

17 (~~(2)~~) "~~Serious bodily injury~~" means ~~bodily injury which involves a~~
18 ~~substantial risk of death, serious permanent disfigurement, or~~

1 ~~protracted loss or impairment of the function of any part or organ of~~
2 ~~the body.~~

3 ~~(3))~~ (b) Vehicular assault in the first degree is a class B felony
4 punishable under chapter 9A.20 RCW.

5 (2)(a) A person is guilty of vehicular assault in the second degree
6 if he or she, under circumstances not amounting to vehicular assault in
7 the first degree, operates or drives any vehicle with criminal
8 negligence and causes substantial bodily harm to another.

9 (b) Vehicular assault in the second degree is a class C felony
10 punishable under chapter 9A.20 RCW.

11 (3) As used in this section, "substantial bodily harm" has the same
12 meaning as in RCW 9A.04.110.

13 **Sec. 2.** RCW 9.41.010 and 1997 c 338 s 46 are each amended to read
14 as follows:

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

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

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

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

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

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

37 (6) "Short-barreled shotgun" means a shotgun having one or more
38 barrels less than eighteen inches in length and any weapon made from a

1 shotgun by any means of modification if such modified weapon has an
2 overall length of less than twenty-six inches.

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

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

18 (9) "Loaded" means:

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

20 (b) Cartridges are in a clip that is locked in place in the
21 firearm;

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

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

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

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

36 (11) "Crime of violence" means:

37 (a) Any of the following felonies, as now existing or hereafter
38 amended: Any felony defined under any law as a class A felony or an
39 attempt to commit a class A felony, criminal solicitation of or

1 criminal conspiracy to commit a class A felony, manslaughter in the
2 first degree, manslaughter in the second degree, indecent liberties if
3 committed by forcible compulsion, kidnapping in the second degree,
4 arson in the second degree, assault in the second degree, assault of a
5 child in the second degree, extortion in the first degree, burglary in
6 the second degree, residential burglary, and robbery in the second
7 degree;

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

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

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

17 (a) Any crime of violence;

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

21 (c) Child molestation in the second degree;

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

23 (e) Indecent liberties;

24 (f) Leading organized crime;

25 (g) Promoting prostitution in the first degree;

26 (h) Rape in the third degree;

27 (i) Drive-by shooting;

28 (j) Sexual exploitation;

29 (k) Vehicular assault in the first degree;

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

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

36 (n) Any other felony with a deadly weapon verdict under RCW
37 9.94A.125; or

38 (o) Any felony offense in effect at any time prior to June 6, 1996,
39 that is comparable to a serious offense, or any federal or out-of-state

1 conviction for an offense that under the laws of this state would be a
2 felony classified as a serious offense.

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

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

12 (15) "Sell" refers to the actual approval of the delivery of a
13 firearm in consideration of payment or promise of payment of a certain
14 price in money.

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

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

21 **Sec. 3.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read
22 as follows:

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

25 (1) "Collect," or any derivative thereof, "collect and remit," or
26 "collect and deliver," when used with reference to the department,
27 means that the department, either directly or through a collection
28 agreement authorized by RCW 9.94A.145, is responsible for monitoring
29 and enforcing the offender's sentence with regard to the legal
30 financial obligation, receiving payment thereof from the offender, and,
31 consistent with current law, delivering daily the entire payment to the
32 superior court clerk without depositing it in a departmental account.

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

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

1 (4) "Community custody" means that portion of an offender's
2 sentence of confinement in lieu of earned release time or imposed
3 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
4 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
5 community subject to controls placed on the offender's movement and
6 activities by the department. For offenders placed on community
7 custody for crimes committed on or after July 1, 2000, the department
8 shall assess the offender's risk of reoffense and may establish and
9 modify conditions of community custody, in addition to those imposed by
10 the court, based upon the risk to community safety.

11 (5) "Community custody range" means the minimum and maximum period
12 of community custody included as part of a sentence under RCW
13 9.94A.715, as established by the commission or the legislature under
14 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

22 (7) "Community service" means compulsory service, without
23 compensation, performed for the benefit of the community by the
24 offender.

25 (8) "Community supervision" means a period of time during which a
26 convicted offender is subject to crime-related prohibitions and other
27 sentence conditions imposed by a court pursuant to this chapter or RCW
28 16.52.200(6) or 46.61.524. Where the court finds that any offender has
29 a chemical dependency that has contributed to his or her offense, the
30 conditions of supervision may, subject to available resources, include
31 treatment. For purposes of the interstate compact for out-of-state
32 supervision of parolees and probationers, RCW 9.95.270, community
33 supervision is the functional equivalent of probation and should be
34 considered the same as probation by other states.

35 (9) "Confinement" means total or partial confinement.

36 (10) "Conviction" means an adjudication of guilt pursuant to Titles
37 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
38 acceptance of a plea of guilty.

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

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

14 (13) "Day fine" means a fine imposed by the sentencing court that
15 equals the difference between the offender's net daily income and the
16 reasonable obligations that the offender has for the support of the
17 offender and any dependents.

18 (14) "Day reporting" means a program of enhanced supervision
19 designed to monitor the offender's daily activities and compliance with
20 sentence conditions, and in which the offender is required to report
21 daily to a specific location designated by the department or the
22 sentencing court.

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

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

32 (17) "Disposable earnings" means that part of the earnings of an
33 offender remaining after the deduction from those earnings of any
34 amount required by law to be withheld. For the purposes of this
35 definition, "earnings" means compensation paid or payable for personal
36 services, whether denominated as wages, salary, commission, bonuses, or
37 otherwise, and, notwithstanding any other provision of law making the
38 payments exempt from garnishment, attachment, or other process to
39 satisfy a court-ordered legal financial obligation, specifically

1 includes periodic payments pursuant to pension or retirement programs,
2 or insurance policies of any type, but does not include payments made
3 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
4 or Title 74 RCW.

5 (18) "Drug offender sentencing alternative" is a sentencing option
6 available to persons convicted of a felony offense other than a violent
7 offense or a sex offense and who are eligible for the option under RCW
8 9.94A.660.

9 (19) "Drug offense" means:

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

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

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

19 (20) "Earned release" means earned release from confinement as
20 provided in RCW 9.94A.150.

21 (21) "Escape" means:

22 (a) Escape in the first degree (RCW 9A.76.110), escape in the
23 second degree (RCW 9A.76.120), willful failure to return from furlough
24 (RCW 72.66.060), willful failure to return from work release (RCW
25 72.65.070), or willful failure to be available for supervision by the
26 department while in community custody (RCW 72.09.310); or

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

30 (22) "Felony traffic offense" means:

31 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
32 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
33 and-run injury-accident (RCW 46.52.020(4)); or

34 (b) 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 felony
36 traffic offense under (a) of this subsection.

37 (23) "Fine" means a specific sum of money ordered by the sentencing
38 court to be paid by the offender to the court over a specific period of
39 time.

1 (24) "First-time offender" means any person who has no prior
2 convictions for a felony and is eligible for the first-time offender
3 waiver under RCW 9.94A.650.

4 (25) "Home detention" means a program of partial confinement
5 available to offenders wherein the offender is confined in a private
6 residence subject to electronic surveillance.

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

21 (27) "Most serious offense" means any of the following felonies or
22 a felony attempt to commit any of the following felonies:

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

26 (b) Assault in the second degree;

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

28 (d) Child molestation in the second degree;

29 (e) Controlled substance homicide;

30 (f) Extortion in the first degree;

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

32 (h) Indecent liberties;

33 (i) Kidnapping in the second degree;

34 (j) Leading organized crime;

35 (k) Manslaughter in the first degree;

36 (l) Manslaughter in the second degree;

37 (m) Promoting prostitution in the first degree;

38 (n) Rape in the third degree;

39 (o) Robbery in the second degree;

1 (p) Sexual exploitation;
2 (q) (~~(vehicular assault;~~
3 (~~r~~)) Vehicular homicide, when proximately caused by the driving of
4 any vehicle by any person while under the influence of intoxicating
5 liquor or any drug as defined by RCW 46.61.502, or by the operation of
6 any vehicle in a reckless manner;
7 (~~s~~) (r) Any other class B felony offense with a finding of
8 sexual motivation;
9 (~~t~~) (s) Any other felony with a deadly weapon verdict under RCW
10 9.94A.125;
11 (~~u~~) (t) Any felony offense in effect at any time prior to
12 December 2, 1993, that is comparable to a most serious offense under
13 this subsection, or any federal or out-of-state conviction for an
14 offense that under the laws of this state would be a felony classified
15 as a most serious offense under this subsection;
16 (~~v~~) (u)(i) A prior conviction for indecent liberties under RCW
17 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
18 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
19 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
20 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
21 (ii) A prior conviction for indecent liberties under RCW
22 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
23 if: (A) The crime was committed against a child under the age of
24 fourteen; or (B) the relationship between the victim and perpetrator is
25 included in the definition of indecent liberties under RCW
26 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
27 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
28 through July 27, 1997.
29 (28) "Nonviolent offense" means an offense which is not a violent
30 offense.
31 (29) "Offender" means a person who has committed a felony
32 established by state law and is eighteen years of age or older or is
33 less than eighteen years of age but whose case is under superior court
34 jurisdiction under RCW 13.04.030 or has been transferred by the
35 appropriate juvenile court to a criminal court pursuant to RCW
36 13.40.110. Throughout this chapter, the terms "offender" and
37 "defendant" are used interchangeably.
38 (30) "Partial confinement" means confinement for no more than one
39 year in a facility or institution operated or utilized under contract

1 by the state or any other unit of government, or, if home detention or
2 work crew has been ordered by the court, in an approved residence, for
3 a substantial portion of each day with the balance of the day spent in
4 the community. Partial confinement includes work release, home
5 detention, work crew, and a combination of work crew and home
6 detention.

7 (31) "Persistent offender" is an offender who:

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

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

18 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
19 of a child in the first degree, child molestation in the first degree,
20 rape in the second degree, rape of a child in the second degree, or
21 indecent liberties by forcible compulsion; (B) murder in the first
22 degree, murder in the second degree, homicide by abuse, kidnapping in
23 the first degree, kidnapping in the second degree, assault in the first
24 degree, assault in the second degree, assault of a child in the first
25 degree, or burglary in the first degree, with a finding of sexual
26 motivation; or (C) an attempt to commit any crime listed in this
27 subsection (31)(b)(i); and

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

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

1 (33) "Restitution" means a specific sum of money ordered by the
2 sentencing court to be paid by the offender to the court over a
3 specified period of time as payment of damages. The sum may include
4 both public and private costs.

5 (34) "Risk assessment" means the application of an objective
6 instrument supported by research and adopted by the department for the
7 purpose of assessing an offender's risk of reoffense, taking into
8 consideration the nature of the harm done by the offender, place and
9 circumstances of the offender related to risk, the offender's
10 relationship to any victim, and any information provided to the
11 department by victims. The results of a risk assessment shall not be
12 based on unconfirmed or unconfirmable allegations.

13 (35) "Serious traffic offense" means:

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

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

22 (36) "Serious violent offense" is a subcategory of violent offense
23 and means:

24 (a)(i) Murder in the first degree;

25 (ii) Homicide by abuse;

26 (iii) Murder in the second degree;

27 (iv) Manslaughter in the first degree;

28 (v) Assault in the first degree;

29 (vi) Kidnapping in the first degree;

30 (vii) Rape in the first degree;

31 (viii) Assault of a child in the first degree; or

32 (ix) An attempt, criminal solicitation, or criminal conspiracy to
33 commit one of these felonies; or

34 (b) 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 serious
36 violent offense under (a) of this subsection.

37 (37) "Sex offense" means:

38 (a) A felony that is a violation of:

39 (i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

1 (ii) RCW 9A.64.020;
2 (iii) RCW 9.68A.090; or
3 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
4 criminal solicitation, or criminal conspiracy to commit such crimes;
5 (b) Any conviction for a felony offense in effect at any time prior
6 to July 1, 1976, that is comparable to a felony classified as a sex
7 offense in (a) of this subsection;
8 (c) A felony with a finding of sexual motivation under RCW
9 9.94A.127 or 13.40.135; or
10 (d) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as a sex
12 offense under (a) of this subsection.
13 (38) "Sexual motivation" means that one of the purposes for which
14 the defendant committed the crime was for the purpose of his or her
15 sexual gratification.
16 (39) "Standard sentence range" means the sentencing court's
17 discretionary range in imposing a nonappealable sentence.
18 (40) "Statutory maximum sentence" means the maximum length of time
19 for which an offender may be confined as punishment for a crime as
20 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
21 crime, or other statute defining the maximum penalty for a crime.
22 (41) "Total confinement" means confinement inside the physical
23 boundaries of a facility or institution operated or utilized under
24 contract by the state or any other unit of government for twenty-four
25 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
26 (42) "Transition training" means written and verbal instructions
27 and assistance provided by the department to the offender during the
28 two weeks prior to the offender's successful completion of the work
29 ethic camp program. The transition training shall include instructions
30 in the offender's requirements and obligations during the offender's
31 period of community custody.
32 (43) "Victim" means any person who has sustained emotional,
33 psychological, physical, or financial injury to person or property as
34 a direct result of the crime charged.
35 (44) "Violent offense" means:
36 (a) Any of the following felonies:
37 (i) Any felony defined under any law as a class A felony or an
38 attempt to commit a class A felony;

1 (ii) Criminal solicitation of or criminal conspiracy to commit a
2 class A felony;

3 (iii) Manslaughter in the first degree;

4 (iv) Manslaughter in the second degree;

5 (v) Indecent liberties if committed by forcible compulsion;

6 (vi) Kidnapping in the second degree;

7 (vii) Arson in the second degree;

8 (viii) Assault in the second degree;

9 (ix) Assault of a child in the second degree;

10 (x) Extortion in the first degree;

11 (xi) Robbery in the second degree;

12 (xii) Drive-by shooting;

13 (xiii) Vehicular assault in the first degree; and

14 (xiv) Vehicular homicide, when proximately caused by the driving of
15 any vehicle by any person while under the influence of intoxicating
16 liquor or any drug as defined by RCW 46.61.502, or by the operation of
17 any vehicle in a reckless manner;

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

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

24 (45) "Work crew" means a program of partial confinement consisting
25 of civic improvement tasks for the benefit of the community that
26 complies with RCW 9.94A.135.

27 (46) "Work ethic camp" means an alternative incarceration program
28 as provided in RCW 9.94A.137 designed to reduce recidivism and lower
29 the cost of corrections by requiring offenders to complete a
30 comprehensive array of real-world job and vocational experiences,
31 character-building work ethics training, life management skills
32 development, substance abuse rehabilitation, counseling, literacy
33 training, and basic adult education.

34 (47) "Work release" means a program of partial confinement
35 available to offenders who are employed or engaged as a student in a
36 regular course of study at school.

37 **Sec. 4.** RCW 9.94A.150 and 2000 c 28 s 28 are each amended to read
38 as follows:

1 No person serving a sentence imposed pursuant to this chapter and
2 committed to the custody of the department shall leave the confines of
3 the correctional facility or be released prior to the expiration of the
4 sentence except as follows:

5 (1) Except as otherwise provided for in subsection (2) of this
6 section, the term of the sentence of an offender committed to a
7 correctional facility operated by the department may be reduced by
8 earned release time in accordance with procedures that shall be
9 developed and promulgated by the correctional agency having
10 jurisdiction in which the offender is confined. The earned release
11 time shall be for good behavior and good performance, as determined by
12 the correctional agency having jurisdiction. The correctional agency
13 shall not credit the offender with earned release credits in advance of
14 the offender actually earning the credits. Any program established
15 pursuant to this section shall allow an offender to earn early release
16 credits for presentence incarceration. If an offender is transferred
17 from a county jail to the department, the administrator of a county
18 jail facility shall certify to the department the amount of time spent
19 in custody at the facility and the amount of earned release time. An
20 offender who has been convicted of a felony committed after July 23,
21 1995, that involves any applicable deadly weapon enhancements under RCW
22 9.94A.310 (3) or (4), or both, shall not receive any good time credits
23 or earned release time for that portion of his or her sentence that
24 results from any deadly weapon enhancements. In the case of an
25 offender convicted of a serious violent offense, or a sex offense that
26 is a class A felony, committed on or after July 1, 1990, the aggregate
27 earned release time may not exceed fifteen percent of the sentence. In
28 no other case shall the aggregate earned release time exceed one-third
29 of the total sentence;

30 (2)(a) A person convicted of a sex offense or an offense
31 categorized as a serious violent offense, assault in the second degree,
32 vehicular homicide, vehicular assault in the first degree, assault of
33 a child in the second degree, any crime against persons where it is
34 determined in accordance with RCW 9.94A.125 that the offender or an
35 accomplice was armed with a deadly weapon at the time of commission, or
36 any felony offense under chapter 69.50 or 69.52 RCW, committed before
37 July 1, 2000, may become eligible, in accordance with a program
38 developed by the department, for transfer to community custody status

1 in lieu of earned release time pursuant to subsection (1) of this
2 section;

3 (b) A person convicted of a sex offense, a violent offense, any
4 crime against persons under RCW 9.94A.440(2), or a felony offense under
5 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
6 become eligible, in accordance with a program developed by the
7 department, for transfer to community custody status in lieu of earned
8 release time pursuant to subsection (1) of this section;

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

13 (4)(a) The secretary may authorize an extraordinary medical
14 placement for an offender when all of the following conditions exist:

15 (i) The offender has a medical condition that is serious enough to
16 require costly care or treatment;

17 (ii) The offender poses a low risk to the community because he or
18 she is physically incapacitated due to age or the medical condition;
19 and

20 (iii) Granting the extraordinary medical placement will result in
21 a cost savings to the state.

22 (b) An offender sentenced to death or to life imprisonment without
23 the possibility of release or parole is not eligible for an
24 extraordinary medical placement.

25 (c) The secretary shall require electronic monitoring for all
26 offenders in extraordinary medical placement unless the electronic
27 monitoring equipment interferes with the function of the offender's
28 medical equipment or results in the loss of funding for the offender's
29 medical care. The secretary shall specify who shall provide the
30 monitoring services and the terms under which the monitoring shall be
31 performed.

32 (d) The secretary may revoke an extraordinary medical placement
33 under this subsection at any time.

34 (5) The governor, upon recommendation from the clemency and pardons
35 board, may grant an extraordinary release for reasons of serious health
36 problems, senility, advanced age, extraordinary meritorious acts, or
37 other extraordinary circumstances;

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

4 (7) The governor may pardon any offender;

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

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

11 Notwithstanding any other provisions of this section, an offender
12 sentenced for a felony crime listed in RCW 9.94A.590 as subject to a
13 mandatory minimum sentence of total confinement shall not be released
14 from total confinement before the completion of the listed mandatory
15 minimum sentence for that felony crime of conviction unless allowed
16 under RCW 9.94A.590, however persistent offenders are not eligible for
17 extraordinary medical placement.

18 **Sec. 5.** RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and
19 2000 c 66 s 2 are each reenacted and amended to read as follows:

20 TABLE 2

21 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

22 XVI	Aggravated Murder 1 (RCW 10.95.020)
23 XV	Homicide by abuse (RCW 9A.32.055)
24	Malicious explosion 1 (RCW 70.74.280(1))
25	Murder 1 (RCW 9A.32.030)
26 XIV	Murder 2 (RCW 9A.32.050)
27 XIII	Malicious explosion 2 (RCW 70.74.280(2))
28	Malicious placement of an explosive 1 (RCW
29	70.74.270(1))
30 XII	Assault 1 (RCW 9A.36.011)
31	Assault of a Child 1 (RCW 9A.36.120)
32	Malicious placement of an imitation device
33	1 (RCW 70.74.272(1)(a))
34	Rape 1 (RCW 9A.44.040)
35	Rape of a Child 1 (RCW 9A.44.073)

1 XI Manslaughter 1 (RCW 9A.32.060)
2 Rape 2 (RCW 9A.44.050)
3 Rape of a Child 2 (RCW 9A.44.076)
4 X Child Molestation 1 (RCW 9A.44.083)
5 Indecent Liberties (with forcible
6 compulsion) (RCW 9A.44.100(1)(a))
7 Kidnapping 1 (RCW 9A.40.020)
8 Leading Organized Crime (RCW
9 9A.82.060(1)(a))
10 Malicious explosion 3 (RCW 70.74.280(3))
11 Manufacture of methamphetamine (RCW
12 69.50.401(a)(1)(ii))
13 Over 18 and deliver heroin,
14 methamphetamine, a narcotic from
15 Schedule I or II, or flunitrazepam
16 from Schedule IV to someone under 18
17 (RCW 69.50.406)
18 IX Assault of a Child 2 (RCW 9A.36.130)
19 Controlled Substance Homicide (RCW
20 69.50.415)
21 Explosive devices prohibited (RCW
22 70.74.180)
23 Homicide by Watercraft, by being under the
24 influence of intoxicating liquor or
25 any drug (RCW 79A.60.050)
26 Inciting Criminal Profiteering (RCW
27 9A.82.060(1)(b))
28 Malicious placement of an explosive 2 (RCW
29 70.74.270(2))
30 Over 18 and deliver narcotic from Schedule
31 III, IV, or V or a nonnarcotic, except
32 flunitrazepam or methamphetamine, from
33 Schedule I-V to someone under 18 and 3
34 years junior (RCW 69.50.406)
35 Robbery 1 (RCW 9A.56.200)
36 Sexual Exploitation (RCW 9.68A.040)

1 Vehicular Homicide, by being under the
2 influence of intoxicating liquor or
3 any drug (RCW 46.61.520)

4 VIII Arson 1 (RCW 9A.48.020)
5 Deliver or possess with intent to deliver
6 methamphetamine (RCW
7 69.50.401(a)(1)(ii))
8 Hit and Run--Death (RCW 46.52.020(4)(a))
9 Homicide by Watercraft, by the operation of
10 any vessel in a reckless manner (RCW
11 79A.60.050)
12 Manslaughter 2 (RCW 9A.32.070)
13 Manufacture, deliver, or possess with
14 intent to deliver amphetamine (RCW
15 69.50.401(a)(1)(ii))
16 Manufacture, deliver, or possess with
17 intent to deliver heroin or cocaine
18 (RCW 69.50.401(a)(1)(i))
19 Possession of Ephedrine, Pseudoephedrine,
20 or Anhydrous Ammonia with intent to
21 manufacture methamphetamine (RCW
22 69.50.440)
23 Promoting Prostitution 1 (RCW 9A.88.070)
24 Selling for profit (controlled or
25 counterfeit) any controlled substance
26 (RCW 69.50.410)
27 Theft of Anhydrous Ammonia (RCW 69.55.010)
28 Vehicular Homicide, by the operation of any
29 vehicle in a reckless manner (RCW
30 46.61.520)

31 VII Burglary 1 (RCW 9A.52.020)
32 Child Molestation 2 (RCW 9A.44.086)
33 Dealing in depictions of minor engaged in
34 sexually explicit conduct (RCW
35 9.68A.050)
36 Drive-by Shooting (RCW 9A.36.045)
37 Homicide by Watercraft, by disregard for
38 the safety of others (RCW 79A.60.050)

1 Indecent Liberties (without forcible
2 compulsion) (RCW 9A.44.100(1) (b) and
3 (c))
4 Introducing Contraband 1 (RCW 9A.76.140)
5 Involving a minor in drug dealing (RCW
6 69.50.401(f))
7 Malicious placement of an explosive 3 (RCW
8 70.74.270(3))
9 Sending, bringing into state depictions of
10 minor engaged in sexually explicit
11 conduct (RCW 9.68A.060)
12 Unlawful Possession of a Firearm in the
13 first degree (RCW 9.41.040(1)(a))
14 Use of a Machine Gun in Commission of a
15 Felony (RCW 9.41.225)
16 Vehicular Homicide, by disregard for the
17 safety of others (RCW 46.61.520)

18 VI Bail Jumping with Murder 1 (RCW
19 9A.76.170(2)(a))
20 Bribery (RCW 9A.68.010)
21 Incest 1 (RCW 9A.64.020(1))
22 Intimidating a Judge (RCW 9A.72.160)
23 Intimidating a Juror/Witness (RCW
24 9A.72.110, 9A.72.130)
25 Malicious placement of an imitation device
26 2 (RCW 70.74.272(1)(b))
27 Manufacture, deliver, or possess with
28 intent to deliver narcotics from
29 Schedule I or II (except heroin or
30 cocaine) or flunitrazepam from
31 Schedule IV (RCW 69.50.401(a)(1)(i))
32 Rape of a Child 3 (RCW 9A.44.079)
33 Theft of a Firearm (RCW 9A.56.300)
34 Unlawful Storage of Anhydrous Ammonia (RCW
35 69.55.020)

36 V Abandonment of dependent person 1 (RCW
37 9A.42.060)

1 Advancing money or property for
2 extortionate extension of credit (RCW
3 9A.82.030)
4 Bail Jumping with class A Felony (RCW
5 9A.76.170(2)(b))
6 Child Molestation 3 (RCW 9A.44.089)
7 Criminal Mistreatment 1 (RCW 9A.42.020)
8 Custodial Sexual Misconduct 1 (RCW
9 9A.44.160)
10 Delivery of imitation controlled substance
11 by person eighteen or over to person
12 under eighteen (RCW 69.52.030(2))
13 Domestic Violence Court Order Violation
14 (RCW 10.99.040, 10.99.050, 26.09.300,
15 26.10.220, 26.26.138, 26.50.110,
16 26.52.070, or 74.34.145)
17 Extortion 1 (RCW 9A.56.120)
18 Extortionate Extension of Credit (RCW
19 9A.82.020)
20 Extortionate Means to Collect Extensions of
21 Credit (RCW 9A.82.040)
22 Incest 2 (RCW 9A.64.020(2))
23 Kidnapping 2 (RCW 9A.40.030)
24 Perjury 1 (RCW 9A.72.020)
25 Persistent prison misbehavior (RCW
26 9.94.070)
27 Possession of a Stolen Firearm (RCW
28 9A.56.310)
29 Rape 3 (RCW 9A.44.060)
30 Rendering Criminal Assistance 1 (RCW
31 9A.76.070)
32 Sexual Misconduct with a Minor 1 (RCW
33 9A.44.093)
34 Sexually Violating Human Remains (RCW
35 9A.44.105)
36 Stalking (RCW 9A.46.110)
37 IV Arson 2 (RCW 9A.48.030)
38 Assault 2 (RCW 9A.36.021)
39 Assault by Watercraft (RCW 79A.60.060)

1 Bribing a Witness/Bribe Received by Witness
2 (RCW 9A.72.090, 9A.72.100)
3 Commercial Bribery (RCW 9A.68.060)
4 Counterfeiting (RCW 9.16.035(4))
5 Escape 1 (RCW 9A.76.110)
6 Hit and Run--Injury (RCW 46.52.020(4)(b))
7 Hit and Run with Vessel--Injury Accident
8 (RCW 79A.60.200(3))
9 Indecent Exposure to Person Under Age
10 Fourteen (subsequent sex offense) (RCW
11 9A.88.010)
12 Influencing Outcome of Sporting Event (RCW
13 9A.82.070)
14 Knowingly Trafficking in Stolen Property
15 (RCW 9A.82.050(2))
16 Malicious Harassment (RCW 9A.36.080)
17 Manufacture, deliver, or possess with
18 intent to deliver narcotics from
19 Schedule III, IV, or V or nonnarcotics
20 from Schedule I-V (except marijuana,
21 amphetamine, methamphetamines, or
22 flunitrazepam) (RCW 69.50.401(a)(1)
23 (iii) through (v))
24 Residential Burglary (RCW 9A.52.025)
25 Robbery 2 (RCW 9A.56.210)
26 Theft of Livestock 1 (RCW 9A.56.080)
27 Threats to Bomb (RCW 9.61.160)
28 Use of Proceeds of Criminal Profiteering
29 (RCW 9A.82.080 (1) and (2))
30 Vehicular Assault 1 (RCW 46.61.522(1))
31 Willful Failure to Return from Furlough
32 (RCW 72.66.060)

33 III Abandonment of dependent person 2 (RCW
34 9A.42.070)
35 Assault 3 (RCW 9A.36.031)
36 Assault of a Child 3 (RCW 9A.36.140)
37 Bail Jumping with class B or C Felony (RCW
38 9A.76.170(2)(c))
39 Burglary 2 (RCW 9A.52.030)

1 Communication with a Minor for Immoral
2 Purposes (RCW 9.68A.090)
3 Criminal Gang Intimidation (RCW 9A.46.120)
4 Criminal Mistreatment 2 (RCW 9A.42.030)
5 Custodial Assault (RCW 9A.36.100)
6 Delivery of a material in lieu of a
7 controlled substance (RCW
8 69.50.401(c))
9 Escape 2 (RCW 9A.76.120)
10 Extortion 2 (RCW 9A.56.130)
11 Harassment (RCW 9A.46.020)
12 Intimidating a Public Servant (RCW
13 9A.76.180)
14 Introducing Contraband 2 (RCW 9A.76.150)
15 Maintaining a Dwelling or Place for
16 Controlled Substances (RCW
17 69.50.402(a)(6))
18 Malicious Injury to Railroad Property (RCW
19 81.60.070)
20 Manufacture, deliver, or possess with
21 intent to deliver marijuana (RCW
22 69.50.401(a)(1)(iii))
23 Manufacture, distribute, or possess with
24 intent to distribute an imitation
25 controlled substance (RCW
26 69.52.030(1))
27 Patronizing a Juvenile Prostitute (RCW
28 9.68A.100)
29 Perjury 2 (RCW 9A.72.030)
30 Possession of Incendiary Device (RCW
31 9.40.120)
32 Possession of Machine Gun or Short-Barreled
33 Shotgun or Rifle (RCW 9.41.190)
34 Promoting Prostitution 2 (RCW 9A.88.080)
35 Recklessly Trafficking in Stolen Property
36 (RCW 9A.82.050(1))
37 Securities Act violation (RCW 21.20.400)
38 Tampering with a Witness (RCW 9A.72.120)

1 Telephone Harassment (subsequent conviction
2 or threat of death) (RCW 9.61.230)
3 Theft of Livestock 2 (RCW 9A.56.080)
4 Unlawful Imprisonment (RCW 9A.40.040)
5 Unlawful possession of firearm in the
6 second degree (RCW 9.41.040(1)(b))
7 Unlawful Use of Building for Drug Purposes
8 (RCW 69.53.010)
9 Willful Failure to Return from Work Release
10 (RCW 72.65.070)

11 II Computer Trespass 1 (RCW 9A.52.110)
12 Counterfeiting (RCW 9.16.035(3))
13 Create, deliver, or possess a counterfeit
14 controlled substance (RCW
15 69.50.401(b))
16 Escape from Community Custody (RCW
17 72.09.310)
18 Health Care False Claims (RCW 48.80.030)
19 Malicious Mischief 1 (RCW 9A.48.070)
20 Possession of controlled substance that is
21 either heroin or narcotics from
22 Schedule I or II or flunitrazepam from
23 Schedule IV (RCW 69.50.401(d))
24 Possession of phencyclidine (PCP) (RCW
25 69.50.401(d))
26 Possession of Stolen Property 1 (RCW
27 9A.56.150)
28 Theft 1 (RCW 9A.56.030)
29 Theft of Rental, Leased, or Lease-purchased
30 Property (valued at one thousand five
31 hundred dollars or more) (RCW
32 9A.56.096(4))
33 Trafficking in Insurance Claims (RCW
34 48.30A.015)
35 Unlawful Practice of Law (RCW 2.48.180)
36 Unlicensed Practice of a Profession or
37 Business (RCW 18.130.190(7))

1 I Attempting to Elude a Pursuing Police
2 Vehicle (RCW 46.61.024)
3 False Verification for Welfare (RCW
4 74.08.055)
5 Forged Prescription (RCW 69.41.020)
6 Forged Prescription for a Controlled
7 Substance (RCW 69.50.403)
8 Forgery (RCW 9A.60.020)
9 Malicious Mischief 2 (RCW 9A.48.080)
10 Possess Controlled Substance that is a
11 Narcotic from Schedule III, IV, or V
12 or Non-narcotic from Schedule I-V
13 (except phencyclidine or
14 flunitrazepam) (RCW 69.50.401(d))
15 Possession of Stolen Property 2 (RCW
16 9A.56.160)
17 Reckless Burning 1 (RCW 9A.48.040)
18 Taking Motor Vehicle Without Permission
19 (RCW 9A.56.070)
20 Theft 2 (RCW 9A.56.040)
21 Theft of Rental, Leased, or Lease-purchased
22 Property (valued at two hundred fifty
23 dollars or more but less than one
24 thousand five hundred dollars) (RCW
25 9A.56.096(4))
26 Unlawful Issuance of Checks or Drafts (RCW
27 9A.56.060)
28 Unlawful Use of Food Stamps (RCW 9.91.140
29 (2) and (3))
30 Vehicle Prowl 1 (RCW 9A.52.095)

31 **Sec. 6.** RCW 9.94A.440 and 2000 c 119 s 28 and 2000 c 28 s 17 are
32 each reenacted and amended to read as follows:

33 (1) Decision not to prosecute.

34 STANDARD: A prosecuting attorney may decline to prosecute, even
35 though technically sufficient evidence to prosecute exists, in
36 situations where prosecution would serve no public purpose, would
37 defeat the underlying purpose of the law in question or would result in
38 decreased respect for the law.

1 GUIDELINE/COMMENTARY:

2 Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (i) Assault cases where the victim has suffered little or no
25 injury;

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

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

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

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

33 Notification

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

36 (2) Decision to prosecute.

37 (a) STANDARD:

38 Crimes against persons will be filed if sufficient admissible
39 evidence exists, which, when considered with the most plausible,

1 reasonably foreseeable defense that could be raised under the evidence,
2 would justify conviction by a reasonable and objective fact-finder.
3 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
4 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
5 9A.64.020 the prosecutor should avoid prefiling agreements or
6 diversions intended to place the accused in a program of treatment or
7 counseling, so that treatment, if determined to be beneficial, can be
8 provided pursuant to RCW 9.94A.670.

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

14 See table below for the crimes within these categories.

15 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

16 CRIMES AGAINST PERSONS

17 Aggravated Murder

18 1st Degree Murder

19 2nd Degree Murder

20 1st Degree Manslaughter

21 2nd Degree Manslaughter

22 1st Degree Kidnapping

23 2nd Degree Kidnapping

24 1st Degree Assault

25 2nd Degree Assault

26 3rd Degree Assault

27 1st Degree Assault of a Child

28 2nd Degree Assault of a Child

29 3rd Degree Assault of a Child

30 1st Degree Rape

31 2nd Degree Rape

32 3rd Degree Rape

33 1st Degree Rape of a Child

34 2nd Degree Rape of a Child

35 3rd Degree Rape of a Child

36 1st Degree Robbery

37 2nd Degree Robbery

38 1st Degree Arson

1 1st Degree Burglary
2 1st Degree Extortion
3 2nd Degree Extortion
4 Indecent Liberties
5 Incest
6 Vehicular Homicide
7 1st Degree Vehicular Assault
8 2nd Degree Vehicular Assault
9 1st Degree Child Molestation
10 2nd Degree Child Molestation
11 3rd Degree Child Molestation
12 1st Degree Promoting Prostitution
13 Intimidating a Juror
14 Communication with a Minor
15 Intimidating a Witness
16 Intimidating a Public Servant
17 Bomb Threat (if against person)
18 Unlawful Imprisonment
19 Promoting a Suicide Attempt
20 Riot (if against person)
21 Stalking
22 Custodial Assault
23 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
24 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
25 Counterfeiting (if a violation of RCW 9.16.035(4))

26 CRIMES AGAINST PROPERTY/OTHER CRIMES
27 2nd Degree Arson
28 1st Degree Escape
29 2nd Degree Escape
30 2nd Degree Burglary
31 1st Degree Theft
32 2nd Degree Theft
33 1st Degree Perjury
34 2nd Degree Perjury
35 1st Degree Introducing Contraband
36 2nd Degree Introducing Contraband
37 1st Degree Possession of Stolen Property
38 2nd Degree Possession of Stolen Property
39 Bribery

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

21 ALL OTHER UNCLASSIFIED FELONIES

22 Selection of Charges/Degree of Charge

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

26 (A) Will significantly enhance the strength of the state's case at
27 trial; or

28 (B) Will result in restitution to all victims.

29 (ii) The prosecutor should not overcharge to obtain a guilty plea.

30 Overcharging includes:

31 (A) Charging a higher degree;

32 (B) Charging additional counts.

33 This standard is intended to direct prosecutors to charge those
34 crimes which demonstrate the nature and seriousness of a defendant's
35 criminal conduct, but to decline to charge crimes which are not
36 necessary to such an indication. Crimes which do not merge as a matter
37 of law, but which arise from the same course of conduct, do not all
38 have to be charged.

1 (b) GUIDELINES/COMMENTARY:

2 (i) Police Investigation

3 A prosecuting attorney is dependent upon law enforcement agencies
4 to conduct the necessary factual investigation which must precede the
5 decision to prosecute. The prosecuting attorney shall ensure that a
6 thorough factual investigation has been conducted before a decision to
7 prosecute is made. In ordinary circumstances the investigation should
8 include the following:

9 (A) The interviewing of all material witnesses, together with the
10 obtaining of written statements whenever possible;

11 (B) The completion of necessary laboratory tests; and

12 (C) The obtaining, in accordance with constitutional requirements,
13 of the suspect's version of the events.

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

17 (ii) Exceptions

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

20 (A) Probable cause exists to believe the suspect is guilty; and

21 (B) The suspect presents a danger to the community or is likely to
22 flee if not apprehended; or

23 (C) The arrest of the suspect is necessary to complete the
24 investigation of the crime.

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

30 (iii) Investigation Techniques

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

33 (A) Polygraph testing;

34 (B) Hypnosis;

35 (C) Electronic surveillance;

36 (D) Use of informants.

37 (iv) Pre-Filing Discussions with Defendant

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

4 (v) Pre-Filing Discussions with Victim(s)

5 Discussions with the victim(s) or victims' representatives
 6 regarding the selection or disposition of charges may occur before the
 7 filing of charges. The discussions may be considered by the prosecutor
 8 in charging and disposition decisions, and should be considered before
 9 reaching any agreement with the defendant regarding these decisions.

10 **Sec. 7.** RCW 13.40.0357 and 2000 c 66 s 3 are each amended to read
 11 as follows:

12 **DESCRIPTION AND OFFENSE CATEGORY**

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

18 ***Arson and Malicious Mischief***

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

31 ***Assault and Other Crimes***

32 ***Involving Physical Harm***

33	<i>A</i>	<i>Assault 1 (9A.36.011)</i>	<i>B+</i>
34	<i>B+</i>	<i>Assault 2 (9A.36.021)</i>	<i>C+</i>
35	<i>C+</i>	<i>Assault 3 (9A.36.031)</i>	<i>D+</i>
36	<i>D+</i>	<i>Assault 4 (9A.36.041)</i>	<i>E</i>

1	B+	<i>Drive-By Shooting</i>	
2		<i>(9A.36.045)</i>	C+
3	D+	<i>Reckless Endangerment</i>	
4		<i>(9A.36.050)</i>	E
5	C+	<i>Promoting Suicide Attempt</i>	
6		<i>(9A.36.060)</i>	D+
7	D+	<i>Coercion (9A.36.070)</i>	E
8	C+	<i>Custodial Assault (9A.36.100)</i>	D+
9		<i>Burglary and Trespass</i>	
10	B+	<i>Burglary 1 (9A.52.020)</i>	C+
11	B	<i>Residential Burglary</i>	
12		<i>(9A.52.025)</i>	C
13	B	<i>Burglary 2 (9A.52.030)</i>	C
14	D	<i>Burglary Tools (Possession of)</i>	
15		<i>(9A.52.060)</i>	E
16	D	<i>Criminal Trespass 1 (9A.52.070)</i>	E
17	E	<i>Criminal Trespass 2 (9A.52.080)</i>	E
18	C	<i>Vehicle Prowling 1 (9A.52.095)</i>	D
19	D	<i>Vehicle Prowling 2 (9A.52.100)</i>	E
20		<i>Drugs</i>	
21	E	<i>Possession/Consumption of Alcohol</i>	
22		<i>(66.44.270)</i>	E
23	C	<i>Illegally Obtaining Legend Drug</i>	
24		<i>(69.41.020)</i>	D
25	C+	<i>Sale, Delivery, Possession of Legend</i>	
26		<i>Drug with Intent to Sell</i>	
27		<i>(69.41.030)</i>	D+
28	E	<i>Possession of Legend Drug</i>	
29		<i>(69.41.030)</i>	E
30	B+	<i>Violation of Uniform Controlled</i>	
31		<i>Substances Act - Narcotic,</i>	
32		<i>Methamphetamine, or Flunitrazepam</i>	
33		<i>Sale (69.50.401(a)(1) (i) or (ii))</i>	B+
34	C	<i>Violation of Uniform Controlled</i>	
35		<i>Substances Act - Nonnarcotic Sale</i>	
36		<i>(69.50.401(a)(1)(ii))</i>	C
37	E	<i>Possession of Marihuana <40 grams</i>	
38		<i>(69.50.401(e))</i>	E

1	<i>C</i>	<i>Fraudulently Obtaining Controlled Substance (69.50.403)</i>	<i>C</i>
2			
3	<i>C+</i>	<i>Sale of Controlled Substance for Profit (69.50.410)</i>	<i>C+</i>
4			
5	<i>E</i>	<i>Unlawful Inhalation (9.47A.020)</i>	<i>E</i>
6	<i>B</i>	<i>Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.401(b)(1) (i) or (ii))</i>	<i>B</i>
7			
8			
9			
10	<i>C</i>	<i>Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.401(b)(1) (iii), (iv), (v))</i>	<i>C</i>
11			
12			
13			
14	<i>C</i>	<i>Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(d))</i>	<i>C</i>
15			
16	<i>C</i>	<i>Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(c))</i>	<i>C</i>
17			
18			
19	<i>C</i>	<i>Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(c))</i>	<i>C</i>
20			
21			
22			
23		<i>Firearms and Weapons</i>	
24	<i>B</i>	<i>Theft of Firearm (9A.56.300)</i>	<i>C</i>
25	<i>B</i>	<i>Possession of Stolen Firearm (9A.56.310)</i>	<i>C</i>
26			
27	<i>E</i>	<i>Carrying Loaded Pistol Without Permit (9.41.050)</i>	<i>E</i>
28			
29	<i>C</i>	<i>Possession of Firearms by Minor (<18) (9.41.040(1)(b)(iii))</i>	<i>C</i>
30			
31	<i>D+</i>	<i>Possession of Dangerous Weapon (9.41.250)</i>	<i>E</i>
32			
33	<i>D</i>	<i>Intimidating Another Person by use of Weapon (9.41.270)</i>	<i>E</i>
34			
35		<i>Homicide</i>	
36	<i>A+</i>	<i>Murder 1 (9A.32.030)</i>	<i>A</i>
37	<i>A+</i>	<i>Murder 2 (9A.32.050)</i>	<i>B+</i>
38	<i>B+</i>	<i>Manslaughter 1 (9A.32.060)</i>	<i>C+</i>

1	C+	<i>Manslaughter 2 (9A.32.070)</i>	D+
2	B+	<i>Vehicular Homicide (46.61.520)</i>	C+
3		<i>Kidnapping</i>	
4	A	<i>Kidnap 1 (9A.40.020)</i>	B+
5	B+	<i>Kidnap 2 (9A.40.030)</i>	C+
6	C+	<i>Unlawful Imprisonment</i>	
7		<i>(9A.40.040)</i>	D+
8		<i>Obstructing Governmental Operation</i>	
9	D	<i>Obstructing a Law Enforcement</i>	
10		<i>Officer (9A.76.020)</i>	E
11	E	<i>Resisting Arrest (9A.76.040)</i>	E
12	B	<i>Introducing Contraband 1</i>	
13		<i>(9A.76.140)</i>	C
14	C	<i>Introducing Contraband 2</i>	
15		<i>(9A.76.150)</i>	D
16	E	<i>Introducing Contraband 3</i>	
17		<i>(9A.76.160)</i>	E
18	B+	<i>Intimidating a Public Servant</i>	
19		<i>(9A.76.180)</i>	C+
20	B+	<i>Intimidating a Witness</i>	
21		<i>(9A.72.110)</i>	C+
22		<i>Public Disturbance</i>	
23	C+	<i>Riot with Weapon (9A.84.010)</i>	D+
24	D+	<i>Riot Without Weapon</i>	
25		<i>(9A.84.010)</i>	E
26	E	<i>Failure to Disperse (9A.84.020)</i>	E
27	E	<i>Disorderly Conduct (9A.84.030)</i>	E
28		<i>Sex Crimes</i>	
29	A	<i>Rape 1 (9A.44.040)</i>	B+
30	A-	<i>Rape 2 (9A.44.050)</i>	B+
31	C+	<i>Rape 3 (9A.44.060)</i>	D+
32	A-	<i>Rape of a Child 1 (9A.44.073)</i>	B+
33	B+	<i>Rape of a Child 2 (9A.44.076)</i>	C+
34	B	<i>Incest 1 (9A.64.020(1))</i>	C
35	C	<i>Incest 2 (9A.64.020(2))</i>	D
36	D+	<i>Indecent Exposure</i>	
37		<i>(Victim <14) (9A.88.010)</i>	E

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

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

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

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

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

36 3rd and subsequent escape or attempted escape during 12-month
37 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		_____			
10	A+	180 WEEKS TO AGE 21 YEARS			
11		_____			
12	A	103 WEEKS TO 129 WEEKS			
13		_____			
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		_____			
22	Current	B+	15-36	52-65	80-100 103-129
23	Offense		WEEKS	WEEKS	WEEKS WEEKS
24	Category		_____		
25		B	LOCAL		52-65
26			SANCTIONS (LS)	15-36 WEEKS	WEEKS
27			_____		_____
28		C+	LS		
29				15-36 WEEKS	
30			_____		
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			_____		
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 disposition
23 of local sanctions or 15 to 36 weeks of confinement and has not
24 committed an A- or B+ offense, the court may impose a disposition under
25 RCW 13.40.160(4) 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. 8.** RCW 38.52.430 and 1993 c 251 s 2 are each amended to read
33 as follows:

34 A person whose intoxication causes an incident resulting in an
35 appropriate emergency response, and who, in connection with the

1 incident, has been found guilty of or has had their prosecution
2 deferred for (1) driving while under the influence of intoxicating
3 liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the
4 influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel
5 while under the influence of alcohol or drugs, RCW ((88.12.100))
6 79A.60.040; (4) vehicular homicide while under the influence of
7 intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular
8 assault while under the influence of intoxicating liquor or any drug,
9 RCW 46.61.522 (1)((b)) (a)(ii), is liable for the expense of an
10 emergency response by a public agency to the incident.

11 The expense of an emergency response is a charge against the person
12 liable for expenses under this section. The charge constitutes a debt
13 of that person and is collectible by the public agency incurring those
14 costs in the same manner as in the case of an obligation under a
15 contract, expressed or implied.

16 In no event shall a person's liability under this section for the
17 expense of an emergency response exceed one thousand dollars for a
18 particular incident.

19 If more than one public agency makes a claim for payment from an
20 individual for an emergency response to a single incident under the
21 provisions of this section, and the sum of the claims exceeds the
22 amount recovered, the division of the amount recovered shall be
23 determined by an interlocal agreement consistent with the requirements
24 of chapter 39.34 RCW.

25 **Sec. 9.** RCW 46.20.391 and 1999 c 274 s 4 and 1999 c 272 s 1 are
26 each reenacted and amended to read as follows:

27 (1) Any person licensed under this chapter who is convicted of an
28 offense relating to motor vehicles for which suspension or revocation
29 of the driver's license is mandatory, other than vehicular homicide or
30 vehicular assault in the first degree, or who has had his or her
31 license suspended under RCW 46.20.3101 (2)(a) or (3)(a), may submit to
32 the department an application for an occupational driver's license.
33 The department, upon receipt of the prescribed fee and upon determining
34 that the petitioner is engaged in an occupation or trade that makes it
35 essential that the petitioner operate a motor vehicle, may issue an
36 occupational driver's license and may set definite restrictions as
37 provided in RCW 46.20.394. No person may petition for, and the
38 department shall not issue, an occupational driver's license that is

1 effective during the first thirty days of any suspension or revocation
2 imposed either for a violation of RCW 46.61.502 or 46.61.504 or under
3 RCW 46.20.3101 (2)(a) or (3)(a), or for both a violation of RCW
4 46.61.502 or 46.61.504 and under RCW 46.20.3101 (2)(a) or (3)(a) where
5 the action arises from the same incident. A person aggrieved by the
6 decision of the department on the application for an occupational
7 driver's license may request a hearing as provided by rule of the
8 department.

9 (2)(a) A person licensed under this chapter whose driver's license
10 is suspended administratively due to failure to appear or pay a traffic
11 ticket under RCW 46.20.289; a violation of the financial responsibility
12 laws under chapter 46.29 RCW; or for multiple violations within a
13 specified period of time under RCW 46.20.291, may apply to the
14 department for an occupational driver's license if the applicant
15 demonstrates to the satisfaction of the department that one of the
16 following additional conditions are met:

17 (i) The applicant is in an apprenticeship program or an on-the-job
18 training program for which a driver's license is required;

19 (ii) The applicant presents evidence that he or she has applied for
20 a position in an apprenticeship or on-the-job training program and the
21 program has certified that a driver's license is required to begin the
22 program, provided that a license granted under this provision shall be
23 in effect no longer than fourteen days;

24 (iii) The applicant is in a program that assists persons who are
25 enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to
26 become gainfully employed and the program requires a driver's license;
27 or

28 (iv) The applicant is undergoing substance abuse treatment or is
29 participating in meetings of a twelve-step group such as alcoholics
30 anonymous.

31 (b) If the suspension is for failure to respond, pay, or comply
32 with a notice of traffic infraction or conviction, the applicant must
33 enter into a payment plan with the court.

34 (c) An occupational driver's license issued to an applicant
35 described in (a) of this subsection shall be valid for the period of
36 the suspension or revocation but not more than two years.

37 (d) Upon receipt of evidence that a holder of an occupational
38 driver's license granted under this subsection is no longer enrolled in
39 an apprenticeship or on-the-job training program, the director shall

1 give written notice by first class mail to the driver that the
2 occupational driver's license shall be canceled. The effective date of
3 cancellation shall be fifteen days from the date of mailing the notice.
4 If at any time before the cancellation goes into effect the driver
5 submits evidence of continued enrollment in the program, the
6 cancellation shall be stayed. If the cancellation becomes effective,
7 the driver may obtain, at no additional charge, a new occupational
8 driver's license upon submittal of evidence of enrollment in another
9 program that meets the criteria set forth in this subsection.

10 (e) The department shall not issue an occupational driver's license
11 under (a)(iv) of this subsection if the applicant is able to receive
12 transit services sufficient to allow for the applicant's participation
13 in the programs referenced under (a)(iv) of this subsection.

14 (3) An applicant for an occupational driver's license is eligible
15 to receive such license only if:

16 (a) Within one year immediately preceding the date of the offense
17 that gave rise to the present conviction, the applicant has not
18 committed any offense relating to motor vehicles for which suspension
19 or revocation of a driver's license is mandatory; and

20 (b) Within seven years immediately preceding the date of the
21 offense that gave rise to the present conviction or incident, the
22 applicant has not committed any of the following offenses: (i) Driving
23 or being in actual physical control of a motor vehicle while under the
24 influence of intoxicating liquor; (ii) vehicular homicide under RCW
25 46.61.520; or (iii) vehicular assault in the first degree under RCW
26 46.61.522(1); and

27 (c) The applicant is engaged in an occupation or trade that makes
28 it essential that he or she operate a motor vehicle, except as allowed
29 under subsection (2)(a) of this section; and

30 (d) The applicant files satisfactory proof of financial
31 responsibility under chapter 46.29 RCW.

32 (4) The director shall cancel an occupational driver's license upon
33 receipt of notice that the holder thereof has been convicted of
34 operating a motor vehicle in violation of its restrictions, or of a
35 separate offense that under chapter 46.20 RCW would warrant suspension
36 or revocation of a regular driver's license. The cancellation is
37 effective as of the date of the conviction, and continues with the same
38 force and effect as any suspension or revocation under this title.

1 **Sec. 10.** RCW 46.61.524 and 2000 c 28 s 40 are each amended to read
2 as follows:

3 (1) A person convicted under RCW 46.61.520(1)(a) or
4 46.61.522(1)((~~b~~)) (a)(ii) shall, as a condition of community
5 (~~(supervision)~~) custody imposed under RCW 9.94A.383 or community
6 placement imposed under RCW 9.94A.660, complete a diagnostic evaluation
7 by an alcohol or drug dependency agency approved by the department of
8 social and health services or a qualified probation department, as
9 defined under RCW 46.61.516 that has been approved by the department of
10 social and health services. This report shall be forwarded to the
11 department of licensing. If the person is found to have an alcohol or
12 drug problem that requires treatment, the person shall complete
13 treatment in a program approved by the department of social and health
14 services under chapter 70.96A RCW. If the person is found not to have
15 an alcohol or drug problem that requires treatment, he or she shall
16 complete a course in an information school approved by the department
17 of social and health services under chapter 70.96A RCW. The convicted
18 person shall pay all costs for any evaluation, education, or treatment
19 required by this section, unless the person is eligible for an existing
20 program offered or approved by the department of social and health
21 services. Nothing in chapter 348, Laws of 1991 requires the addition
22 of new treatment or assessment facilities nor affects the department of
23 social and health services use of existing programs and facilities
24 authorized by law.

25 (2) As provided for under RCW 46.20.285, the department shall
26 revoke the license, permit to drive, or a nonresident privilege of a
27 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
28 assault under RCW 46.61.522. The department shall determine the
29 eligibility of a person convicted of vehicular homicide under RCW
30 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)((~~b~~))
31 (a)(ii) to receive a license based upon the report provided by the
32 designated alcoholism treatment facility or probation department, and
33 shall deny reinstatement until satisfactory progress in an approved
34 program has been established and the person is otherwise qualified.

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