
HOUSE BILL 2476

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By Representatives Shabro, Pearson, Nixon, McDonald, Talcott, Linville, Skinner, Buck, Condotta, Walsh, Ahern, Haler, Serben, Ericksen, Alexander, Schindler, Armstrong, McCune, Holmquist and Woods

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1 AN ACT Relating to protecting children, vulnerable adults, and
2 communities from sex and kidnapping offenders regardless of whether the
3 perpetrator was known to the victim at the time of the crime by
4 creating the new crimes of sexual victimization in the first and second
5 degrees, failure to report an unregistered sex or kidnapping offender,
6 and tampering with an electronic monitoring device, designating as a
7 sex offense the crime of possession of depictions of a minor engaged in
8 sexually explicit conduct, increasing the penalty for failure to
9 register as a sex or kidnapping offender, imposing minimum sentences
10 for sexual victimization in the first and second degrees, child
11 molestation in the first degree, kidnapping in the first degree with a
12 finding of sexual motivation, and rape of a child in the first and
13 second degrees, requiring electronic monitoring for certain sex
14 offenders, adding to the aggravating circumstances for purposes of
15 imposing the death penalty, requiring sex offenders to receive
16 treatment and admit guilt before being released, prohibiting sex
17 offenders with life sentences from receiving treatment, narrowing the
18 eligibility for the special sex offender sentencing alternative,
19 tightening sex and kidnapping offender registration requirements, and
20 providing an appropriation to the attorney general for purposes of
21 public education and awareness; amending RCW 9A.44.050, 9A.44.100,

1 9A.44.010, 9.94A.030, 9.94A.030, 9.94A.712, 9.94A.712, 10.95.020,
2 9.95.062, 9.95.420, 72.09.335, 9A.04.080, 9A.44.130, 9A.44.140,
3 9A.46.060, 9A.28.020, 9A.32.030, 10.64.025, 10.99.020, 13.40.0357,
4 13.40.040, 13.40.077, and 43.43.830; reenacting and amending RCW
5 9.94A.505, 9.94A.670, 9A.44.130, 9.94A.411, and 9.94A.515; adding new
6 sections to chapter 9A.44 RCW; adding a new section to chapter 9A.76
7 RCW; adding a new section to chapter 72.09 RCW; adding a new section to
8 chapter 9.94A RCW; creating a new section; prescribing penalties;
9 making an appropriation; providing effective dates; and providing
10 expiration dates.

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

12 NEW SECTION. **Sec. 1.** Sexual abuse, including the rape and
13 molestation of helpless children and vulnerable persons, is one of the
14 most terrifying and demeaning criminal acts an individual can
15 perpetrate against another person. The personal pain and fear suffered
16 by the innocent victims of sexual abuse, and by their families, create
17 devastating difficulties that often take years, if not a lifetime, to
18 overcome. The grief and loss caused by the sexual abuse of young
19 children and vulnerable persons are severe and the severity of
20 punishment for those who commit such sexual abuse should be
21 commensurate with the terror and trauma they have forced upon their
22 victims, and the victim's family and loved ones. Justice is concerned
23 with enforcing consequences for one's own actions to ensure personal
24 responsibility for such actions. The severity of punishment for those
25 who commit sexual abuse, such as the rape and molestation of a child or
26 a vulnerable person, should not depend on whether the victim is known
27 or unknown to the defendant who committed the act but should be
28 consistent for and commensurate with the horrible crimes such
29 perpetrators have imposed upon their victims. Strict penalties for
30 such cruel and humiliating violations of a person's dignity, honor, and
31 well-being are both appropriate and just, will act as a deterrent to
32 others who are inclined to commit such immoral and inhumane crimes, and
33 reflect the will of the majority of the people of this state. The
34 legislature intends to ensure that the sanctions imposed for sexual
35 abuse of a child or a vulnerable person are proportionate to the crime

1 and that the victims of sexual abuse will be better able to lead lives
2 free of fear knowing that the perpetrators of such crimes against them
3 will not be around to harm them, or others, for a long time.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.44 RCW
5 to read as follows:

6 (1) A person is guilty of sexual victimization in the first degree
7 if he or she commits rape in the first degree and the victim of the
8 crime was under the age of twelve at the time of the offense.

9 (2) Sexual victimization in the first degree is a class A felony.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.44 RCW
11 to read as follows:

12 (1) A person is guilty of sexual victimization in the second degree
13 if he or she:

14 (a) Has sexual intercourse or sexual contact with another person
15 when the victim is incapable of consent by reason of being physically
16 helpless or mentally incapacitated; or

17 (b) Commits rape in the first degree, rape in the second degree by
18 forcible compulsion, rape in the third degree, or indecent liberties by
19 forcible compulsion, and the victim of the crime was, at the time of
20 the offense, a person with a developmental disability, a mentally
21 disordered person, or a frail elder or vulnerable adult.

22 (2) Sexual victimization in the second degree is a class A felony.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 9A.76 RCW
24 to read as follows:

25 (1) A person is guilty of failure to report an unregistered sex
26 offender or kidnapping offender if he or she:

27 (a) Knows that another person has not met the requirements of RCW
28 9A.44.130; and

29 (b) With the intent to assist the other person in eluding a law
30 enforcement agency, does not notify, or withholds information from, a
31 law enforcement agency regarding the person's noncompliance with RCW
32 9A.44.130 and, if known, the location of the person.

33 (2) Failure to report an unregistered sex offender or kidnapping
34 offender is a class C felony.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 9A.44 RCW
2 to read as follows:

3 (1) A person is guilty of tampering with an electronic monitoring
4 device if, under circumstances not constituting sexually violent
5 predator escape, he or she:

6 (a) Is required to be electronically monitored under section 13 or
7 14 of this act; and

8 (b) Intentionally alters, tampers with, damages, or destroys any
9 electronic monitoring equipment used to enforce the electronic
10 monitoring requirement.

11 (2) Tampering with an electronic monitoring device is a class C
12 felony.

13 **Sec. 6.** RCW 9A.44.050 and 1997 c 392 s 514 are each amended to
14 read as follows:

15 (1) A person is guilty of rape in the second degree when, under
16 circumstances not constituting rape in the first degree, the person
17 engages in sexual intercourse with another person:

18 (a) By forcible compulsion;

19 (b) ~~((When the victim is incapable of consent by reason of being
20 physically helpless or mentally incapacitated;~~

21 ~~(c))~~ When the victim is ~~((developmentally disabled))~~ a person with
22 a developmental disability and the perpetrator is a person who is not
23 married to the victim and who has supervisory authority over the
24 victim;

25 ~~((d))~~ (c) When the perpetrator is a health care provider, the
26 victim is a client or patient, and the sexual intercourse occurs during
27 a treatment session, consultation, interview, or examination. It is an
28 affirmative defense that the defendant must prove by a preponderance of
29 the evidence that the client or patient consented to the sexual
30 intercourse with the knowledge that the sexual intercourse was not for
31 the purpose of treatment;

32 ~~((e))~~ (d) When the victim is a resident of a facility for
33 mentally disordered or chemically dependent persons and the perpetrator
34 is a person who is not married to the victim and has supervisory
35 authority over the victim; or

36 ~~((f))~~ (e) When the victim is a frail elder or vulnerable adult

1 and the perpetrator is a person who is not married to the victim and
2 who has a significant relationship with the victim.

3 (2) Rape in the second degree is a class A felony.

4 **Sec. 7.** RCW 9A.44.100 and 2003 c 53 s 67 are each amended to read
5 as follows:

6 (1) A person is guilty of indecent liberties when he or she
7 knowingly causes another person who is not his or her spouse to have
8 sexual contact with him or her or another:

9 (a) By forcible compulsion;

10 (b) ~~((When the other person is incapable of consent by reason of
11 being mentally defective, mentally incapacitated, or physically
12 helpless;~~

13 ~~(c))~~ When the victim is ~~((developmentally disabled))~~ a person with
14 a developmental disability and the perpetrator is a person who is not
15 married to the victim and who has supervisory authority over the
16 victim;

17 ~~((d))~~ (c) When the perpetrator is a health care provider, the
18 victim is a client or patient, and the sexual contact occurs during a
19 treatment session, consultation, interview, or examination. It is an
20 affirmative defense that the defendant must prove by a preponderance of
21 the evidence that the client or patient consented to the sexual contact
22 with the knowledge that the sexual contact was not for the purpose of
23 treatment;

24 ~~((e))~~ (d) When the victim is a resident of a facility for
25 mentally disordered or chemically dependent persons and the perpetrator
26 is a person who is not married to the victim and has supervisory
27 authority over the victim; or

28 ~~((f))~~ (e) When the victim is a frail elder or vulnerable adult
29 and the perpetrator is a person who is not married to the victim and
30 who has a significant relationship with the victim.

31 (2)(a) Except as provided in (b) of this subsection, indecent
32 liberties is a class B felony.

33 (b) Indecent liberties by forcible compulsion is a class A felony.

34 **Sec. 8.** RCW 9A.44.010 and 2005 c 262 s 1 are each amended to read
35 as follows:

36 As used in this chapter:

1 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs
2 upon any penetration, however slight, and
3 (b) Also means any penetration of the vagina or anus however
4 slight, by an object, when committed on one person by another, whether
5 such persons are of the same or opposite sex, except when such
6 penetration is accomplished for medically recognized treatment or
7 diagnostic purposes, and
8 (c) Also means any act of sexual contact between persons involving
9 the sex organs of one person and the mouth or anus of another whether
10 such persons are of the same or opposite sex.
11 (2) "Sexual contact" means any touching of the sexual or other
12 intimate parts of a person done for the purpose of gratifying sexual
13 desire of either party or a third party.
14 (3) "Married" means one who is legally married to another, but does
15 not include a person who is living separate and apart from his or her
16 spouse and who has filed in an appropriate court for legal separation
17 or for dissolution of his or her marriage.
18 (4) "Mental incapacity" is that condition existing at the time of
19 the offense which prevents a person from understanding the nature or
20 consequences of the act of sexual intercourse whether that condition is
21 produced by illness, defect, the influence of a substance or from some
22 other cause.
23 (5) "Physically helpless" means a person who is unconscious or for
24 any other reason is physically unable to communicate unwillingness to
25 an act.
26 (6) "Forcible compulsion" means physical force which overcomes
27 resistance, or a threat, express or implied, that places a person in
28 fear of death or physical injury to herself or himself or another
29 person, or in fear that she or he or another person will be kidnapped.
30 (7) "Consent" means that at the time of the act of sexual
31 intercourse or sexual contact there are actual words or conduct
32 indicating freely given agreement to have sexual intercourse or sexual
33 contact.
34 (8) "Significant relationship" means a situation in which the
35 perpetrator is:
36 (a) A person who undertakes the responsibility, professionally or
37 voluntarily, to provide education, health, welfare, or organized
38 recreational activities principally for minors;

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

3 (c) A person who provides welfare, health or residential
4 assistance, personal care, or organized recreational activities to
5 frail elders or vulnerable adults, including a provider, employee,
6 temporary employee, volunteer, or independent contractor who supplies
7 services to long-term care facilities licensed or required to be
8 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home
9 health, hospice, or home care agencies licensed or required to be
10 licensed under chapter 70.127 RCW, but not including a consensual
11 sexual partner.

12 (9) "Abuse of a supervisory position" means:

13 (a) To use a direct or indirect threat or promise to exercise
14 authority to the detriment or benefit of a minor; or

15 (b) To exploit a significant relationship in order to obtain the
16 consent of a minor.

17 (10) "~~((Developmentally disabled))~~ Person with a developmental
18 disability," for purposes of section 3 of this act, RCW
19 9A.44.050(1)((+e+)) (b), and 9A.44.100(1)((+e+)) (b), means a person
20 with a developmental disability as defined in RCW 71A.10.020.

21 (11) "Person with supervisory authority," for purposes of RCW
22 9A.44.050(1) ((+e+)) (b) or ((+e+)) (d) and 9A.44.100(1) ((+e+)) (b) or
23 ((+e+)) (d), means any proprietor or employee of any public or private
24 care or treatment facility who directly supervises developmentally
25 disabled, mentally disordered, or chemically dependent persons at the
26 facility.

27 (12) "Mentally disordered person" for the purposes of section 3 of
28 this act, RCW 9A.44.050(1)((+e+)) (d), and 9A.44.100(1)((+e+)) (d)
29 means a person with a "mental disorder" as defined in RCW 71.05.020.

30 (13) "Chemically dependent person" for purposes of RCW
31 9A.44.050(1)((+e+)) (d) and 9A.44.100(1)((+e+)) (d) means a person who
32 is "chemically dependent" as defined in RCW 70.96A.020(4).

33 (14) "Health care provider" for purposes of RCW 9A.44.050 and
34 9A.44.100 means a person who is, holds himself or herself out to be, or
35 provides services as if he or she were: (a) A member of a health care
36 profession under chapter 18.130 RCW; or (b) registered under chapter
37 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether

1 the health care provider is licensed, certified, or registered by the
2 state.

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

7 (16) "Frail elder or vulnerable adult" means a person sixty years
8 of age or older who has the functional, mental, or physical inability
9 to care for himself or herself. "Frail elder or vulnerable adult" also
10 includes a person found incapacitated under chapter 11.88 RCW, a person
11 over eighteen years of age who has a developmental disability under
12 chapter 71A.10 RCW, a person admitted to a long-term care facility that
13 is licensed or required to be licensed under chapter 18.20, 18.51,
14 72.36, or 70.128 RCW, and a person receiving services from a home
15 health, hospice, or home care agency licensed or required to be
16 licensed under chapter 70.127 RCW.

17 **Sec. 9.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
18 as follows:

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

21 (1) "Board" means the indeterminate sentence review board created
22 under chapter 9.95 RCW.

23 (2) "Collect," or any derivative thereof, "collect and remit," or
24 "collect and deliver," when used with reference to the department,
25 means that the department, either directly or through a collection
26 agreement authorized by RCW 9.94A.760, is responsible for monitoring
27 and enforcing the offender's sentence with regard to the legal
28 financial obligation, receiving payment thereof from the offender, and,
29 consistent with current law, delivering daily the entire payment to the
30 superior court clerk without depositing it in a departmental account.

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

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

36 (5) "Community custody" means that portion of an offender's
37 sentence of confinement in lieu of earned release time or imposed

1 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
2 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
3 community subject to controls placed on the offender's movement and
4 activities by the department. For offenders placed on community
5 custody for crimes committed on or after July 1, 2000, the department
6 shall assess the offender's risk of reoffense and may establish and
7 modify conditions of community custody, in addition to those imposed by
8 the court, based upon the risk to community safety.

9 (6) "Community custody range" means the minimum and maximum period
10 of community custody included as part of a sentence under RCW
11 9.94A.715, as established by the commission or the legislature under
12 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

20 (8) "Community protection zone" means the area within eight hundred
21 eighty feet of the facilities and grounds of a public or private
22 school.

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

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

36 (11) "Confinement" means total or partial confinement.

37 (12) "Conviction" means an adjudication of guilt pursuant to Titles

1 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
2 acceptance of a plea of guilty.

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

10 (14) "Criminal history" means the list of a defendant's prior
11 convictions and juvenile adjudications, whether in this state, in
12 federal court, or elsewhere.

13 (a) The history shall include, where known, for each conviction (i)
14 whether the defendant has been placed on probation and the length and
15 terms thereof; and (ii) whether the defendant has been incarcerated and
16 the length of incarceration.

17 (b) A conviction may be removed from a defendant's criminal history
18 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
19 a similar out-of-state statute, or if the conviction has been vacated
20 pursuant to a governor's pardon.

21 (c) The determination of a defendant's criminal history is distinct
22 from the determination of an offender score. A prior conviction that
23 was not included in an offender score calculated pursuant to a former
24 version of the sentencing reform act remains part of the defendant's
25 criminal history.

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

30 (16) "Day reporting" means a program of enhanced supervision
31 designed to monitor the offender's daily activities and compliance with
32 sentence conditions, and in which the offender is required to report
33 daily to a specific location designated by the department or the
34 sentencing court.

35 (17) "Department" means the department of corrections.

36 (18) "Determinate sentence" means a sentence that states with
37 exactitude the number of actual years, months, or days of total
38 confinement, of partial confinement, of community supervision, the

1 number of actual hours or days of community restitution work, or
2 dollars or terms of a legal financial obligation. The fact that an
3 offender through earned release can reduce the actual period of
4 confinement shall not affect the classification of the sentence as a
5 determinate sentence.

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

18 (20) "Drug offender sentencing alternative" is a sentencing option
19 available to persons convicted of a felony offense other than a violent
20 offense or a sex offense and who are eligible for the option under RCW
21 9.94A.660.

22 (21) "Drug offense" means:

23 (a) Any felony violation of chapter 69.50 RCW except possession of
24 a controlled substance (RCW 69.50.4013) or forged prescription for a
25 controlled substance (RCW 69.50.403);

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

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

32 (22) "Earned release" means earned release from confinement as
33 provided in RCW 9.94A.728.

34 (23) "Escape" means:

35 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
36 first degree (RCW 9A.76.110), escape in the second degree (RCW
37 9A.76.120), willful failure to return from furlough (RCW 72.66.060),

1 willful failure to return from work release (RCW 72.65.070), or willful
2 failure to be available for supervision by the department while in
3 community custody (RCW 72.09.310); or

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

7 (24) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
10 and-run injury-accident (RCW 46.52.020(4)); or

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

14 (25) "Fine" means a specific sum of money ordered by the sentencing
15 court to be paid by the offender to the court over a specific period of
16 time.

17 (26) "First-time offender" means any person who has no prior
18 convictions for a felony and is eligible for the first-time offender
19 waiver under RCW 9.94A.650.

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

23 (28) "Legal financial obligation" means a sum of money that is
24 ordered by a superior court of the state of Washington for legal
25 financial obligations which may include restitution to the victim,
26 statutorily imposed crime victims' compensation fees as assessed
27 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
28 court-appointed attorneys' fees, and costs of defense, fines, and any
29 other financial obligation that is assessed to the offender as a result
30 of a felony conviction. Upon conviction for vehicular assault while
31 under the influence of intoxicating liquor or any drug, RCW
32 46.61.522(1)(b), or vehicular homicide while under the influence of
33 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
34 obligations may also include payment to a public agency of the expense
35 of an emergency response to the incident resulting in the conviction,
36 subject to RCW 38.52.430.

37 (29) "Most serious offense" means any of the following felonies or
38 a felony attempt to commit any of the following felonies:

1 (a) Any felony defined under any law as a class A felony or
2 criminal solicitation of or criminal conspiracy to commit a class A
3 felony;
4 (b) Assault in the second degree;
5 (c) Assault of a child in the second degree;
6 (d) Child molestation in the second degree;
7 (e) Controlled substance homicide;
8 (f) Extortion in the first degree;
9 (g) Incest when committed against a child under age fourteen;
10 (h) Indecent liberties;
11 (i) Kidnapping in the second degree;
12 (j) Leading organized crime;
13 (k) Manslaughter in the first degree;
14 (l) Manslaughter in the second degree;
15 (m) Promoting prostitution in the first degree;
16 (n) Rape in the third degree;
17 (o) Robbery in the second degree;
18 (p) Sexual exploitation;
19 (q) Vehicular assault, when caused by the operation or driving of
20 a vehicle by a person while under the influence of intoxicating liquor
21 or any drug or by the operation or driving of a vehicle in a reckless
22 manner;
23 (r) Vehicular homicide, when proximately caused by the driving of
24 any vehicle by any person while under the influence of intoxicating
25 liquor or any drug as defined by RCW 46.61.502, or by the operation of
26 any vehicle in a reckless manner;
27 (s) Any other class B felony offense with a finding of sexual
28 motivation;
29 (t) Any other felony with a deadly weapon verdict under RCW
30 9.94A.602;
31 (u) Any felony offense in effect at any time prior to December 2,
32 1993, that is comparable to a most serious offense under this
33 subsection, or any federal or out-of-state conviction for an offense
34 that under the laws of this state would be a felony classified as a
35 most serious offense under this subsection;
36 (v)(i) A prior conviction for indecent liberties under RCW
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.

1 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
2 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
3 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

4 (ii) A prior conviction for indecent liberties under RCW
5 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
6 if: (A) The crime was committed against a child under the age of
7 fourteen; or (B) the relationship between the victim and perpetrator is
8 included in the definition of indecent liberties under RCW
9 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
10 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
11 through July 27, 1997.

12 (30) "Nonviolent offense" means an offense which is not a violent
13 offense.

14 (31) "Offender" means a person who has committed a felony
15 established by state law and is eighteen years of age or older or is
16 less than eighteen years of age but whose case is under superior court
17 jurisdiction under RCW 13.04.030 or has been transferred by the
18 appropriate juvenile court to a criminal court pursuant to RCW
19 13.40.110. Throughout this chapter, the terms "offender" and
20 "defendant" are used interchangeably.

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

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

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

32 (ii) Has, before the commission of the offense under (a) of this
33 subsection, been convicted as an offender on at least two separate
34 occasions, whether in this state or elsewhere, of felonies that under
35 the laws of this state would be considered most serious offenses and
36 would be included in the offender score under RCW 9.94A.525; provided
37 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted; or

3 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
4 of a child in the first degree, child molestation in the first degree,
5 sexual victimization in the first degree, rape in the second degree,
6 rape of a child in the second degree, sexual victimization in the
7 second degree, or indecent liberties by forcible compulsion; (B) any of
8 the following offenses with a finding of sexual motivation: Murder in
9 the first degree, murder in the second degree, homicide by abuse,
10 kidnapping in the first degree, kidnapping in the second degree,
11 assault in the first degree, assault in the second degree, assault of
12 a child in the first degree, or burglary in the first degree; or (C) an
13 attempt to commit any crime listed in this subsection (33)(b)(i); and

14 (ii) Has, before the commission of the offense under (b)(i) of this
15 subsection, been convicted as an offender on at least one occasion,
16 whether in this state or elsewhere, of an offense listed in (b)(i) of
17 this subsection or any federal or out-of-state offense or offense under
18 prior Washington law that is comparable to the offenses listed in
19 (b)(i) of this subsection. A conviction for rape of a child in the
20 first degree constitutes a conviction under (b)(i) of this subsection
21 only when the offender was sixteen years of age or older when the
22 offender committed the offense. A conviction for rape of a child in
23 the second degree constitutes a conviction under (b)(i) of this
24 subsection only when the offender was eighteen years of age or older
25 when the offender committed the offense.

26 (34) "Postrelease supervision" is that portion of an offender's
27 community placement that is not community custody.

28 (35) "Private school" means a school regulated under chapter
29 28A.195 or 28A.205 RCW.

30 (36) "Public school" has the same meaning as in RCW 28A.150.010.

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

35 (38) "Risk assessment" means the application of an objective
36 instrument supported by research and adopted by the department for the
37 purpose of assessing an offender's risk of reoffense, taking into
38 consideration the nature of the harm done by the offender, place and

1 circumstances of the offender related to risk, the offender's
2 relationship to any victim, and any information provided to the
3 department by victims. The results of a risk assessment shall not be
4 based on unconfirmed or unconfirmable allegations.

5 (39) "Serious traffic offense" means:

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

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

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

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

17 (ii) Homicide by abuse;

18 (iii) Murder in the second degree;

19 (iv) Manslaughter in the first degree;

20 (v) Assault in the first degree;

21 (vi) Kidnapping in the first degree;

22 (vii) Rape in the first degree;

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

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

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

29 (41) "Sex offense" means:

30 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
31 RCW 9A.44.130(11);

32 (ii) A violation of RCW 9A.64.020;

33 (iii) A felony that is a violation of chapter 9.68A RCW other than
34 RCW ((~~9.68A.070~~ or)) 9.68A.080; or

35 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
36 criminal solicitation, or criminal conspiracy to commit such crimes;

37 (b) Any conviction for a felony offense in effect at any time prior

1 to July 1, 1976, that is comparable to a felony classified as a sex
2 offense in (a) of this subsection;

3 (c) A felony with a finding of sexual motivation under RCW
4 9.94A.835 or 13.40.135; or

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

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

11 (43) "Standard sentence range" means the sentencing court's
12 discretionary range in imposing a nonappealable sentence.

13 (44) "Statutory maximum sentence" means the maximum length of time
14 for which an offender may be confined as punishment for a crime as
15 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
16 crime, or other statute defining the maximum penalty for a crime.

17 (45) "Total confinement" means confinement inside the physical
18 boundaries of a facility or institution operated or utilized under
19 contract by the state or any other unit of government for twenty-four
20 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

21 (46) "Transition training" means written and verbal instructions
22 and assistance provided by the department to the offender during the
23 two weeks prior to the offender's successful completion of the work
24 ethic camp program. The transition training shall include instructions
25 in the offender's requirements and obligations during the offender's
26 period of community custody.

27 (47) "Victim" means any person who has sustained emotional,
28 psychological, physical, or financial injury to person or property as
29 a direct result of the crime charged.

30 (48) "Violent offense" means:

31 (a) Any of the following felonies:

32 (i) Any felony defined under any law as a class A felony or an
33 attempt to commit a class A felony;

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

36 (iii) Manslaughter in the first degree;

37 (iv) Manslaughter in the second degree;

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

1 (vi) Kidnapping in the second degree;
2 (vii) Arson in the second degree;
3 (viii) Assault in the second degree;
4 (ix) Assault of a child in the second degree;
5 (x) Extortion in the first degree;
6 (xi) Robbery in the second degree;
7 (xii) Drive-by shooting;
8 (xiii) Vehicular assault, when caused by the operation or driving
9 of a vehicle by a person while under the influence of intoxicating
10 liquor or any drug or by the operation or driving of a vehicle in a
11 reckless manner; and

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

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

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

22 (49) "Work crew" means a program of partial confinement consisting
23 of civic improvement tasks for the benefit of the community that
24 complies with RCW 9.94A.725.

25 (50) "Work ethic camp" means an alternative incarceration program
26 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
27 the cost of corrections by requiring offenders to complete a
28 comprehensive array of real-world job and vocational experiences,
29 character-building work ethics training, life management skills
30 development, substance abuse rehabilitation, counseling, literacy
31 training, and basic adult education.

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

35 **Sec. 10.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
36 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Board" means the indeterminate sentence review board created
4 under chapter 9.95 RCW.

5 (2) "Collect," or any derivative thereof, "collect and remit," or
6 "collect and deliver," when used with reference to the department,
7 means that the department, either directly or through a collection
8 agreement authorized by RCW 9.94A.760, is responsible for monitoring
9 and enforcing the offender's sentence with regard to the legal
10 financial obligation, receiving payment thereof from the offender, and,
11 consistent with current law, delivering daily the entire payment to the
12 superior court clerk without depositing it in a departmental account.

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

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

18 (5) "Community custody" means that portion of an offender's
19 sentence of confinement in lieu of earned release time or imposed
20 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
21 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
22 community subject to controls placed on the offender's movement and
23 activities by the department. For offenders placed on community
24 custody for crimes committed on or after July 1, 2000, the department
25 shall assess the offender's risk of reoffense and may establish and
26 modify conditions of community custody, in addition to those imposed by
27 the court, based upon the risk to community safety.

28 (6) "Community custody range" means the minimum and maximum period
29 of community custody included as part of a sentence under RCW
30 9.94A.715, as established by the commission or the legislature under
31 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

32 (7) "Community placement" means that period during which the
33 offender is subject to the conditions of community custody and/or
34 postrelease supervision, which begins either upon completion of the
35 term of confinement (postrelease supervision) or at such time as the
36 offender is transferred to community custody in lieu of earned release.
37 Community placement may consist of entirely community custody, entirely
38 postrelease supervision, or a combination of the two.

1 (8) "Community restitution" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender.

4 (9) "Community supervision" means a period of time during which a
5 convicted offender is subject to crime-related prohibitions and other
6 sentence conditions imposed by a court pursuant to this chapter or RCW
7 16.52.200(6) or 46.61.524. Where the court finds that any offender has
8 a chemical dependency that has contributed to his or her offense, the
9 conditions of supervision may, subject to available resources, include
10 treatment. For purposes of the interstate compact for out-of-state
11 supervision of parolees and probationers, RCW 9.95.270, community
12 supervision is the functional equivalent of probation and should be
13 considered the same as probation by other states.

14 (10) "Confinement" means total or partial confinement.

15 (11) "Conviction" means an adjudication of guilt pursuant to Titles
16 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
17 acceptance of a plea of guilty.

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

25 (13) "Criminal history" means the list of a defendant's prior
26 convictions and juvenile adjudications, whether in this state, in
27 federal court, or elsewhere.

28 (a) The history shall include, where known, for each conviction (i)
29 whether the defendant has been placed on probation and the length and
30 terms thereof; and (ii) whether the defendant has been incarcerated and
31 the length of incarceration.

32 (b) A conviction may be removed from a defendant's criminal history
33 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
34 a similar out-of-state statute, or if the conviction has been vacated
35 pursuant to a governor's pardon.

36 (c) The determination of a defendant's criminal history is distinct
37 from the determination of an offender score. A prior conviction that

1 was not included in an offender score calculated pursuant to a former
2 version of the sentencing reform act remains part of the defendant's
3 criminal history.

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

8 (15) "Day reporting" means a program of enhanced supervision
9 designed to monitor the offender's daily activities and compliance with
10 sentence conditions, and in which the offender is required to report
11 daily to a specific location designated by the department or the
12 sentencing court.

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

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

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

34 (19) "Drug offender sentencing alternative" is a sentencing option
35 available to persons convicted of a felony offense other than a violent
36 offense or a sex offense and who are eligible for the option under RCW
37 9.94A.660.

38 (20) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of
2 a controlled substance (RCW 69.50.4013) or forged prescription for a
3 controlled substance (RCW 69.50.403);

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

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

10 (21) "Earned release" means earned release from confinement as
11 provided in RCW 9.94A.728.

12 (22) "Escape" means:

13 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
14 first degree (RCW 9A.76.110), escape in the second degree (RCW
15 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
16 willful failure to return from work release (RCW 72.65.070), or willful
17 failure to be available for supervision by the department while in
18 community custody (RCW 72.09.310); or

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

22 (23) "Felony traffic offense" means:

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

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

29 (24) "Fine" means a specific sum of money ordered by the sentencing
30 court to be paid by the offender to the court over a specific period of
31 time.

32 (25) "First-time offender" means any person who has no prior
33 convictions for a felony and is eligible for the first-time offender
34 waiver under RCW 9.94A.650.

35 (26) "Home detention" means a program of partial confinement
36 available to offenders wherein the offender is confined in a private
37 residence subject to electronic surveillance.

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

15 (28) "Most serious offense" means any of the following felonies or
16 a felony attempt to commit any of the following felonies:

17 (a) Any felony defined under any law as a class A felony or
18 criminal solicitation of or criminal conspiracy to commit a class A
19 felony;

20 (b) Assault in the second degree;

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

22 (d) Child molestation in the second degree;

23 (e) Controlled substance homicide;

24 (f) Extortion in the first degree;

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

26 (h) Indecent liberties;

27 (i) Kidnapping in the second degree;

28 (j) Leading organized crime;

29 (k) Manslaughter in the first degree;

30 (l) Manslaughter in the second degree;

31 (m) Promoting prostitution in the first degree;

32 (n) Rape in the third degree;

33 (o) Robbery in the second degree;

34 (p) Sexual exploitation;

35 (q) Vehicular assault, when caused by the operation or driving of
36 a vehicle by a person while under the influence of intoxicating liquor
37 or any drug or by the operation or driving of a vehicle in a reckless
38 manner;

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

5 (s) Any other class B felony offense with a finding of sexual
6 motivation;

7 (t) Any other felony with a deadly weapon verdict under RCW
8 9.94A.602;

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

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

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

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

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

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

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

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

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

9 (ii) Has, before the commission of the offense under (a) of this
10 subsection, been convicted as an offender on at least two separate
11 occasions, whether in this state or elsewhere, of felonies that under
12 the laws of this state would be considered most serious offenses and
13 would be included in the offender score under RCW 9.94A.525; provided
14 that of the two or more previous convictions, at least one conviction
15 must have occurred before the commission of any of the other most
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
18 of a child in the first degree, child molestation in the first degree,
19 sexual victimization in the first degree, rape in the second degree,
20 rape of a child in the second degree, sexual victimization in the
21 second degree, or indecent liberties by forcible compulsion; (B) any of
22 the following offenses with a finding of sexual motivation: Murder in
23 the first degree, murder in the second degree, homicide by abuse,
24 kidnapping in the first degree, kidnapping in the second degree,
25 assault in the first degree, assault in the second degree, assault of
26 a child in the first degree, or burglary in the first degree; or (C) an
27 attempt to commit any crime listed in this subsection (32)(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 or any federal or out-of-state offense or offense under
32 prior Washington law that is comparable to the offenses listed in
33 (b)(i) of this subsection. A conviction for rape of a child in the
34 first degree constitutes a conviction under (b)(i) of this subsection
35 only when the offender was sixteen years of age or older when the
36 offender committed the offense. A conviction for rape of a child in
37 the second degree constitutes a conviction under (b)(i) of this

1 subsection only when the offender was eighteen years of age or older
2 when the offender committed the offense.

3 (33) "Postrelease supervision" is that portion of an offender's
4 community placement that is not community custody.

5 (34) "Restitution" means a specific sum of money ordered by the
6 sentencing court to be paid by the offender to the court over a
7 specified period of time as payment of damages. The sum may include
8 both public and private costs.

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

17 (36) "Serious traffic offense" means:

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

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

26 (37) "Serious violent offense" is a subcategory of violent offense
27 and means:

- 28 (a)(i) Murder in the first degree;
- 29 (ii) Homicide by abuse;
- 30 (iii) Murder in the second degree;
- 31 (iv) Manslaughter in the first degree;
- 32 (v) Assault in the first degree;
- 33 (vi) Kidnapping in the first degree;
- 34 (vii) Rape in the first degree;
- 35 (viii) Assault of a child in the first degree; or
- 36 (ix) An attempt, criminal solicitation, or criminal conspiracy to
37 commit one of these felonies; or

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

4 (38) "Sex offense" means:

5 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
6 RCW 9A.44.130(11);

7 (ii) A violation of RCW 9A.64.020;

8 (iii) A felony that is a violation of chapter 9.68A RCW other than
9 RCW (~~9.68A.070 or~~) 9.68A.080; or

10 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
11 criminal solicitation, or criminal conspiracy to commit such crimes;

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

15 (c) A felony with a finding of sexual motivation under RCW
16 9.94A.835 or 13.40.135; or

17 (d) 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 sex
19 offense under (a) of this subsection.

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

23 (40) "Standard sentence range" means the sentencing court's
24 discretionary range in imposing a nonappealable sentence.

25 (41) "Statutory maximum sentence" means the maximum length of time
26 for which an offender may be confined as punishment for a crime as
27 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
28 crime, or other statute defining the maximum penalty for a crime.

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

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

1 (44) "Victim" means any person who has sustained emotional,
2 psychological, physical, or financial injury to person or property as
3 a direct result of the crime charged.

4 (45) "Violent offense" means:

5 (a) Any of the following felonies:

6 (i) Any felony defined under any law as a class A felony or an
7 attempt to commit a class A felony;

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

10 (iii) Manslaughter in the first degree;

11 (iv) Manslaughter in the second degree;

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

13 (vi) Kidnapping in the second degree;

14 (vii) Arson in the second degree;

15 (viii) Assault in the second degree;

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

17 (x) Extortion in the first degree;

18 (xi) Robbery in the second degree;

19 (xii) Drive-by shooting;

20 (xiii) Vehicular assault, when caused by the operation or driving
21 of a vehicle by a person while under the influence of intoxicating
22 liquor or any drug or by the operation or driving of a vehicle in a
23 reckless manner; and

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

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

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

34 (46) "Work crew" means a program of partial confinement consisting
35 of civic improvement tasks for the benefit of the community that
36 complies with RCW 9.94A.725.

37 (47) "Work ethic camp" means an alternative incarceration program
38 as provided in RCW 9.94A.690 designed to reduce recidivism and lower

1 the cost of corrections by requiring offenders to complete a
2 comprehensive array of real-world job and vocational experiences,
3 character-building work ethics training, life management skills
4 development, substance abuse rehabilitation, counseling, literacy
5 training, and basic adult education.

6 (48) "Work release" means a program of partial confinement
7 available to offenders who are employed or engaged as a student in a
8 regular course of study at school.

9 **Sec. 11.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read
10 as follows:

11 (1) An offender who is not a persistent offender shall be sentenced
12 under this section if the offender:

13 (a) Is convicted of:

14 (i) Rape in the first degree, rape in the second degree, rape of a
15 child in the first degree, child molestation in the first degree,
16 sexual victimization in the first degree, rape of a child in the second
17 degree, sexual victimization in the second degree, or indecent
18 liberties by forcible compulsion;

19 (ii) Any of the following offenses with a finding of sexual
20 motivation: Murder in the first degree, murder in the second degree,
21 homicide by abuse, kidnapping in the first degree, kidnapping in the
22 second degree, assault in the first degree, assault in the second
23 degree, assault of a child in the first degree, or burglary in the
24 first degree; or

25 (iii) An attempt to commit any crime listed in this subsection
26 (1)(a);
27 committed on or after September 1, 2001; or

28 (b) Has a prior conviction for an offense listed in RCW
29 9.94A.030(33)(b), and is convicted of any sex offense which was
30 committed after September 1, 2001.

31 For purposes of this subsection (1)(b), failure to register is not
32 a sex offense.

33 (2) An offender convicted of rape of a child in the first or second
34 degree or child molestation in the first degree who was seventeen years
35 of age or younger at the time of the offense shall not be sentenced
36 under this section.

1 (3)(a) Upon a finding that the offender is subject to sentencing
2 under this section, the court shall impose a sentence to a maximum term
3 (~~consisting of the statutory maximum sentence for the offense~~) and a
4 minimum term (~~either within the standard sentence range for the~~
5 ~~offense, or outside the standard sentence range pursuant to RCW~~
6 ~~9.94A.535, if the offender is otherwise eligible for such a sentence~~).

7 **(b) The maximum term shall be the statutory maximum sentence for**
8 **the offense.**

9 **(c)(i) Except as provided in (c)(ii) of this subsection, the**
10 **minimum term shall be either within the standard sentence range for the**
11 **offense, or outside the standard sentence range pursuant to RCW**
12 **9.94A.535, if the offender is otherwise eligible for such a sentence.**

13 **(ii)(A) If the offense that caused the offender to be sentenced**
14 **under this section was sexual victimization in the first degree, the**
15 **minimum sentence shall be life.**

16 **(B) If the offense that caused the offender to be sentenced under**
17 **this section was rape of a child in the first degree, the minimum term**
18 **shall be either the maximum of the standard range for the offense or**
19 **thirty years, whichever is greater.**

20 **(C) If the offense that caused the offender to be sentenced under**
21 **this section was child molestation in the first degree, kidnapping in**
22 **the first degree with a finding of sexual motivation, rape of a child**
23 **in the second degree, or sexual victimization in the second degree, the**
24 **minimum term shall be either the maximum of the standard range for the**
25 **offense or twenty-five years, whichever is greater.**

26 **(D) The minimum terms in this subsection (3)(c)(ii) do not apply to**
27 **a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i). The**
28 **minimum term for such a juvenile shall be imposed under (c)(i) of this**
29 **subsection.**

30 (4) A person sentenced under subsection (3) of this section shall
31 serve the sentence in a facility or institution operated, or utilized
32 under contract, by the state.

33 (5) When a court sentences a person to the custody of the
34 department under this section, the court shall, in addition to the
35 other terms of the sentence, sentence the offender to community custody
36 under the supervision of the department and the authority of the board
37 for any period of time the person is released from total confinement
38 before the expiration of the maximum sentence.

1 (6)(a)(i) Unless a condition is waived by the court, the conditions
2 of community custody shall include those provided for in RCW
3 9.94A.700(4). The conditions may also include those provided for in
4 RCW 9.94A.700(5). The court may also order the offender to participate
5 in rehabilitative programs or otherwise perform affirmative conduct
6 reasonably related to the circumstances of the offense, the offender's
7 risk of reoffending, or the safety of the community, and the department
8 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
9 9.95.425, and 9.95.430.

10 (ii) If the offense that caused the offender to be sentenced under
11 this section was an offense listed in subsection (1)(a) of this
12 section, the conditions of community custody shall also include a
13 requirement that the offender submit to electronic monitoring by the
14 department using an active global positioning system or similar
15 tracking system. The system must be designed to actively monitor,
16 identify, and timely report the offender's location.

17 (iii) If the offense that caused the offender to be sentenced under
18 this section was an offense listed in subsection (1)(a) of this section
19 and the victim of the offense was under eighteen years of age at the
20 time of the offense, the court shall, as a condition of community
21 custody, prohibit the offender from residing in a community protection
22 zone.

23 (b) As part of any sentence under this section, the court shall
24 also require the offender to comply with any conditions imposed by the
25 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

26 **Sec. 12.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
27 as follows:

28 (1) An offender who is not a persistent offender shall be sentenced
29 under this section if the offender:

30 (a) Is convicted of:

31 (i) Rape in the first degree, rape in the second degree, rape of a
32 child in the first degree, child molestation in the first degree,
33 sexual victimization in the first degree, rape of a child in the second
34 degree, sexual victimization in the second degree, or indecent
35 liberties by forcible compulsion;

36 (ii) Any of the following offenses with a finding of sexual
37 motivation: Murder in the first degree, murder in the second degree,

1 homicide by abuse, kidnapping in the first degree, kidnapping in the
2 second degree, assault in the first degree, assault in the second
3 degree, assault of a child in the first degree, or burglary in the
4 first degree; or

5 (iii) An attempt to commit any crime listed in this subsection
6 (1)(a);
7 committed on or after September 1, 2001; or

8 (b) Has a prior conviction for an offense listed in RCW
9 9.94A.030(32)(b), and is convicted of any sex offense which was
10 committed after September 1, 2001.

11 For purposes of this subsection (1)(b), failure to register is not
12 a sex offense.

13 (2) An offender convicted of rape of a child in the first or second
14 degree or child molestation in the first degree who was seventeen years
15 of age or younger at the time of the offense shall not be sentenced
16 under this section.

17 (3)(a) Upon a finding that the offender is subject to sentencing
18 under this section, the court shall impose a sentence to a maximum term
19 (~~consisting of the statutory maximum sentence for the offense~~) and a
20 minimum term (~~either within the standard sentence range for the
21 offense, or outside the standard sentence range pursuant to RCW
22 9.94A.535, if the offender is otherwise eligible for such a sentence~~).

23 (b) The maximum term shall be the statutory maximum sentence for
24 the offense.

25 (c)(i) Except as provided in (c)(ii) of this subsection, the
26 minimum term shall be either within the standard sentence range for the
27 offense, or outside the standard sentence range pursuant to RCW
28 9.94A.535, if the offender is otherwise eligible for such a sentence.

29 (ii)(A) If the offense that caused the offender to be sentenced
30 under this section was sexual victimization in the first degree, the
31 minimum sentence shall be life.

32 (B) If the offense that caused the offender to be sentenced under
33 this section was rape of a child in the first degree, the minimum term
34 shall be either the maximum of the standard range for the offense or
35 thirty years, whichever is greater.

36 (C) If the offense that caused the offender to be sentenced under
37 this section was child molestation in the first degree, kidnapping in
38 the first degree with a finding of sexual motivation, rape of a child

1 in the second degree, or sexual victimization in the second degree, the
2 minimum term shall be either the maximum of the standard range for the
3 offense or twenty-five years, whichever is greater.

4 (D) The minimum terms in this subsection (3)(c)(ii) do not apply to
5 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i). The
6 minimum term for such a juvenile shall be imposed under (c)(i) of this
7 subsection.

8 (4) A person sentenced under subsection (3) of this section shall
9 serve the sentence in a facility or institution operated, or utilized
10 under contract, by the state.

11 (5) When a court sentences a person to the custody of the
12 department under this section, the court shall, in addition to the
13 other terms of the sentence, sentence the offender to community custody
14 under the supervision of the department and the authority of the board
15 for any period of time the person is released from total confinement
16 before the expiration of the maximum sentence.

17 (6)(a)(i) Unless a condition is waived by the court, the conditions
18 of community custody shall include those provided for in RCW
19 9.94A.700(4). The conditions may also include those provided for in
20 RCW 9.94A.700(5). The court may also order the offender to participate
21 in rehabilitative programs or otherwise perform affirmative conduct
22 reasonably related to the circumstances of the offense, the offender's
23 risk of reoffending, or the safety of the community, and the department
24 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
25 9.95.425, and 9.95.430.

26 (ii) If the offense that caused the offender to be sentenced under
27 this section was an offense listed in subsection (1)(a) of this
28 section, the conditions of community custody shall also include a
29 requirement that the offender submit to electronic monitoring by the
30 department using an active global positioning system or similar
31 tracking system. The system must be designed to actively monitor,
32 identify, and timely report the offender's location.

33 (b) As part of any sentence under this section, the court shall
34 also require the offender to comply with any conditions imposed by the
35 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

36 NEW SECTION. Sec. 13. A new section is added to chapter 72.09 RCW
37 to read as follows:

1 The department shall electronically monitor an offender serving a
2 term of community custody on or after the effective date of this
3 section if the offender has a current or prior conviction for an
4 offense listed in RCW 9.94A.030(32)(b)(i). The department shall
5 monitor such an offender using a global positioning system, or similar
6 tracking system, that is designed to actively monitor, identify, and
7 timely report the offender's location.

8 NEW SECTION. **Sec. 14.** A new section is added to chapter 9A.44 RCW
9 to read as follows:

10 The state patrol shall electronically monitor a person required to
11 register under RCW 9A.44.130 if the person has a prior conviction for
12 an offense listed in RCW 9.94A.030(32)(b)(i) and is not being
13 electronically monitored under section 5 of this act. The state patrol
14 shall monitor such a person using a global positioning system, or
15 similar tracking system, that is designed to actively monitor,
16 identify, and timely report the person's location.

17 **Sec. 15.** RCW 10.95.020 and 2003 c 53 s 96 are each amended to read
18 as follows:

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

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

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

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

35 (4) The person committed the murder pursuant to an agreement that

1 he or she would receive money or any other thing of value for
2 committing the murder;

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

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

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

14 (8) The victim was:

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

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

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

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

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

- 29 (a) Robbery in the first or second degree;
- 30 (b) Rape in the first or second degree;
- 31 (c) Burglary in the first or second degree or residential burglary;
- 32 (d) Kidnapping in the first degree; or
- 33 (e) Arson in the first degree;

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

37 (13) At the time the person committed the murder, there existed a
38 court order, issued in this or any other state, which prohibited the

1 person from either contacting the victim, molesting the victim, or
2 disturbing the peace of the victim, and the person had knowledge of the
3 existence of that order;

4 (14) At the time the person committed the murder, the person and
5 the victim were "family or household members" as that term is defined
6 in RCW 10.99.020(~~(+1)~~) (3), and the person had previously engaged in
7 a pattern or practice of three or more of the following crimes
8 committed upon the victim within a five-year period, regardless of
9 whether a conviction resulted:

10 (a) Harassment as defined in RCW 9A.46.020; or

11 (b) Any criminal assault;

12 (15) The murder was committed with sexual motivation and the victim
13 was under the age of sixteen;

14 (16) The murder was committed with sexual motivation and the victim
15 was incapable of consent by reason of being physically helpless or
16 mentally incapacitated, or was a person with a developmental
17 disability, a mentally disordered person, or a frail elder or
18 vulnerable adult.

19 NEW SECTION. Sec. 16. A new section is added to chapter 9.94A RCW
20 to read as follows:

21 (1) An offender shall be sentenced under this section if:

22 (a) He or she is not a persistent offender;

23 (b) He or she is convicted of a sex offense that is not sentenced
24 under RCW 9.94A.712; and

25 (c) The standard range for the sex offense includes the possibility
26 of confinement for more than one year.

27 (2) A court shall sentence an offender sentenced under this section
28 to:

29 (a) A minimum term and a maximum term. The minimum term shall be
30 either within the standard sentence range for the offense or outside
31 the standard sentence range pursuant to RCW 9.94A.535. The maximum
32 term shall be the statutory maximum sentence for the offense; and

33 (b) A term of community custody pursuant to RCW 9.94A.715 to be
34 served upon the offender's release from total confinement.

35 (3) An offender sentenced under this section shall serve his or her
36 sentence in a facility or institution operated, or utilized under
37 contract, by the state.

1 (4) An offender sentenced under this section shall be released
2 after the expiration of his or her minimum term, minus any earned
3 release credits the offender may have earned under RCW 9.94A.728, if
4 the department has determined that he or she has successfully completed
5 a sex offender treatment program and acknowledged that he or she is
6 guilty of his or her crime of conviction. However, the offender may
7 not be released prior to the expiration of his or her maximum term
8 unless the department determines that he or she has successfully
9 completed a sex offender treatment program and acknowledged that he or
10 she is guilty of his or her crime of conviction.

11 **Sec. 17.** RCW 9.95.062 and 1996 c 275 s 9 are each amended to read
12 as follows:

13 (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in
14 a criminal action shall not stay the execution of the judgment of
15 conviction, if the court determines by a preponderance of the evidence
16 that:

17 (a) The defendant is likely to flee or to pose a danger to the
18 safety of any other person or the community if the judgment is stayed;
19 or

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

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

24 (d) The defendant has not undertaken to the extent of the
25 defendant's financial ability to pay the financial obligations under
26 the judgment or has not posted an adequate performance bond to assure
27 payment.

28 (2) An appeal by a defendant convicted of one of the following
29 offenses shall not stay execution of the judgment of conviction: Rape
30 in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a
31 child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076,
32 and 9A.44.079); sexual victimization in the first or second degree;
33 child molestation in the first, second, or third degree (RCW 9A.44.083,
34 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first
35 or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW
36 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); any class
37 A or B felony that is a sexually motivated offense as defined in RCW

1 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is,
2 under chapter 9A.28 RCW, a criminal attempt, solicitation, or
3 conspiracy to commit one of those offenses.

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

10 **Sec. 18.** RCW 9.95.420 and 2002 c 174 s 1 are each amended to read
11 as follows:

12 (1)(a) Except as provided in (c) of this subsection, before the
13 expiration of the minimum term, as part of the end of sentence review
14 process under RCW 72.09.340, 72.09.345, and where appropriate,
15 72.09.370, the department shall conduct, and the offender shall
16 participate in, an examination of the offender, incorporating
17 methodologies that are recognized by experts in the prediction of
18 sexual dangerousness, and including a prediction of the probability
19 that the offender will engage in sex offenses if released.

20 (b) The board may contract for an additional, independent
21 examination, subject to the standards in this section.

22 (c) If at the time the sentence is imposed by the superior court
23 the offender's minimum term has expired or will expire within one
24 hundred twenty days of the sentencing hearing, the department shall
25 conduct, within ninety days of the offender's arrival at a department
26 of corrections facility, and the offender shall participate in, an
27 examination of the offender, incorporating methodologies that are
28 recognized by experts in the prediction of sexual dangerousness, and
29 including a prediction of the probability that the offender will engage
30 in sex offenses if released.

31 (2) The board shall impose the conditions and instructions provided
32 for in RCW 9.94A.720. The board shall consider the department's
33 recommendations and may impose conditions in addition to those
34 recommended by the department. The board may impose or modify
35 conditions of community custody following notice to the offender.

36 (3)(a) Except as provided in (b) of this subsection, no later than
37 ninety days before expiration of the minimum term, but after the board

1 receives the results from the end of sentence review process and the
2 recommendations for additional or modified conditions of community
3 custody from the department, the board shall conduct a hearing to
4 determine whether it is more likely than not that the offender will
5 engage in sex offenses if released on conditions to be set by the
6 board. The board may consider an offender's failure to participate in
7 an evaluation under subsection (1) of this section in determining
8 whether to release the offender. The board shall order the offender
9 released, under such affirmative and other conditions as the board
10 determines appropriate, unless the board determines by a preponderance
11 of the evidence that, despite such conditions, it is more likely than
12 not that the offender will commit sex offenses if released, that the
13 offender has not successfully completed a sex offender treatment
14 program while in the custody of the department, or that the offender
15 has not acknowledged that he or she is guilty of his or her crime of
16 conviction. If the board does not order the offender released, the
17 board shall establish a new minimum term, not to exceed an additional
18 two years.

19 (b) If at the time the offender's minimum term has expired or will
20 expire within one hundred twenty days of the offender's arrival at a
21 department of correction's facility, then no later than one hundred
22 twenty days after the offender's arrival at a department of corrections
23 facility, but after the board receives the results from the end of
24 sentence review process and the recommendations for additional or
25 modified conditions of community custody from the department, the board
26 shall conduct a hearing to determine whether it is more likely than not
27 that the offender will engage in sex offenses if released on conditions
28 to be set by the board. The board may consider an offender's failure
29 to participate in an evaluation under subsection (1) of this section in
30 determining whether to release the offender. The board shall order the
31 offender released, under such affirmative and other conditions as the
32 board determines appropriate, unless the board determines by a
33 preponderance of the evidence that, despite such conditions, it is more
34 likely than not that the offender will commit sex offenses if released,
35 that the offender has not successfully completed a sex offender
36 treatment program while in the custody of the department, or that the
37 offender has not acknowledged that he or she is guilty of his or her

1 crime of conviction. If the board does not order the offender
2 released, the board shall establish a new minimum term, not to exceed
3 an additional two years.

4 **Sec. 19.** RCW 72.09.335 and 2001 2nd sp.s. c 12 s 305 are each
5 amended to read as follows:

6 (1) The department shall provide offenders sentenced under RCW
7 9.94A.712 or section 16 of this act with the opportunity for sex
8 offender treatment during incarceration.

9 (2) The department may not provide sex offender treatment to an
10 offender who is sentenced to life without the possibility of release.

11 **Sec. 20.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and
12 2002 c 175 s 6 are each reenacted and amended to read as follows:

13 (1) When a person is convicted of a felony, the court shall impose
14 punishment as provided in this chapter.

15 (2)(a) The court shall impose a sentence as provided in the
16 following sections and as applicable in the case:

17 (i) Unless another term of confinement applies, the court shall
18 impose a sentence within the standard sentence range established in RCW
19 9.94A.510 or 9.94A.517;

20 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

21 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

22 (iv) RCW 9.94A.545, relating to community custody for offenders
23 whose term of confinement is one year or less;

24 (v) RCW 9.94A.570, relating to persistent offenders;

25 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

26 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

27 (viii) RCW 9.94A.660, relating to the drug offender sentencing
28 alternative;

29 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
30 alternative;

31 (x) RCW 9.94A.712, relating to certain sex offenses;

32 (xi) RCW 9.94A.535, relating to exceptional sentences;

33 (xii) RCW 9.94A.589, relating to consecutive and concurrent
34 sentences;

35 (xiii) Section 16 of this act, relating to certain sex offenses.

1 (b) If a standard sentence range has not been established for the
2 offender's crime, the court shall impose a determinate sentence which
3 may include not more than one year of confinement; community
4 restitution work; until July 1, 2000, a term of community supervision
5 not to exceed one year and on and after July 1, 2000, a term of
6 community custody not to exceed one year, subject to conditions and
7 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other
8 legal financial obligations. The court may impose a sentence which
9 provides more than one year of confinement if the court finds reasons
10 justifying an exceptional sentence as provided in RCW 9.94A.535.

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

17 (4) If a sentence imposed includes payment of a legal financial
18 obligation, it shall be imposed as provided in RCW 9.94A.750,
19 9.94A.753, 9.94A.760, and 43.43.7541.

20 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
21 court may not impose a sentence providing for a term of confinement or
22 community supervision, community placement, or community custody which
23 exceeds the statutory maximum for the crime as provided in chapter
24 9A.20 RCW.

25 (6) The sentencing court shall give the offender credit for all
26 confinement time served before the sentencing if that confinement was
27 solely in regard to the offense for which the offender is being
28 sentenced.

29 (7) The court shall order restitution as provided in RCW 9.94A.750
30 and 9.94A.753.

31 (8) As a part of any sentence, the court may impose and enforce
32 crime-related prohibitions and affirmative conditions as provided in
33 this chapter.

34 (9) The court may order an offender whose sentence includes
35 community placement or community supervision to undergo a mental status
36 evaluation and to participate in available outpatient mental health
37 treatment, if the court finds that reasonable grounds exist to believe
38 that the offender is a mentally ill person as defined in RCW 71.24.025,

1 and that this condition is likely to have influenced the offense. An
2 order requiring mental status evaluation or treatment must be based on
3 a presentence report and, if applicable, mental status evaluations that
4 have been filed with the court to determine the offender's competency
5 or eligibility for a defense of insanity. The court may order
6 additional evaluations at a later date if deemed appropriate.

7 (10) In any sentence of partial confinement, the court may require
8 the offender to serve the partial confinement in work release, in a
9 program of home detention, on work crew, or in a combined program of
10 work crew and home detention.

11 (11) In sentencing an offender convicted of a crime of domestic
12 violence, as defined in RCW 10.99.020, if the offender has a minor
13 child, or if the victim of the offense for which the offender was
14 convicted has a minor child, the court may, as part of any term of
15 community supervision, community placement, or community custody, order
16 the offender to participate in a domestic violence perpetrator program
17 approved under RCW 26.50.150.

18 **Sec. 21.** RCW 9.94A.670 and 2004 c 176 s 4 and 2004 c 38 s 9 are
19 each reenacted and amended to read as follows:

20 (1) Unless the context clearly requires otherwise, the definitions
21 in this subsection apply to this section only.

22 (a) "Sex offender treatment provider" or "treatment provider" means
23 a certified sex offender treatment provider or a certified affiliate
24 sex offender treatment provider as defined in RCW 18.155.020.

25 (b) "Substantial bodily harm" means bodily injury that involves a
26 temporary but substantial disfigurement, or that causes a temporary but
27 substantial loss or impairment of the function of any body part or
28 organ, or that causes a fracture of any body part or organ.

29 (c) "Victim" means any person who has sustained emotional,
30 psychological, physical, or financial injury to person or property as
31 a result of the crime charged. "Victim" also means a parent or
32 guardian of a victim who is a minor child unless the parent or guardian
33 is the perpetrator of the offense.

34 (2) An offender is eligible for the special sex offender sentencing
35 alternative if:

36 (a) The offender has been convicted of a sex offense other than a

1 violation of RCW 9A.44.050 or a sex offense that is also a serious
2 violent offense;

3 (b) The offender has no prior convictions for a sex offense as
4 defined in RCW 9.94A.030 or any other felony sex offenses in this or
5 any other state;

6 (c) The offender has no prior adult convictions for a violent
7 offense that was committed within five years of the date the current
8 offense was committed;

9 (d) The offense did not result in substantial bodily harm to the
10 victim;

11 (e) The offender had an established relationship with, or
12 connection to, the victim such that the sole connection with the victim
13 was not the commission of the crime; (~~and~~)

14 (f) The offender was not, at the time of the offense, a person who
15 undertakes the responsibility, professionally or voluntarily, to
16 provide education, health, welfare, or organized recreational
17 activities principally for minors;

18 (g) The offender was not, at the time of the offense, a person who,
19 in the course of his or her employment, supervised minors; and

20 (h) The offender's standard sentence range for the offense includes
21 the possibility of confinement for less than eleven years.

22 (3) If the court finds the offender is eligible for this
23 alternative, the court, on its own motion or the motion of the state or
24 the offender, may order an examination to determine whether the
25 offender is amenable to treatment.

26 (a) The report of the examination shall include at a minimum the
27 following:

28 (i) The offender's version of the facts and the official version of
29 the facts;

30 (ii) The offender's offense history;

31 (iii) An assessment of problems in addition to alleged deviant
32 behaviors;

33 (iv) The offender's social and employment situation; and

34 (v) Other evaluation measures used.

35 The report shall set forth the sources of the examiner's
36 information.

37 (b) The examiner shall assess and report regarding the offender's

1 amenability to treatment and relative risk to the community. A
2 proposed treatment plan shall be provided and shall include, at a
3 minimum:

4 (i) Frequency and type of contact between offender and therapist;

5 (ii) Specific issues to be addressed in the treatment and
6 description of planned treatment modalities;

7 (iii) Monitoring plans, including any requirements regarding living
8 conditions, lifestyle requirements, and monitoring by family members
9 and others;

10 (iv) Anticipated length of treatment; and

11 (v) Recommended crime-related prohibitions and affirmative
12 conditions, which must include, to the extent known, an identification
13 of specific activities or behaviors that are precursors to the
14 offender's offense cycle, including, but not limited to, activities or
15 behaviors such as viewing or listening to pornography or use of alcohol
16 or controlled substances.

17 (c) The court on its own motion may order, or on a motion by the
18 state shall order, a second examination regarding the offender's
19 amenability to treatment. The examiner shall be selected by the party
20 making the motion. The offender shall pay the cost of any second
21 examination ordered unless the court finds the defendant to be indigent
22 in which case the state shall pay the cost.

23 (4) After receipt of the reports, the court shall consider whether
24 the offender and the community will benefit from use of this
25 alternative, consider whether the alternative is too lenient in light
26 of the extent and circumstances of the offense, consider whether the
27 offender has victims in addition to the victim of the offense, consider
28 whether the offender is amenable to treatment, consider the risk the
29 offender would present to the community, to the victim, or to persons
30 of similar age and circumstances as the victim, and consider the
31 victim's opinion whether the offender should receive a treatment
32 disposition under this section. The court shall give great weight to
33 the victim's opinion whether the offender should receive a treatment
34 disposition under this section. If the sentence imposed is contrary to
35 the victim's opinion, the court shall enter written findings stating
36 its reasons for imposing the treatment disposition. The fact that the
37 offender admits to his or her offense does not, by itself, constitute
38 amenability to treatment. If the court determines that this

1 alternative is appropriate, the court shall then impose a sentence or,
2 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
3 standard sentence range. If the sentence imposed is less than eleven
4 years of confinement, the court may suspend the execution of the
5 sentence and impose the following conditions of suspension:

6 (a) The court shall order the offender to serve a term of
7 confinement of up to twelve months or the maximum term within the
8 standard range, whichever is less. The court may order the offender to
9 serve a term of confinement greater than twelve months or the maximum
10 term within the standard range based on the presence of an aggravating
11 circumstance listed in RCW 9.94A.535(~~(+2)~~) (3). In no case shall the
12 term of confinement exceed the statutory maximum sentence for the
13 offense. The court may order the offender to serve all or part of his
14 or her term of confinement in partial confinement. An offender
15 sentenced to a term of confinement under this subsection is not
16 eligible for earned release under RCW 9.92.151 or 9.94A.728.

17 (b) The court shall place the offender on community custody for the
18 length of the suspended sentence, the length of the maximum term
19 imposed pursuant to RCW 9.94A.712, or three years, whichever is
20 greater, and require the offender to comply with any conditions imposed
21 by the department under RCW 9.94A.720.

22 (c) The court shall order treatment for any period up to five years
23 in duration. The court, in its discretion, shall order outpatient sex
24 offender treatment or inpatient sex offender treatment, if available.
25 A community mental health center may not be used for such treatment
26 unless it has an appropriate program designed for sex offender
27 treatment. The offender shall not change sex offender treatment
28 providers or treatment conditions without first notifying the
29 prosecutor, the community corrections officer, and the court. If any
30 party or the court objects to a proposed change, the offender shall not
31 change providers or conditions without court approval after a hearing.

32 (d) As conditions of the suspended sentence, the court shall impose
33 specific prohibitions and affirmative conditions relating to the known
34 precursor activities or behaviors identified in the proposed treatment
35 plan under subsection (3)(b)(v) of this section or identified in an
36 annual review under subsection (7)(b) of this section.

37 (5) As conditions of the suspended sentence, the court may impose
38 one or more of the following:

1 (a) Crime-related prohibitions;
2 (b) Require the offender to devote time to a specific employment or
3 occupation;
4 (c) Require the offender to remain within prescribed geographical
5 boundaries and notify the court or the community corrections officer
6 prior to any change in the offender's address or employment;
7 (d) Require the offender to report as directed to the court and a
8 community corrections officer;
9 (e) Require the offender to pay all court-ordered legal financial
10 obligations as provided in RCW 9.94A.030;
11 (f) Require the offender to perform community restitution work; or
12 (g) Require the offender to reimburse the victim for the cost of
13 any counseling required as a result of the offender's crime.
14 (6) At the time of sentencing, the court shall set a treatment
15 termination hearing for three months prior to the anticipated date for
16 completion of treatment.
17 (7)(a) The sex offender treatment provider shall submit quarterly
18 reports on the offender's progress in treatment to the court and the
19 parties. The report shall reference the treatment plan and include at
20 a minimum the following: Dates of attendance, offender's compliance
21 with requirements, treatment activities, the offender's relative
22 progress in treatment, and any other material specified by the court at
23 sentencing.
24 (b) The court shall conduct a hearing on the offender's progress in
25 treatment at least once a year. At least fourteen days prior to the
26 hearing, notice of the hearing shall be given to the victim. The
27 victim shall be given the opportunity to make statements to the court
28 regarding the offender's supervision and treatment. At the hearing,
29 the court may modify conditions of community custody including, but not
30 limited to, crime-related prohibitions and affirmative conditions
31 relating to activities and behaviors identified as part of, or relating
32 to precursor activities and behaviors in, the offender's offense cycle
33 or revoke the suspended sentence.
34 (8) At least fourteen days prior to the treatment termination
35 hearing, notice of the hearing shall be given to the victim. The
36 victim shall be given the opportunity to make statements to the court
37 regarding the offender's supervision and treatment. Prior to the
38 treatment termination hearing, the treatment provider and community

1 corrections officer shall submit written reports to the court and
2 parties regarding the offender's compliance with treatment and
3 monitoring requirements, and recommendations regarding termination from
4 treatment, including proposed community custody conditions. The court
5 may order an evaluation regarding the advisability of termination from
6 treatment by a sex offender treatment provider who may not be the same
7 person who treated the offender under subsection (4) of this section or
8 any person who employs, is employed by, or shares profits with the
9 person who treated the offender under subsection (4) of this section
10 unless the court has entered written findings that such evaluation is
11 in the best interest of the victim and that a successful evaluation of
12 the offender would otherwise be impractical. The offender shall pay
13 the cost of the evaluation. At the treatment termination hearing the
14 court may: (a) Modify conditions of community custody, and either (b)
15 terminate treatment, or (c) extend treatment in two-year increments for
16 up to the remaining period of community custody.

17 (9)(a) If a violation of conditions other than a second violation
18 of the prohibitions or affirmative conditions relating to precursor
19 behaviors or activities imposed under subsection (4)(d) or (7)(b) of
20 this section occurs during community custody, the department shall
21 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer
22 the violation to the court and recommend revocation of the suspended
23 sentence as provided for in subsections (6) and (8) of this section.

24 (b) If a second violation of the prohibitions or affirmative
25 conditions relating to precursor behaviors or activities imposed under
26 subsection (4)(d) or (7)(b) of this section occurs during community
27 custody, the department shall refer the violation to the court and
28 recommend revocation of the suspended sentence as provided in
29 subsection (10) of this section.

30 (10) The court may revoke the suspended sentence at any time during
31 the period of community custody and order execution of the sentence if:
32 (a) The offender violates the conditions of the suspended sentence, or
33 (b) the court finds that the offender is failing to make satisfactory
34 progress in treatment. All confinement time served during the period
35 of community custody shall be credited to the offender if the suspended
36 sentence is revoked.

37 (11) The offender's sex offender treatment provider may not be the
38 same person who examined the offender under subsection (3) of this

1 section or any person who employs, is employed by, or shares profits
2 with the person who examined the offender under subsection (3) of this
3 section, unless the court has entered written findings that such
4 treatment is in the best interests of the victim and that successful
5 treatment of the offender would otherwise be impractical. Examinations
6 and treatment ordered pursuant to this subsection shall only be
7 conducted by certified sex offender treatment providers or certified
8 affiliate sex offender treatment providers under chapter 18.155 RCW
9 unless the court finds that:

10 (a) The offender has already moved to another state or plans to
11 move to another state for reasons other than circumventing the
12 certification requirements; or

13 (b)(i) No certified sex offender treatment providers or certified
14 affiliate sex offender treatment providers are available for treatment
15 within a reasonable geographical distance of the offender's home; and

16 (ii) The evaluation and treatment plan comply with this section and
17 the rules adopted by the department of health.

18 (12) If the offender is less than eighteen years of age when the
19 charge is filed, the state shall pay for the cost of initial evaluation
20 and treatment.

21 **Sec. 22.** RCW 9A.04.080 and 1998 c 221 s 2 are each amended to read
22 as follows:

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

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

27 (i) Murder;

28 (ii) Homicide by abuse;

29 (iii) Arson if a death results;

30 (iv) Vehicular homicide;

31 (v) Vehicular assault if a death results;

32 (vi) Hit-and-run injury-accident if a death results (RCW
33 46.52.020(4)).

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

36 (i) Any felony committed by a public officer if the commission is

1 in connection with the duties of his or her office or constitutes a
2 breach of his or her public duty or a violation of the oath of office;

3 (ii) Arson if no death results; or

4 (iii) Violations of RCW 9A.44.040 (~~(e)~~), 9A.44.050, section 2 or
5 3 of this act if the rape is reported to a law enforcement agency
6 within one year of its commission; except that if the victim is under
7 fourteen years of age when the rape is committed and the rape is
8 reported to a law enforcement agency within one year of its commission,
9 the violation may be prosecuted up to three years after the victim's
10 eighteenth birthday or up to ten years after the rape's commission,
11 whichever is later. If a violation of RCW 9A.44.040 (~~(e)~~), 9A.44.050,
12 section 2 or 3 of this act is not reported within one year, the rape
13 may not be prosecuted: (A) More than three years after its commission
14 if the violation was committed against a victim fourteen years of age
15 or older; or (B) more than three years after the victim's eighteenth
16 birthday or more than seven years after the rape's commission,
17 whichever is later, if the violation was committed against a victim
18 under fourteen years of age.

19 (c) Violations of the following statutes shall not be prosecuted
20 more than three years after the victim's eighteenth birthday or more
21 than seven years after their commission, whichever is later: RCW
22 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
23 9A.44.100(1)(b), or 9A.64.020.

24 (d) The following offenses shall not be prosecuted more than six
25 years after their commission: Violations of RCW 9A.82.060 or
26 9A.82.080.

27 (e) The following offenses shall not be prosecuted more than five
28 years after their commission: Any class C felony under chapter 74.09,
29 82.36, or 82.38 RCW.

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

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

35 (h) No other felony may be prosecuted more than three years after
36 its commission; except that in a prosecution under RCW 9A.44.115, if
37 the person who was viewed, photographed, or filmed did not realize at
38 the time that he or she was being viewed, photographed, or filmed, the

1 prosecution must be commenced within two years of the time the person
2 who was viewed or in the photograph or film first learns that he or she
3 was viewed, photographed, or filmed.

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

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

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

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

17 **Sec. 23.** RCW 9A.44.130 and 2003 c 215 s 1 and 2003 c 53 s 68 are
18 each reenacted and amended to read as follows:

19 (1) Any adult or juvenile residing whether or not the person has a
20 fixed residence, or who is a student, is employed, or carries on a
21 vocation in this state who has been found to have committed or has been
22 convicted of any sex offense or kidnapping offense, or who has been
23 found not guilty by reason of insanity under chapter 10.77 RCW of
24 committing any sex offense or kidnapping offense, shall register with
25 the county sheriff for the county of the person's residence, or if the
26 person is not a resident of Washington, the county of the person's
27 school, or place of employment or vocation, or as otherwise specified
28 in this section. Where a person required to register under this
29 section is in custody of the state department of corrections, the state
30 department of social and health services, a local division of youth
31 services, or a local jail or juvenile detention facility as a result of
32 a sex offense or kidnapping offense, the person shall also register at
33 the time of release from custody with an official designated by the
34 agency that has jurisdiction over the person. In addition, any such
35 adult or juvenile: (a) Who is admitted to a public or private
36 institution of higher education shall, within ten days of enrolling or
37 by the first business day after arriving at the institution, whichever

1 is earlier, notify the sheriff for the county of the person's residence
2 of the person's intent to attend the institution; (b) who gains
3 employment at a public or private institution of higher education
4 shall, within ten days of accepting employment or by the first business
5 day after commencing work at the institution, whichever is earlier,
6 notify the sheriff for the county of the person's residence of the
7 person's employment by the institution; or (c) whose enrollment or
8 employment at a public or private institution of higher education is
9 terminated shall, within ten days of such termination, notify the
10 sheriff for the county of the person's residence of the person's
11 termination of enrollment or employment at the institution. Persons
12 required to register under this section who are enrolled in a public or
13 private institution of higher education on June 11, 1998, must notify
14 the county sheriff immediately. The sheriff shall notify the
15 institution's department of public safety and shall provide that
16 department with the same information provided to a county sheriff under
17 subsection (3) of this section.

18 (2) This section may not be construed to confer any powers pursuant
19 to RCW (~~4.24.500~~) 4.24.550 upon the public safety department of any
20 public or private institution of higher education.

21 (3)(a) The person shall provide the following information when
22 registering: (i) Name; (ii) complete residential address; (iii) date
23 and place of birth; (iv) place of employment; (v) crime for which
24 convicted; (vi) date and place of conviction; (vii) aliases used;
25 (viii) social security number; (ix) photograph; and (x) fingerprints.

26 (b) Any person who lacks a fixed residence shall provide the
27 following information when registering: (i) Name; (ii) date and place
28 of birth; (iii) place of employment; (iv) crime for which convicted;
29 (v) date and place of conviction; (vi) aliases used; (vii) social
30 security number; (viii) photograph; (ix) fingerprints; and (x) where he
31 or she plans to stay.

32 (4)(a) Offenders shall register with the county sheriff within the
33 following deadlines. For purposes of this section the term
34 "conviction" refers to adult convictions and juvenile adjudications for
35 sex offenses or kidnapping offenses:

36 (i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex
37 offense on, before, or after February 28, 1990, and who, on or after
38 July 28, 1991, are in custody, as a result of that offense, of the

1 state department of corrections, the state department of social and
2 health services, a local division of youth services, or a local jail or
3 juvenile detention facility, and (B) kidnapping offenders who on or
4 after July 27, 1997, are in custody of the state department of
5 corrections, the state department of social and health services, a
6 local division of youth services, or a local jail or juvenile detention
7 facility, must register at the time of release from custody with an
8 official designated by the agency that has jurisdiction over the
9 offender. The agency shall within three days forward the registration
10 information to the county sheriff for the county of the offender's
11 anticipated residence. The offender must also register within twenty-
12 four hours from the time of release with the county sheriff for the
13 county of the person's residence, or if the person is not a resident of
14 Washington, the county of the person's school, or place of employment
15 or vocation. The agency that has jurisdiction over the offender shall
16 provide notice to the offender of the duty to register. Failure to
17 register at the time of release and within twenty-four hours of release
18 constitutes a violation of this section and is punishable as provided
19 in subsection (10) of this section.

20 When the agency with jurisdiction intends to release an offender
21 with a duty to register under this section, and the agency has
22 knowledge that the offender is eligible for developmental disability
23 services from the department of social and health services, the agency
24 shall notify the division of developmental disabilities of the release.
25 Notice shall occur not more than thirty days before the offender is to
26 be released. The agency and the division shall assist the offender in
27 meeting the initial registration requirement under this section.
28 Failure to provide such assistance shall not constitute a defense for
29 any violation of this section.

30 (ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL
31 JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody
32 but are under the jurisdiction of the indeterminate sentence review
33 board or under the department of correction's active supervision, as
34 defined by the department of corrections, the state department of
35 social and health services, or a local division of youth services, for
36 sex offenses committed before, on, or after February 28, 1990, must
37 register within ten days of July 28, 1991. Kidnapping offenders who,
38 on July 27, 1997, are not in custody but are under the jurisdiction of

1 the indeterminate sentence review board or under the department of
2 correction's active supervision, as defined by the department of
3 corrections, the state department of social and health services, or a
4 local division of youth services, for kidnapping offenses committed
5 before, on, or after July 27, 1997, must register within ten days of
6 July 27, 1997. A change in supervision status of a sex offender who
7 was required to register under this subsection (4)(a)(ii) as of July
8 28, 1991, or a kidnapping offender required to register as of July 27,
9 1997, shall not relieve the offender of the duty to register or to
10 reregister following a change in residence. The obligation to register
11 shall only cease pursuant to RCW 9A.44.140.

12 (iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on
13 or after July 23, 1995, and kidnapping offenders who, on or after July
14 27, 1997, as a result of that offense are in the custody of the United
15 States bureau of prisons or other federal or military correctional
16 agency for sex offenses committed before, on, or after February 28,
17 1990, or kidnapping offenses committed on, before, or after July 27,
18 1997, must register within twenty-four hours from the time of release
19 with the county sheriff for the county of the person's residence, or if
20 the person is not a resident of Washington, the county of the person's
21 school, or place of employment or vocation. Sex offenders who, on July
22 23, 1995, are not in custody but are under the jurisdiction of the
23 United States bureau of prisons, United States courts, United States
24 parole commission, or military parole board for sex offenses committed
25 before, on, or after February 28, 1990, must register within ten days
26 of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not
27 in custody but are under the jurisdiction of the United States bureau
28 of prisons, United States courts, United States parole commission, or
29 military parole board for kidnapping offenses committed before, on, or
30 after July 27, 1997, must register within ten days of July 27, 1997.
31 A change in supervision status of a sex offender who was required to
32 register under this subsection (4)(a)(iii) as of July 23, 1995, or a
33 kidnapping offender required to register as of July 27, 1997 shall not
34 relieve the offender of the duty to register or to reregister following
35 a change in residence, or if the person is not a resident of
36 Washington, the county of the person's school, or place of employment
37 or vocation. The obligation to register shall only cease pursuant to
38 RCW 9A.44.140.

1 (iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders
2 who are convicted of a sex offense on or after July 28, 1991, for a sex
3 offense that was committed on or after February 28, 1990, and
4 kidnapping offenders who are convicted on or after July 27, 1997, for
5 a kidnapping offense that was committed on or after July 27, 1997, but
6 who are not sentenced to serve a term of confinement immediately upon
7 sentencing, shall report to the county sheriff to register immediately
8 upon completion of being sentenced.

9 (v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON
10 RESIDENTS. Sex offenders and kidnapping offenders who move to
11 Washington state from another state or a foreign country that are not
12 under the jurisdiction of the state department of corrections, the
13 indeterminate sentence review board, or the state department of social
14 and health services at the time of moving to Washington, must register
15 within (~~thirty days~~) twenty-four hours of establishing residence or
16 reestablishing residence if the person is a former Washington resident.
17 The duty to register under this subsection applies to sex offenders
18 convicted under the laws of another state or a foreign country, federal
19 or military statutes, or Washington state for offenses committed on or
20 after February 28, 1990, and to kidnapping offenders convicted under
21 the laws of another state or a foreign country, federal or military
22 statutes, or Washington state for offenses committed on or after July
23 27, 1997. Sex offenders and kidnapping offenders from other states or
24 a foreign country who, when they move to Washington, are under the
25 jurisdiction of the department of corrections, the indeterminate
26 sentence review board, or the department of social and health services
27 must register within twenty-four hours of moving to Washington. The
28 agency that has jurisdiction over the offender shall notify the
29 offender of the registration requirements before the offender moves to
30 Washington.

31 (vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult
32 or juvenile who has been found not guilty by reason of insanity under
33 chapter 10.77 RCW of (A) committing a sex offense on, before, or after
34 February 28, 1990, and who, on or after July 23, 1995, is in custody,
35 as a result of that finding, of the state department of social and
36 health services, or (B) committing a kidnapping offense on, before, or
37 after July 27, 1997, and who on or after July 27, 1997, is in custody,
38 as a result of that finding, of the state department of social and

1 health services, must register within twenty-four hours from the time
2 of release with the county sheriff for the county of the person's
3 residence. The state department of social and health services shall
4 provide notice to the adult or juvenile in its custody of the duty to
5 register. Any adult or juvenile who has been found not guilty by
6 reason of insanity of committing a sex offense on, before, or after
7 February 28, 1990, but who was released before July 23, 1995, or any
8 adult or juvenile who has been found not guilty by reason of insanity
9 of committing a kidnapping offense but who was released before July 27,
10 1997, shall be required to register within twenty-four hours of
11 receiving notice of this registration requirement. The state
12 department of social and health services shall make reasonable attempts
13 within available resources to notify sex offenders who were released
14 before July 23, 1995, and kidnapping offenders who were released before
15 July 27, 1997. Failure to register within twenty-four hours of
16 release, or of receiving notice, constitutes a violation of this
17 section and is punishable as provided in subsection (10) of this
18 section.

19 (vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks
20 a fixed residence and leaves the county in which he or she is
21 registered and enters and remains within a new county for twenty-four
22 hours is required to register with the county sheriff not more than
23 twenty-four hours after entering the county and provide the information
24 required in subsection (3)(b) of this section.

25 (viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER
26 SUPERVISION. Offenders who lack a fixed residence and who are under
27 the supervision of the department shall register in the county of their
28 supervision.

29 (ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND
30 SCHOOL IN ANOTHER STATE. Offenders required to register in Washington,
31 who move to another state, or who work, carry on a vocation, or attend
32 school in another state shall register a new address, fingerprints, and
33 photograph with the new state within ten days after establishing
34 residence, or after beginning to work, carry on a vocation, or attend
35 school in the new state. The person must also send written notice
36 within ten days of moving to the new state or to a foreign country to
37 the county sheriff with whom the person last registered in Washington

1 state. The county sheriff shall promptly forward this information to
2 the Washington state patrol.

3 (b) Failure to register within the time required under this section
4 constitutes a per se violation of this section and is punishable as
5 provided in subsection (10) of this section. The county sheriff shall
6 not be required to determine whether the person is living within the
7 county.

8 (c) An arrest on charges of failure to register, service of an
9 information, or a complaint for a violation of this section, or
10 arraignment on charges for a violation of this section, constitutes
11 actual notice of the duty to register. Any person charged with the
12 crime of failure to register under this section who asserts as a
13 defense the lack of notice of the duty to register shall register
14 immediately following actual notice of the duty through arrest,
15 service, or arraignment. Failure to register as required under this
16 subsection (4)(c) constitutes grounds for filing another charge of
17 failing to register. Registering following arrest, service, or
18 arraignment on charges shall not relieve the offender from criminal
19 liability for failure to register prior to the filing of the original
20 charge.

21 (d) The deadlines for the duty to register under this section do
22 not relieve any sex offender of the duty to register under this section
23 as it existed prior to July 28, 1991.

24 (5)(a) If any person required to register pursuant to this section
25 changes his or her residence address within the same county, the person
26 must send signed written notice of the change of address to the county
27 sheriff within seventy-two hours of moving. If any person required to
28 register pursuant to this section moves to a new county, the person
29 must send signed written notice of the change of address at least
30 fourteen days before moving to the county sheriff in the new county of
31 residence and must register with that county sheriff within twenty-four
32 hours of moving. The person must also send signed written notice
33 within ten days of the change of address in the new county to the
34 county sheriff with whom the person last registered. The county
35 sheriff with whom the person last registered shall promptly forward the
36 information concerning the change of address to the county sheriff for
37 the county of the person's new residence. Upon receipt of notice of
38 change of address to a new state, the county sheriff shall promptly

1 forward the information regarding the change of address to the agency
2 designated by the new state as the state's offender registration
3 agency.

4 (b) It is an affirmative defense to a charge that the person failed
5 to send a notice at least fourteen days in advance of moving as
6 required under (a) of this subsection that the person did not know the
7 location of his or her new residence at least fourteen days before
8 moving. The defendant must establish the defense by a preponderance of
9 the evidence and, to prevail on the defense, must also prove by a
10 preponderance that the defendant sent the required notice within
11 twenty-four hours of determining the new address.

12 (6)(a)(i) Any person required to register under this section who
13 lacks a fixed residence shall provide signed written notice to the
14 sheriff of the county where he or she last registered within forty-
15 eight hours excluding weekends and holidays after ceasing to have a
16 fixed residence. The notice shall include the information required by
17 subsection (3)(b) of this section, except the photograph and
18 fingerprints. The county sheriff may, for reasonable cause, require
19 the offender to provide a photograph and fingerprints. The sheriff
20 shall forward this information to the sheriff of the county in which
21 the person intends to reside, if the person intends to reside in
22 another county.

23 (~~(b)~~) (ii) A person who lacks a fixed residence must report
24 weekly, in person, to the sheriff of the county where he or she is
25 registered. The weekly report shall be on a day specified by the
26 county sheriff's office, and shall occur during normal business hours.
27 The county sheriff's office (~~may~~) shall require the person to list
28 the locations and, when applicable, the complete addresses, where the
29 person has stayed during the last seven days and where the person plans
30 to stay during the forthcoming week. The lack of a fixed residence is
31 a factor that may be considered in determining an offender's risk level
32 and shall make the offender subject to disclosure of information to the
33 public at large pursuant to RCW 4.24.550.

34 (~~(c)~~) (iii) If any person required to register pursuant to this
35 section does not have a fixed residence, it is an affirmative defense
36 to the charge of failure to register, that he or she provided written
37 notice to the sheriff of the county where he or she last registered
38 within forty-eight hours excluding weekends and holidays after ceasing

1 to have a fixed residence and has subsequently complied with the
2 requirements of subsections (4)(a)(vii) or (viii) and (6) of this
3 section. To prevail, the person must prove the defense by a
4 preponderance of the evidence.

5 (b) A person with a fixed residence who is required to register
6 under this section shall report to the sheriff of the county of the
7 person's residence to update and confirm his or her registration
8 information once a month for offenders designated as risk level III and
9 twice a year for offenders designated as risk level I or II. The
10 requirements of this subsection shall not affect the offender's duty
11 under this section to notify the sheriff when his or her registration
12 information changes.

13 (7) A sex offender subject to registration requirements under this
14 section who applies to change his or her name under RCW 4.24.130 or any
15 other law shall submit a copy of the application to the county sheriff
16 of the county of the person's residence and to the state patrol not
17 fewer than five days before the entry of an order granting the name
18 change. No sex offender under the requirement to register under this
19 section at the time of application shall be granted an order changing
20 his or her name if the court finds that doing so will interfere with
21 legitimate law enforcement interests, except that no order shall be
22 denied when the name change is requested for religious or legitimate
23 cultural reasons or in recognition of marriage or dissolution of
24 marriage. A sex offender under the requirement to register under this
25 section who receives an order changing his or her name shall submit a
26 copy of the order to the county sheriff of the county of the person's
27 residence and to the state patrol within five days of the entry of the
28 order.

29 (8) The county sheriff shall obtain a photograph of the individual
30 and shall obtain a copy of the individual's fingerprints.

31 (9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540,
32 70.48.470, and 72.09.330:

33 (a) "Sex offense" means:

34 (i) Any offense defined as a sex offense by RCW 9.94A.030;

35 (ii) Any violation under RCW 9A.44.096 (sexual misconduct with a
36 minor in the second degree);

37 (iii) Any violation under RCW 9.68A.090 (communication with a minor
38 for immoral purposes);

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

4 (v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a
5 criminal attempt, criminal solicitation, or criminal conspiracy to
6 commit an offense that is classified as a sex offense under RCW
7 9.94A.030 or this subsection.

8 (b) "Kidnapping offense" means: (i) The crimes of kidnapping in
9 the first degree, kidnapping in the second degree, and unlawful
10 imprisonment, as defined in chapter 9A.40 RCW, where the victim is a
11 minor and the offender is not the minor's parent; (ii) any offense that
12 is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation,
13 or criminal conspiracy to commit an offense that is classified as a
14 kidnapping offense under this subsection (9)(b); and (iii) any federal
15 or out-of-state conviction for an offense that under the laws of this
16 state would be classified as a kidnapping offense under this subsection
17 (9)(b).

18 (c) "Employed" or "carries on a vocation" means employment that is
19 full-time or part-time for a period of time exceeding fourteen days, or
20 for an aggregate period of time exceeding thirty days during any
21 calendar year. A person is employed or carries on a vocation whether
22 the person's employment is financially compensated, volunteered, or for
23 the purpose of government or educational benefit.

24 (d) "Student" means a person who is enrolled, on a full-time or
25 part-time basis, in any public or private educational institution. An
26 educational institution includes any secondary school, trade or
27 professional institution, or institution of higher education.

28 (10)(a) A person who knowingly fails to (~~register with the county~~
29 ~~sheriff or notify the county sheriff, or who changes his or her name~~
30 ~~without notifying the county sheriff and the state patrol, as required~~
31 ~~by~~) comply with any of the requirements of this section is guilty of
32 a class C felony if the crime for which the individual was convicted
33 was a felony sex offense as defined in subsection (9)(a) of this
34 section or a federal or out-of-state conviction for an offense that
35 under the laws of this state would be a felony sex offense as defined
36 in subsection (9)(a) of this section.

37 (b) If the crime for which the individual was convicted was other

1 than a felony or a federal or out-of-state conviction for an offense
2 that under the laws of this state would be other than a felony,
3 violation of this section is a gross misdemeanor.

4 (11)(a) A person who knowingly fails to (~~register or who moves~~
5 ~~within the state without notifying the county sheriff as required by~~)
6 comply with any of the requirements of this section is guilty of a
7 class C felony if the crime for which the individual was convicted was
8 a felony kidnapping offense as defined in subsection (9)(b) of this
9 section or a federal or out-of-state conviction for an offense that
10 under the laws of this state would be a felony kidnapping offense as
11 defined in subsection (9)(b) of this section.

12 (b) If the crime for which the individual was convicted was other
13 than a felony or a federal or out-of-state conviction for an offense
14 that under the laws of this state would be other than a felony,
15 violation of this section is a gross misdemeanor.

16 **Sec. 24.** RCW 9A.44.130 and 2005 c 380 s 1 are each amended to read
17 as follows:

18 (1)(a) Any adult or juvenile residing whether or not the person has
19 a fixed residence, or who is a student, is employed, or carries on a
20 vocation in this state who has been found to have committed or has been
21 convicted of any sex offense or kidnapping offense, or who has been
22 found not guilty by reason of insanity under chapter 10.77 RCW of
23 committing any sex offense or kidnapping offense, shall register with
24 the county sheriff for the county of the person's residence, or if the
25 person is not a resident of Washington, the county of the person's
26 school, or place of employment or vocation, or as otherwise specified
27 in this section. Where a person required to register under this
28 section is in custody of the state department of corrections, the state
29 department of social and health services, a local division of youth
30 services, or a local jail or juvenile detention facility as a result of
31 a sex offense or kidnapping offense, the person shall also register at
32 the time of release from custody with an official designated by the
33 agency that has jurisdiction over the person.

34 (b) Any adult or juvenile who is required to register under (a) of
35 this subsection:

36 (i) Who is attending, or planning to attend, a public or private
37 school regulated under Title 28A RCW or chapter 72.40 RCW shall, within

1 ten days of enrolling or prior to arriving at the school to attend
2 classes, whichever is earlier, notify the sheriff for the county of the
3 person's residence of the person's intent to attend the school, and the
4 sheriff shall promptly notify the principal of the school;

5 (ii) Who is admitted to a public or private institution of higher
6 education shall, within ten days of enrolling or by the first business
7 day after arriving at the institution, whichever is earlier, notify the
8 sheriff for the county of the person's residence of the person's intent
9 to attend the institution;

10 (iii) Who gains employment at a public or private institution of
11 higher education shall, within ten days of accepting employment or by
12 the first business day after commencing work at the institution,
13 whichever is earlier, notify the sheriff for the county of the person's
14 residence of the person's employment by the institution; or

15 (iv) Whose enrollment or employment at a public or private
16 institution of higher education is terminated shall, within ten days of
17 such termination, notify the sheriff for the county of the person's
18 residence of the person's termination of enrollment or employment at
19 the institution.

20 (c) Persons required to register under this section who are
21 enrolled in a public or private institution of higher education on June
22 11, 1998, or a public or private school regulated under Title 28A RCW
23 or chapter 72.40 RCW on September 1, 2006, must notify the county
24 sheriff immediately.

25 (d) The sheriff shall notify the school's principal or
26 institution's department of public safety and shall provide that
27 department with the same information provided to a county sheriff under
28 subsection (3) of this section.

29 (e)(i) A principal receiving notice under this subsection must
30 disclose the information received from the sheriff under (b) of this
31 subsection as follows:

32 (A) If the student who is required to register as a sex offender is
33 classified as a risk level II or III, the principal shall provide the
34 information received to every teacher of any student required to
35 register under (a) of this subsection and to any other personnel who,
36 in the judgment of the principal, supervises the student or for
37 security purposes should be aware of the student's record;

1 (B) If the student who is required to register as a sex offender is
2 classified as a risk level I, the principal shall provide the
3 information received only to personnel who, in the judgment of the
4 principal, for security purposes should be aware of the student's
5 record.

6 (ii) Any information received by a principal or school personnel
7 under this subsection is confidential and may not be further
8 disseminated except as provided in RCW 28A.225.330, other statutes or
9 case law, and the family and educational and privacy rights act of
10 1994, 20 U.S.C. Sec. 1232g et seq.

11 (2) This section may not be construed to confer any powers pursuant
12 to RCW (~~4.24.500~~) 4.24.550 upon the public safety department of any
13 public or private school or institution of higher education.

14 (3)(a) The person shall provide the following information when
15 registering: (i) Name; (ii) complete residential address; (iii) date
16 and place of birth; (iv) place of employment; (v) crime for which
17 convicted; (vi) date and place of conviction; (vii) aliases used;
18 (viii) social security number; (ix) photograph; and (x) fingerprints.

19 (b) Any person who lacks a fixed residence shall provide the
20 following information when registering: (i) Name; (ii) date and place
21 of birth; (iii) place of employment; (iv) crime for which convicted;
22 (v) date and place of conviction; (vi) aliases used; (vii) social
23 security number; (viii) photograph; (ix) fingerprints; and (x) where he
24 or she plans to stay.

25 (4)(a) Offenders shall register with the county sheriff within the
26 following deadlines. For purposes of this section the term
27 "conviction" refers to adult convictions and juvenile adjudications for
28 sex offenses or kidnapping offenses:

29 (i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex
30 offense on, before, or after February 28, 1990, and who, on or after
31 July 28, 1991, are in custody, as a result of that offense, of the
32 state department of corrections, the state department of social and
33 health services, a local division of youth services, or a local jail or
34 juvenile detention facility, and (B) kidnapping offenders who on or
35 after July 27, 1997, are in custody of the state department of
36 corrections, the state department of social and health services, a
37 local division of youth services, or a local jail or juvenile detention
38 facility, must register at the time of release from custody with an

1 official designated by the agency that has jurisdiction over the
2 offender. The agency shall within three days forward the registration
3 information to the county sheriff for the county of the offender's
4 anticipated residence. The offender must also register within twenty-
5 four hours from the time of release with the county sheriff for the
6 county of the person's residence, or if the person is not a resident of
7 Washington, the county of the person's school, or place of employment
8 or vocation. The agency that has jurisdiction over the offender shall
9 provide notice to the offender of the duty to register. Failure to
10 register at the time of release and within twenty-four hours of release
11 constitutes a violation of this section and is punishable as provided
12 in subsection (10) of this section.

13 When the agency with jurisdiction intends to release an offender
14 with a duty to register under this section, and the agency has
15 knowledge that the offender is eligible for developmental disability
16 services from the department of social and health services, the agency
17 shall notify the division of developmental disabilities of the release.
18 Notice shall occur not more than thirty days before the offender is to
19 be released. The agency and the division shall assist the offender in
20 meeting the initial registration requirement under this section.
21 Failure to provide such assistance shall not constitute a defense for
22 any violation of this section.

23 (ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL
24 JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody
25 but are under the jurisdiction of the indeterminate sentence review
26 board or under the department of corrections' active supervision, as
27 defined by the department of corrections, the state department of
28 social and health services, or a local division of youth services, for
29 sex offenses committed before, on, or after February 28, 1990, must
30 register within ten days of July 28, 1991. Kidnapping offenders who,
31 on July 27, 1997, are not in custody but are under the jurisdiction of
32 the indeterminate sentence review board or under the department of
33 corrections' active supervision, as defined by the department of
34 corrections, the state department of social and health services, or a
35 local division of youth services, for kidnapping offenses committed
36 before, on, or after July 27, 1997, must register within ten days of
37 July 27, 1997. A change in supervision status of a sex offender who
38 was required to register under this subsection (4)(a)(ii) as of July

1 28, 1991, or a kidnapping offender required to register as of July 27,
2 1997, shall not relieve the offender of the duty to register or to
3 reregister following a change in residence. The obligation to register
4 shall only cease pursuant to RCW 9A.44.140.

5 (iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on
6 or after July 23, 1995, and kidnapping offenders who, on or after July
7 27, 1997, as a result of that offense are in the custody of the United
8 States bureau of prisons or other federal or military correctional
9 agency for sex offenses committed before, on, or after February 28,
10 1990, or kidnapping offenses committed on, before, or after July 27,
11 1997, must register within twenty-four hours from the time of release
12 with the county sheriff for the county of the person's residence, or if
13 the person is not a resident of Washington, the county of the person's
14 school, or place of employment or vocation. Sex offenders who, on July
15 23, 1995, are not in custody but are under the jurisdiction of the
16 United States bureau of prisons, United States courts, United States
17 parole commission, or military parole board for sex offenses committed
18 before, on, or after February 28, 1990, must register within ten days
19 of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not
20 in custody but are under the jurisdiction of the United States bureau
21 of prisons, United States courts, United States parole commission, or
22 military parole board for kidnapping offenses committed before, on, or
23 after July 27, 1997, must register within ten days of July 27, 1997.
24 A change in supervision status of a sex offender who was required to
25 register under this subsection (4)(a)(iii) as of July 23, 1995, or a
26 kidnapping offender required to register as of July 27, 1997 shall not
27 relieve the offender of the duty to register or to reregister following
28 a change in residence, or if the person is not a resident of
29 Washington, the county of the person's school, or place of employment
30 or vocation. The obligation to register shall only cease pursuant to
31 RCW 9A.44.140.

32 (iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders
33 who are convicted of a sex offense on or after July 28, 1991, for a sex
34 offense that was committed on or after February 28, 1990, and
35 kidnapping offenders who are convicted on or after July 27, 1997, for
36 a kidnapping offense that was committed on or after July 27, 1997, but
37 who are not sentenced to serve a term of confinement immediately upon

1 sentencing, shall report to the county sheriff to register immediately
2 upon completion of being sentenced.

3 (v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON
4 RESIDENTS. Sex offenders and kidnapping offenders who move to
5 Washington state from another state or a foreign country that are not
6 under the jurisdiction of the state department of corrections, the
7 indeterminate sentence review board, or the state department of social
8 and health services at the time of moving to Washington, must register
9 within (~~thirty days~~) twenty-four hours of establishing residence or
10 reestablishing residence if the person is a former Washington resident.
11 The duty to register under this subsection applies to sex offenders
12 convicted under the laws of another state or a foreign country, federal
13 or military statutes, or Washington state for offenses committed on or
14 after February 28, 1990, and to kidnapping offenders convicted under
15 the laws of another state or a foreign country, federal or military
16 statutes, or Washington state for offenses committed on or after July
17 27, 1997. Sex offenders and kidnapping offenders from other states or
18 a foreign country who, when they move to Washington, are under the
19 jurisdiction of the department of corrections, the indeterminate
20 sentence review board, or the department of social and health services
21 must register within twenty-four hours of moving to Washington. The
22 agency that has jurisdiction over the offender shall notify the
23 offender of the registration requirements before the offender moves to
24 Washington.

25 (vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult
26 or juvenile who has been found not guilty by reason of insanity under
27 chapter 10.77 RCW of (A) committing a sex offense on, before, or after
28 February 28, 1990, and who, on or after July 23, 1995, is in custody,
29 as a result of that finding, of the state department of social and
30 health services, or (B) committing a kidnapping offense on, before, or
31 after July 27, 1997, and who on or after July 27, 1997, is in custody,
32 as a result of that finding, of the state department of social and
33 health services, must register within twenty-four hours from the time
34 of release with the county sheriff for the county of the person's
35 residence. The state department of social and health services shall
36 provide notice to the adult or juvenile in its custody of the duty to
37 register. Any adult or juvenile who has been found not guilty by
38 reason of insanity of committing a sex offense on, before, or after

1 February 28, 1990, but who was released before July 23, 1995, or any
2 adult or juvenile who has been found not guilty by reason of insanity
3 of committing a kidnapping offense but who was released before July 27,
4 1997, shall be required to register within twenty-four hours of
5 receiving notice of this registration requirement. The state
6 department of social and health services shall make reasonable attempts
7 within available resources to notify sex offenders who were released
8 before July 23, 1995, and kidnapping offenders who were released before
9 July 27, 1997. Failure to register within twenty-four hours of
10 release, or of receiving notice, constitutes a violation of this
11 section and is punishable as provided in subsection (10) of this
12 section.

13 (vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks
14 a fixed residence and leaves the county in which he or she is
15 registered and enters and remains within a new county for twenty-four
16 hours is required to register with the county sheriff not more than
17 twenty-four hours after entering the county and provide the information
18 required in subsection (3)(b) of this section.

19 (viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER
20 SUPERVISION. Offenders who lack a fixed residence and who are under
21 the supervision of the department shall register in the county of their
22 supervision.

23 (ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND
24 SCHOOL IN ANOTHER STATE. Offenders required to register in Washington,
25 who move to another state, or who work, carry on a vocation, or attend
26 school in another state shall register a new address, fingerprints, and
27 photograph with the new state within ten days after establishing
28 residence, or after beginning to work, carry on a vocation, or attend
29 school in the new state. The person must also send written notice
30 within ten days of moving to the new state or to a foreign country to
31 the county sheriff with whom the person last registered in Washington
32 state. The county sheriff shall promptly forward this information to
33 the Washington state patrol.

34 (b) Failure to register within the time required under this section
35 constitutes a per se violation of this section and is punishable as
36 provided in subsection (10) of this section. The county sheriff shall
37 not be required to determine whether the person is living within the
38 county.

1 (c) An arrest on charges of failure to register, service of an
2 information, or a complaint for a violation of this section, or
3 arraignment on charges for a violation of this section, constitutes
4 actual notice of the duty to register. Any person charged with the
5 crime of failure to register under this section who asserts as a
6 defense the lack of notice of the duty to register shall register
7 immediately following actual notice of the duty through arrest,
8 service, or arraignment. Failure to register as required under this
9 subsection (4)(c) constitutes grounds for filing another charge of
10 failing to register. Registering following arrest, service, or
11 arraignment on charges shall not relieve the offender from criminal
12 liability for failure to register prior to the filing of the original
13 charge.

14 (d) The deadlines for the duty to register under this section do
15 not relieve any sex offender of the duty to register under this section
16 as it existed prior to July 28, 1991.

17 (5)(a) If any person required to register pursuant to this section
18 changes his or her residence address within the same county, the person
19 must send signed written notice of the change of address to the county
20 sheriff within seventy-two hours of moving. If any person required to
21 register pursuant to this section moves to a new county, the person
22 must send signed written notice of the change of address at least
23 fourteen days before moving to the county sheriff in the new county of
24 residence and must register with that county sheriff within twenty-four
25 hours of moving. The person must also send signed written notice
26 within ten days of the change of address in the new county to the
27 county sheriff with whom the person last registered. The county
28 sheriff with whom the person last registered shall promptly forward the
29 information concerning the change of address to the county sheriff for
30 the county of the person's new residence. Upon receipt of notice of
31 change of address to a new state, the county sheriff shall promptly
32 forward the information regarding the change of address to the agency
33 designated by the new state as the state's offender registration
34 agency.

35 (b) It is an affirmative defense to a charge that the person failed
36 to send a notice at least fourteen days in advance of moving as
37 required under (a) of this subsection that the person did not know the
38 location of his or her new residence at least fourteen days before

1 moving. The defendant must establish the defense by a preponderance of
2 the evidence and, to prevail on the defense, must also prove by a
3 preponderance that the defendant sent the required notice within
4 twenty-four hours of determining the new address.

5 (6)(a)(i) Any person required to register under this section who
6 lacks a fixed residence shall provide signed written notice to the
7 sheriff of the county where he or she last registered within forty-
8 eight hours excluding weekends and holidays after ceasing to have a
9 fixed residence. The notice shall include the information required by
10 subsection (3)(b) of this section, except the photograph and
11 fingerprints. The county sheriff may, for reasonable cause, require
12 the offender to provide a photograph and fingerprints. The sheriff
13 shall forward this information to the sheriff of the county in which
14 the person intends to reside, if the person intends to reside in
15 another county.

16 ~~((b))~~ (ii) A person who lacks a fixed residence must report
17 weekly, in person, to the sheriff of the county where he or she is
18 registered. The weekly report shall be on a day specified by the
19 county sheriff's office, and shall occur during normal business hours.
20 The county sheriff's office ~~((may))~~ shall require the person to list
21 the locations and, when applicable, the complete addresses, where the
22 person has stayed during the last seven days and where the person plans
23 to stay during the forthcoming week. The lack of a fixed residence is
24 a factor that may be considered in determining an offender's risk level
25 and shall make the offender subject to disclosure of information to the
26 public at large pursuant to RCW 4.24.550.

27 ~~((e))~~ (iii) If any person required to register pursuant to this
28 section does not have a fixed residence, it is an affirmative defense
29 to the charge of failure to register, that he or she provided written
30 notice to the sheriff of the county where he or she last registered
31 within forty-eight hours excluding weekends and holidays after ceasing
32 to have a fixed residence and has subsequently complied with the
33 requirements of subsections (4)(a)(vii) or (viii) and (6) of this
34 section. To prevail, the person must prove the defense by a
35 preponderance of the evidence.

36 (b) A person with a fixed residence who is required to register
37 under this section shall report to the sheriff of the county of the
38 person's residence to update and confirm his or her registration

1 information once a month for offenders designated as risk level III and
2 twice a year for offenders designated as risk level I or II. The
3 requirements of this subsection shall not affect the offender's duty
4 under this section to notify the sheriff when his or her registration
5 information changes.

6 (7) A sex offender subject to registration requirements under this
7 section who applies to change his or her name under RCW 4.24.130 or any
8 other law shall submit a copy of the application to the county sheriff
9 of the county of the person's residence and to the state patrol not
10 fewer than five days before the entry of an order granting the name
11 change. No sex offender under the requirement to register under this
12 section at the time of application shall be granted an order changing
13 his or her name if the court finds that doing so will interfere with
14 legitimate law enforcement interests, except that no order shall be
15 denied when the name change is requested for religious or legitimate
16 cultural reasons or in recognition of marriage or dissolution of
17 marriage. A sex offender under the requirement to register under this
18 section who receives an order changing his or her name shall submit a
19 copy of the order to the county sheriff of the county of the person's
20 residence and to the state patrol within five days of the entry of the
21 order.

22 (8) The county sheriff shall obtain a photograph of the individual
23 and shall obtain a copy of the individual's fingerprints.

24 (9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540,
25 70.48.470, and 72.09.330:

26 (a) "Sex offense" means:

27 (i) Any offense defined as a sex offense by RCW 9.94A.030;

28 (ii) Any violation under RCW 9A.44.096 (sexual misconduct with a
29 minor in the second degree);

30 (iii) Any violation under RCW 9.68A.090 (communication with a minor
31 for immoral purposes);

32 (iv) Any federal or out-of-state conviction for an offense that
33 under the laws of this state would be classified as a sex offense under
34 this subsection; and

35 (v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a
36 criminal attempt, criminal solicitation, or criminal conspiracy to
37 commit an offense that is classified as a sex offense under RCW
38 9.94A.030 or this subsection.

1 (b) "Kidnapping offense" means: (i) The crimes of kidnapping in
2 the first degree, kidnapping in the second degree, and unlawful
3 imprisonment, as defined in chapter 9A.40 RCW, where the victim is a
4 minor and the offender is not the minor's parent; (ii) any offense that
5 is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation,
6 or criminal conspiracy to commit an offense that is classified as a
7 kidnapping offense under this subsection (9)(b); and (iii) any federal
8 or out-of-state conviction for an offense that under the laws of this
9 state would be classified as a kidnapping offense under this subsection
10 (9)(b).

11 (c) "Employed" or "carries on a vocation" means employment that is
12 full-time or part-time for a period of time exceeding fourteen days, or
13 for an aggregate period of time exceeding thirty days during any
14 calendar year. A person is employed or carries on a vocation whether
15 the person's employment is financially compensated, volunteered, or for
16 the purpose of government or educational benefit.

17 (d) "Student" means a person who is enrolled, on a full-time or
18 part-time basis, in any public or private educational institution. An
19 educational institution includes any secondary school, trade or
20 professional institution, or institution of higher education.

21 (10)(a) A person who knowingly fails to (~~register with the county~~
22 ~~sheriff or notify the county sheriff, or who changes his or her name~~
23 ~~without notifying the county sheriff and the state patrol, as required~~
24 ~~by~~) comply with any of the requirements of this section is guilty of
25 a class C felony if the crime for which the individual was convicted
26 was a felony sex offense as defined in subsection (9)(a) of this
27 section or a federal or out-of-state conviction for an offense that
28 under the laws of this state would be a felony sex offense as defined
29 in subsection (9)(a) of this section.

30 (b) If the crime for which the individual was convicted was other
31 than a felony or a federal or out-of-state conviction for an offense
32 that under the laws of this state would be other than a felony,
33 violation of this section is a gross misdemeanor.

34 (11)(a) A person who knowingly fails to (~~register or who moves~~
35 ~~within the state without notifying the county sheriff as required by~~)
36 comply with any of the requirements of this section is guilty of a
37 class C felony if the crime for which the individual was convicted was
38 a felony kidnapping offense as defined in subsection (9)(b) of this

1 section or a federal or out-of-state conviction for an offense that
2 under the laws of this state would be a felony kidnapping offense as
3 defined in subsection (9)(b) of this section.

4 (b) If the crime for which the individual was convicted was other
5 than a felony or a federal or out-of-state conviction for an offense
6 that under the laws of this state would be other than a felony,
7 violation of this section is a gross misdemeanor.

8 (12) Except as may otherwise be provided by law, nothing in this
9 section shall impose any liability upon a peace officer, including a
10 county sheriff, or law enforcement agency, for failing to release
11 information authorized under this section.

12 **Sec. 25.** RCW 9A.44.140 and 2002 c 25 s 1 are each amended to read
13 as follows:

14 (1) The duty to register under RCW 9A.44.130 shall end:

15 (a) For a person convicted of a class A felony or an offense listed
16 in subsection (5) of this section, or a person convicted of any sex
17 offense or kidnapping offense who has one or more prior convictions for
18 a sex offense or kidnapping offense: Such person may only be relieved
19 of the duty to register under subsection (3) or (4) of this section.

20 (b) For a person convicted of a class B felony, and the person does
21 not have one or more prior convictions for a sex offense or kidnapping
22 offense and the person's current offense is not listed in subsection
23 (5) of this section: Fifteen years after the last date of release from
24 confinement, if any, (including full-time residential treatment)
25 pursuant to the conviction, or entry of the judgment and sentence, if
26 the person has spent fifteen consecutive years in the community without
27 being convicted of any new offenses.

28 (c) For a person convicted of a class C felony, a violation of RCW
29 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to
30 commit a class C felony, and the person does not have one or more prior
31 convictions for a sex offense or kidnapping offense and the person's
32 current offense is not listed in subsection (5) of this section: Ten
33 years after the last date of release from confinement, if any,
34 (including full-time residential treatment) pursuant to the conviction,
35 or entry of the judgment and sentence, if the person has spent ten
36 consecutive years in the community without being convicted of any new
37 offenses.

1 (2) The provisions of subsection (1) of this section shall apply
2 equally to a person who has been found not guilty by reason of insanity
3 under chapter 10.77 RCW of a sex offense or kidnapping offense.

4 (3)(a) Except as provided in (b) of this subsection, any person
5 having a duty to register under RCW 9A.44.130 may petition the superior
6 court to be relieved of that duty, if the person has spent ten
7 consecutive years in the community without being convicted of any new
8 offenses. The petition shall be made to the court in which the
9 petitioner was convicted of the offense that subjects him or her to the
10 duty to register, or, in the case of convictions in other states, a
11 foreign country, or a federal or military court, to the court in
12 Thurston county. The prosecuting attorney of the county shall be named
13 and served as the respondent in any such petition. The court shall
14 consider the nature of the registrable offense committed, and the
15 criminal and relevant noncriminal behavior of the petitioner both
16 before and after conviction, and may consider other factors. Except as
17 provided in subsection (4) of this section, the court may relieve the
18 petitioner of the duty to register only if the petitioner shows, with
19 clear and convincing evidence, that future registration of the
20 petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200,
21 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

22 (b)(i) The court may not relieve a person of the duty to register
23 if the person has been determined to be a sexually violent predator as
24 defined in RCW 71.09.020, or has been convicted of a sex offense or
25 kidnapping offense that is a class A felony and that was committed with
26 forcible compulsion on or after June 8, 2000.

27 (ii) The court may not relieve a person of the duty to register if
28 the person has been convicted of one aggravated offense or more than
29 one sexually violent offense, as defined in subsection (5) of this
30 section, and the offense or offenses were committed on or after March
31 12, 2002.

32 (c) Any person subject to (b) of this subsection or subsection (5)
33 of this section may petition the court to be exempted from any
34 community notification requirements that the person may be subject to
35 fifteen years after the later of the entry of the judgment and sentence
36 or the last date of release from confinement, including full-time
37 residential treatment, pursuant to the conviction, if the person has

1 spent the time in the community without being convicted of any new
2 offense.

3 (4) An offender having a duty to register under RCW 9A.44.130 for
4 a sex offense or kidnapping offense committed when the offender was a
5 juvenile may petition the superior court to be relieved of that duty.
6 The court shall consider the nature of the registrable offense
7 committed, and the criminal and relevant noncriminal behavior of the
8 petitioner both before and after adjudication, and may consider other
9 factors.

10 (a) The court may relieve the petitioner of the duty to register
11 for a sex offense or kidnapping offense that was committed while the
12 petitioner was fifteen years of age or older only if the petitioner
13 shows, with clear and convincing evidence, that future registration of
14 the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200,
15 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

16 (b) The court may relieve the petitioner of the duty to register
17 for a sex offense or kidnapping offense that was committed while the
18 petitioner was under the age of fifteen if the petitioner (i) has not
19 been adjudicated of any additional sex offenses or kidnapping offenses
20 during the twenty-four months following the adjudication for the
21 offense giving rise to the duty to register, and (ii) proves by a
22 preponderance of the evidence that future registration of the
23 petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200,
24 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

25 This subsection shall not apply to juveniles prosecuted as adults.

26 (5)(a) A person who has been convicted of an aggravated offense, or
27 has been convicted of one or more prior sexually violent offenses or
28 criminal offenses against a victim who is a minor, as defined in (b) of
29 this subsection may only be relieved of the duty to register under
30 subsection (3)(b) of this section. This provision shall apply to
31 convictions for crimes committed on or after July 22, 2001.

32 (b) Unless the context clearly requires otherwise, the following
33 definitions apply only to the federal lifetime registration
34 requirements under this subsection:

35 (i) "Aggravated offense" means an adult conviction that meets the
36 definition of 18 U.S.C. Sec. 2241, which is limited to the following:

37 (A) Any sex offense involving sexual intercourse or sexual contact
38 where the victim is under twelve years of age;

1 (B) RCW 9A.44.040 (rape in the first degree), RCW 9A.44.073 (rape
2 of a child in the first degree), ~~((or))~~ RCW 9A.44.083 (child
3 molestation in the first degree), or section 3 of this act (sexual
4 victimization in the second degree);

5 (C) Any of the following offenses when committed by forcible
6 compulsion or by the offender administering, by threat or force or
7 without the knowledge or permission of that person, a drug, intoxicant,
8 or other similar substance that substantially impairs the ability of
9 that person to appraise or control conduct: RCW 9A.44.050 (rape in the
10 second degree), RCW 9A.44.100 (indecent liberties), RCW 9A.44.160
11 (custodial sexual misconduct in the first degree), RCW 9A.64.020
12 (incest), or RCW 9.68A.040 (sexual exploitation of a minor);

13 (D) Any of the following offenses when committed by forcible
14 compulsion or by the offender administering, by threat or force or
15 without the knowledge or permission of that person, a drug, intoxicant,
16 or other similar substance that substantially impairs the ability of
17 that person to appraise or control conduct, if the victim is twelve
18 years of age or over but under sixteen years of age and the offender is
19 eighteen years of age or over and is more than forty-eight months older
20 than the victim: RCW 9A.44.076 (rape of a child in the second degree),
21 RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086
22 (child molestation in the second degree), or RCW 9A.44.089 (child
23 molestation in the third degree);

24 (E) A felony with a finding of sexual motivation under RCW
25 9.94A.835 where the victim is under twelve years of age or that is
26 committed by forcible compulsion or by the offender administering, by
27 threat or force or without the knowledge or permission of that person,
28 a drug, intoxicant, or other similar substance that substantially
29 impairs the ability of that person to appraise or control conduct;

30 (F) An offense that is, under chapter 9A.28 RCW, an attempt or
31 solicitation to commit such an offense; or

32 (G) An offense defined by federal law or the laws of another state
33 that is equivalent to the offenses listed in (b)(i)(A) through (F) of
34 this subsection.

35 (ii) "Sexually violent offense" means an adult conviction that
36 meets the definition of 42 U.S.C. Sec. 14071(a)(1)(A), which is limited
37 to the following:

38 (A) An aggravated offense;

1 (B) An offense that is not an aggravated offense but meets the
2 definition of 18 U.S.C. Sec. 2242, which is limited to RCW 9A.44.050(1)
3 (b) through ~~((f))~~ (e) (rape in the second degree) and RCW
4 9A.44.100(1) (b) through ~~((f))~~ (e) (indecent liberties);

5 (C) A felony with a finding of sexual motivation under RCW
6 9.94A.835 where the victim is incapable of appraising the nature of the
7 conduct or physically incapable of declining participation in, or
8 communicating unwillingness to engage in, the conduct;

9 (D) An offense that is, under chapter 9A.28 RCW, an attempt or
10 solicitation to commit such an offense; or

11 (E) An offense defined by federal law or the laws of another state
12 that is equivalent to the offenses listed in (b)(ii)(A) through (D) of
13 this subsection.

14 (iii) "Criminal offense against a victim who is a minor" means, in
15 addition to any aggravated offense or sexually violent offense where
16 the victim was under eighteen years of age, an adult conviction for the
17 following offenses where the victim is under eighteen years of age:

18 (A) RCW 9A.44.060 (rape in the third degree), RCW 9A.44.076 (rape
19 of a child in the second degree), RCW 9A.44.079 (rape of a child in the
20 third degree), RCW 9A.44.086 (child molestation in the second degree),
21 RCW 9A.44.089 (child molestation in the third degree), RCW 9A.44.093
22 (sexual misconduct with a minor in the first degree), RCW 9A.44.096
23 (sexual misconduct with a minor in the second degree), RCW 9A.44.160
24 (custodial sexual misconduct in the first degree), RCW 9A.64.020
25 (incest), RCW 9.68A.040 (sexual exploitation of a minor), RCW 9.68A.090
26 (communication with a minor for immoral purposes), or RCW 9.68A.100
27 (patronizing a juvenile prostitute);

28 (B) RCW 9A.40.020 (kidnapping in the first degree), RCW 9A.40.030
29 (kidnapping in the second degree), or RCW 9A.40.040 (unlawful
30 imprisonment), where the victim is a minor and the offender is not the
31 minor's parent;

32 (C) A felony with a finding of sexual motivation under RCW
33 9.94A.835 where the victim is a minor;

34 (D) An offense that is, under chapter 9A.28 RCW, an attempt or
35 solicitation to commit such an offense; or

36 (E) An offense defined by federal law or the laws of another state
37 that is equivalent to the offenses listed in (b)(iii)(A) through (D) of
38 this subsection.

1 (6) Unless relieved of the duty to register pursuant to this
2 section, a violation of RCW 9A.44.130 is an ongoing offense for
3 purposes of the statute of limitations under RCW 9A.04.080.

4 (7) Nothing in RCW 9.94A.637 relating to discharge of an offender
5 shall be construed as operating to relieve the offender of his or her
6 duty to register pursuant to RCW 9A.44.130.

7 (8) For purposes of determining whether a person has been convicted
8 of more than one sex offense, failure to register as a sex offender or
9 kidnapping offender is not a sex or kidnapping offense.

10 **Sec. 26.** RCW 9A.46.060 and 2004 c 94 s 4 are each amended to read
11 as follows:

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

- 14 (1) Harassment (RCW 9A.46.020);
- 15 (2) Malicious harassment (RCW 9A.36.080);
- 16 (3) Telephone harassment (RCW 9.61.230);
- 17 (4) Assault in the first degree (RCW 9A.36.011);
- 18 (5) Assault of a child in the first degree (RCW 9A.36.120);
- 19 (6) Assault in the second degree (RCW 9A.36.021);
- 20 (7) Assault of a child in the second degree (RCW 9A.36.130);
- 21 (8) Assault in the fourth degree (RCW 9A.36.041);
- 22 (9) Reckless endangerment (RCW 9A.36.050);
- 23 (10) Extortion in the first degree (RCW 9A.56.120);
- 24 (11) Extortion in the second degree (RCW 9A.56.130);
- 25 (12) Coercion (RCW 9A.36.070);
- 26 (13) Burglary in the first degree (RCW 9A.52.020);
- 27 (14) Burglary in the second degree (RCW 9A.52.030);
- 28 (15) Criminal trespass in the first degree (RCW 9A.52.070);
- 29 (16) Criminal trespass in the second degree (RCW 9A.52.080);
- 30 (17) Malicious mischief in the first degree (RCW 9A.48.070);
- 31 (18) Malicious mischief in the second degree (RCW 9A.48.080);
- 32 (19) Malicious mischief in the third degree (RCW 9A.48.090);
- 33 (20) Kidnapping in the first degree (RCW 9A.40.020);
- 34 (21) Kidnapping in the second degree (RCW 9A.40.030);
- 35 (22) Unlawful imprisonment (RCW 9A.40.040);
- 36 (23) Rape in the first degree (RCW 9A.44.040);
- 37 (24) Rape in the second degree (RCW 9A.44.050);

- 1 (25) Rape in the third degree (RCW 9A.44.060);
2 (26) Sexual victimization in the first degree (section 2 of this
3 act);
4 (27) Sexual victimization in the second degree (section 3 of this
5 act);
6 (28) Indecent liberties (RCW 9A.44.100);
7 ((+27+)) (29) Rape of a child in the first degree (RCW 9A.44.073);
8 ((+28+)) (30) Rape of a child in the second degree (RCW 9A.44.076);
9 ((+29+)) (31) Rape of a child in the third degree (RCW 9A.44.079);
10 ((+30+)) (32) Child molestation in the first degree (RCW
11 9A.44.083);
12 ((+31+)) (33) Child molestation in the second degree (RCW
13 9A.44.086);
14 ((+32+)) (34) Child molestation in the third degree (RCW
15 9A.44.089);
16 ((+33+)) (35) Stalking (RCW 9A.46.110);
17 ((+34+)) (36) Cyberstalking (RCW 9.61.260);
18 ((+35+)) (37) Residential burglary (RCW 9A.52.025);
19 ((+36+)) (38) Violation of a temporary or permanent protective
20 order issued pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50
21 RCW;
22 ((+37+)) (39) Unlawful discharge of a laser in the first degree
23 (RCW 9A.49.020); and
24 ((+38+)) (40) Unlawful discharge of a laser in the second degree
25 (RCW 9A.49.030).

26 **Sec. 27.** RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are
27 each reenacted and amended to read as follows:

28 (1) Decision not to prosecute.
29 STANDARD: A prosecuting attorney may decline to prosecute, even
30 though technically sufficient evidence to prosecute exists, in
31 situations where prosecution would serve no public purpose, would
32 defeat the underlying purpose of the law in question or would result in
33 decreased respect for the law.

34 GUIDELINE/COMMENTARY:
35 Examples
36 The following are examples of reasons not to prosecute which could
37 satisfy the standard.

1 (a) Contrary to Legislative Intent - It may be proper to decline to
2 charge where the application of criminal sanctions would be clearly
3 contrary to the intent of the legislature in enacting the particular
4 statute.

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

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

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

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

12 (iv) The statute has not been recently reconsidered by the
13 legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (i) Assault cases where the victim has suffered little or no
21 injury;

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

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

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

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

29 Notification

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

32 (2) Decision to prosecute.

33 (a) STANDARD:

34 Crimes against persons will be filed if sufficient admissible
35 evidence exists, which, when considered with the most plausible,
36 reasonably foreseeable defense that could be raised under the evidence,
37 would justify conviction by a reasonable and objective fact-finder.
38 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, section

1 2 of this act, section 3 of this act, 9A.44.073, 9A.44.076, 9A.44.079,
2 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should
3 avoid prefiling agreements or diversions intended to place the accused
4 in a program of treatment or counseling, so that treatment, if
5 determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

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

11 See table below for the crimes within these categories.

12 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

13 CRIMES AGAINST PERSONS

14 Aggravated Murder

15 1st Degree Murder

16 2nd Degree Murder

17 1st Degree Manslaughter

18 2nd Degree Manslaughter

19 1st Degree Kidnapping

20 2nd Degree Kidnapping

21 1st Degree Assault

22 2nd Degree Assault

23 3rd Degree Assault

24 1st Degree Assault of a Child

25 2nd Degree Assault of a Child

26 3rd Degree Assault of a Child

27 1st Degree Rape

28 2nd Degree Rape

29 3rd Degree Rape

30 1st Degree Sexual Victimization

31 2nd Degree Sexual Victimization

32 1st Degree Rape of a Child

33 2nd Degree Rape of a Child

34 3rd Degree Rape of a Child

35 1st Degree Robbery

36 2nd Degree Robbery

37 1st Degree Arson

38 1st Degree Burglary

1 1st Degree Extortion
2 2nd Degree Extortion
3 Indecent Liberties
4 Incest
5 Vehicular Homicide
6 Vehicular Assault
7 1st Degree Child Molestation
8 2nd Degree Child Molestation
9 3rd Degree Child Molestation
10 1st Degree Promoting Prostitution
11 Intimidating a Juror
12 Communication with a Minor
13 Intimidating a Witness
14 Intimidating a Public Servant
15 Bomb Threat (if against person)
16 Unlawful Imprisonment
17 Promoting a Suicide Attempt
18 Riot (if against person)
19 Stalking
20 Custodial Assault
21 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
22 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
23 Counterfeiting (if a violation of RCW 9.16.035(4))
24 CRIMES AGAINST PROPERTY/OTHER CRIMES
25 2nd Degree Arson
26 1st Degree Escape
27 2nd Degree Escape
28 2nd Degree Burglary
29 1st Degree Theft
30 2nd Degree Theft
31 1st Degree Perjury
32 2nd Degree Perjury
33 1st Degree Introducing Contraband
34 2nd Degree Introducing Contraband
35 1st Degree Possession of Stolen Property
36 2nd Degree Possession of Stolen Property
37 Bribery
38 Bribing a Witness

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

20 ALL OTHER UNCLASSIFIED FELONIES

21 Selection of Charges/Degree of Charge

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

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

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

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

29 Overcharging includes:

30 (A) Charging a higher degree;

31 (B) Charging additional counts.

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

38 (b) GUIDELINES/COMMENTARY:

1 (i) Police Investigation

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

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

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

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

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

16 (ii) Exceptions

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

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

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

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

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

29 (iii) Investigation Techniques

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

32 (A) Polygraph testing;

33 (B) Hypnosis;

34 (C) Electronic surveillance;

35 (D) Use of informants.

36 (iv) Pre-Filing Discussions with Defendant

37 Discussions with the defendant or his/her representative regarding

1 the selection or disposition of charges may occur prior to the filing
2 of charges, and potential agreements can be reached.

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

9 **Sec. 28.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are
10 each reenacted and amended to read as follows:

11 TABLE 2
12 CRIMES INCLUDED WITHIN
13 EACH SERIOUSNESS LEVEL

14	XVI	Aggravated Murder 1 (RCW
15		10.95.020)
16	XV	Homicide by abuse (RCW 9A.32.055)
17		Malicious explosion 1 (RCW
18		70.74.280(1))
19		Murder 1 (RCW 9A.32.030)
20	XIV	Murder 2 (RCW 9A.32.050)
21		Trafficking 1 (RCW 9A.40.100(1))
22	XIII	Malicious explosion 2 (RCW
23		70.74.280(2))
24		Malicious placement of an explosive 1
25		(RCW 70.74.270(1))
26	XII	Assault 1 (RCW 9A.36.011)
27		Assault of a Child 1 (RCW 9A.36.120)
28		Malicious placement of an imitation
29		device 1 (RCW 70.74.272(1)(a))
30		Rape 1 (RCW 9A.44.040)
31		Rape of a Child 1 (RCW 9A.44.073)
32		<u>Sexual Victimization 1 (section 2 of</u>
33		<u>this act)</u>
34		<u>Sexual Victimization 2 (section 3 of</u>
35		<u>this act)</u>

1 Trafficking 2 (RCW 9A.40.100(2))
2 XI Manslaughter 1 (RCW 9A.32.060)
3 Rape 2 (RCW 9A.44.050)
4 Rape of a Child 2 (RCW 9A.44.076)
5 X Child Molestation 1 (RCW 9A.44.083)
6 Indecent Liberties (with forcible
7 compulsion) (RCW
8 9A.44.100(1)(a))
9 Kidnapping 1 (RCW 9A.40.020)
10 Leading Organized Crime (RCW
11 9A.82.060(1)(a))
12 Malicious explosion 3 (RCW
13 70.74.280(3))
14 Sexually Violent Predator Escape
15 (RCW 9A.76.115)
16 IX Assault of a Child 2 (RCW 9A.36.130)
17 Explosive devices prohibited (RCW
18 70.74.180)
19 Hit and Run--Death (RCW
20 46.52.020(4)(a))
21 Homicide by Watercraft, by being
22 under the influence of intoxicating
23 liquor or any drug (RCW
24 79A.60.050)
25 Inciting Criminal Profiteering (RCW
26 9A.82.060(1)(b))
27 Malicious placement of an explosive 2
28 (RCW 70.74.270(2))
29 Robbery 1 (RCW 9A.56.200)
30 Sexual Exploitation (RCW 9.68A.040)
31 Vehicular Homicide, by being under
32 the influence of intoxicating liquor
33 or any drug (RCW 46.61.520)
34 VIII Arson 1 (RCW 9A.48.020)

1 Homicide by Watercraft, by the
2 operation of any vessel in a
3 reckless manner (RCW
4 79A.60.050)
5 Manslaughter 2 (RCW 9A.32.070)
6 Promoting Prostitution 1 (RCW
7 9A.88.070)
8 Theft of Ammonia (RCW 69.55.010)
9 Vehicular Homicide, by the operation
10 of any vehicle in a reckless
11 manner (RCW 46.61.520)
12 VII Burglary 1 (RCW 9A.52.020)
13 Child Molestation 2 (RCW 9A.44.086)
14 Civil Disorder Training (RCW
15 9A.48.120)
16 Dealing in depictions of minor
17 engaged in sexually explicit
18 conduct (RCW 9.68A.050)
19 Drive-by Shooting (RCW 9A.36.045)
20 Homicide by Watercraft, by disregard
21 for the safety of others (RCW
22 79A.60.050)
23 Indecent Liberties (without forcible
24 compulsion) (RCW 9A.44.100(1)
25 (b) (~~and (e)~~))
26 Introducing Contraband 1 (RCW
27 9A.76.140)
28 Malicious placement of an explosive 3
29 (RCW 70.74.270(3))
30 Negligently Causing Death By Use of
31 a Signal Preemption Device
32 (RCW 46.37.675)
33 Sending, bringing into state depictions
34 of minor engaged in sexually
35 explicit conduct (RCW
36 9.68A.060)

1 Unlawful Possession of a Firearm in
2 the first degree (RCW
3 9.41.040(1))
4 Use of a Machine Gun in Commission
5 of a Felony (RCW 9.41.225)
6 Vehicular Homicide, by disregard for
7 the safety of others (RCW
8 46.61.520)
9 VI Bail Jumping with Murder 1 (RCW
10 9A.76.170(3)(a))
11 Bribery (RCW 9A.68.010)
12 Failure to Report an Unregistered Sex
13 Offender or Kidnapping Offender
14 (section 4 of this act)
15 Incest 1 (RCW 9A.64.020(1))
16 Intimidating a Judge (RCW
17 9A.72.160)
18 Intimidating a Juror/Witness (RCW
19 9A.72.110, 9A.72.130)
20 Malicious placement of an imitation
21 device 2 (RCW 70.74.272(1)(b))
22 Rape of a Child 3 (RCW 9A.44.079)
23 Theft of a Firearm (RCW 9A.56.300)
24 Unlawful Storage of Ammonia (RCW
25 69.55.020)
26 V Abandonment of dependent person 1
27 (RCW 9A.42.060)
28 Advancing money or property for
29 extortionate extension of credit
30 (RCW 9A.82.030)
31 Bail Jumping with class A Felony
32 (RCW 9A.76.170(3)(b))
33 Child Molestation 3 (RCW 9A.44.089)
34 Criminal Mistreatment 1 (RCW
35 9A.42.020)
36 Custodial Sexual Misconduct 1 (RCW
37 9A.44.160)

1 Domestic Violence Court Order
2 Violation (RCW 10.99.040,
3 10.99.050, 26.09.300, 26.10.220,
4 26.26.138, 26.50.110, 26.52.070,
5 or 74.34.145)
6 Extortion 1 (RCW 9A.56.120)
7 Extortionate Extension of Credit
8 (RCW 9A.82.020)
9 Extortionate Means to Collect
10 Extensions of Credit (RCW
11 9A.82.040)
12 Incest 2 (RCW 9A.64.020(2))
13 Kidnapping 2 (RCW 9A.40.030)
14 Perjury 1 (RCW 9A.72.020)
15 Persistent prison misbehavior (RCW
16 9.94.070)
17 Possession of a Stolen Firearm (RCW
18 9A.56.310)
19 Rape 3 (RCW 9A.44.060)
20 Rendering Criminal Assistance 1
21 (RCW 9A.76.070)
22 Sexual Misconduct with a Minor 1
23 (RCW 9A.44.093)
24 Sexually Violating Human Remains
25 (RCW 9A.44.105)
26 Stalking (RCW 9A.46.110)
27 Taking Motor Vehicle Without
28 Permission 1 (RCW 9A.56.070)
29 IV Arson 2 (RCW 9A.48.030)
30 Assault 2 (RCW 9A.36.021)
31 Assault 3 (of a Peace Officer with a
32 Projectile Stun Gun) (RCW
33 9A.36.031(1)(h))
34 Assault by Watercraft (RCW
35 79A.60.060)

1 Bribing a Witness/Bribe Received by
2 Witness (RCW 9A.72.090,
3 9A.72.100)
4 Cheating 1 (RCW 9.46.1961)
5 Commercial Bribery (RCW
6 9A.68.060)
7 Counterfeiting (RCW 9.16.035(4))
8 Endangerment with a Controlled
9 Substance (RCW 9A.42.100)
10 Escape 1 (RCW 9A.76.110)
11 Failure to Register as a Kidnapping
12 Offender (RCW 9A.44.130(11)(a))
13 Failure to Register as a Sex Offender
14 (RCW 9A.44.130(10)(a))
15 Hit and Run--Injury (RCW
16 46.52.020(4)(b))
17 Hit and Run with Vessel--Injury
18 Accident (RCW 79A.60.200(3))
19 Identity Theft 1 (RCW 9.35.020(2))
20 Indecent Exposure to Person Under
21 Age Fourteen (subsequent sex
22 offense) (RCW 9A.88.010)
23 Influencing Outcome of Sporting
24 Event (RCW 9A.82.070)
25 Malicious Harassment (RCW
26 9A.36.080)
27 Residential Burglary (RCW
28 9A.52.025)
29 Robbery 2 (RCW 9A.56.210)
30 Tampering with an Electronic
31 Monitoring Device (section 5 of
32 this act)
33 Theft of Livestock 1 (RCW 9A.56.080)
34 Threats to Bomb (RCW 9.61.160)
35 Trafficking in Stolen Property 1 (RCW
36 9A.82.050)

1 Unlawful factoring of a credit card or
2 payment card transaction (RCW
3 9A.56.290(4)(b))
4 Unlawful transaction of health
5 coverage as a health care service
6 contractor (RCW 48.44.016(3))
7 Unlawful transaction of health
8 coverage as a health maintenance
9 organization (RCW 48.46.033(3))
10 Unlawful transaction of insurance
11 business (RCW 48.15.023(3))
12 Unlicensed practice as an insurance
13 professional (RCW 48.17.063(3))
14 Use of Proceeds of Criminal
15 Profiteering (RCW 9A.82.080 (1)
16 and (2))
17 Vehicular Assault, by being under the
18 influence of intoxicating liquor or
19 any drug, or by the operation or
20 driving of a vehicle in a reckless
21 manner (RCW 46.61.522)
22 Willful Failure to Return from
23 Furlough (RCW 72.66.060)
24 III Abandonment of dependent person 2
25 (RCW 9A.42.070)
26 Assault 3 (Except Assault 3 of a Peace
27 Officer With a Projectile Stun
28 Gun) (RCW 9A.36.031 except
29 subsection (1)(h))
30 Assault of a Child 3 (RCW 9A.36.140)
31 Bail Jumping with class B or C Felony
32 (RCW 9A.76.170(3)(c))
33 Burglary 2 (RCW 9A.52.030)
34 Communication with a Minor for
35 Immoral Purposes (RCW
36 9.68A.090)

1 Criminal Gang Intimidation (RCW
2 9A.46.120)
3 Criminal Mistreatment 2 (RCW
4 9A.42.030)
5 Custodial Assault (RCW 9A.36.100)
6 Cyberstalking (subsequent conviction
7 or threat of death) (RCW
8 9.61.260(3))
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
15 9A.76.150)
16 Malicious Injury to Railroad Property
17 (RCW 81.60.070)
18 Negligently Causing Substantial Bodily
19 Harm By Use of a Signal
20 Preemption Device (RCW
21 46.37.674)
22 Patronizing a Juvenile Prostitute
23 (RCW 9.68A.100)
24 Perjury 2 (RCW 9A.72.030)
25 Possession of Incendiary Device (RCW
26 9.40.120)
27 Possession of Machine Gun or Short-
28 Barreled Shotgun or Rifle (RCW
29 9.41.190)
30 Promoting Prostitution 2 (RCW
31 9A.88.080)
32 Securities Act violation (RCW
33 21.20.400)
34 Tampering with a Witness (RCW
35 9A.72.120)

1 Telephone Harassment (subsequent
2 conviction or threat of death)
3 (RCW 9.61.230(2))
4 Theft of Livestock 2 (RCW 9A.56.083)
5 Trafficking in Stolen Property 2 (RCW
6 9A.82.055)
7 Unlawful Imprisonment (RCW
8 9A.40.040)
9 Unlawful possession of firearm in the
10 second degree (RCW 9.41.040(2))
11 Vehicular Assault, by the operation or
12 driving of a vehicle with disregard
13 for the safety of others (RCW
14 46.61.522)
15 Willful Failure to Return from Work
16 Release (RCW 72.65.070)
17 II Computer Trespass 1 (RCW
18 9A.52.110)
19 Counterfeiting (RCW 9.16.035(3))
20 Escape from Community Custody
21 (RCW 72.09.310)
22 Health Care False Claims (RCW
23 48.80.030)
24 Identity Theft 2 (RCW 9.35.020(3))
25 Improperly Obtaining Financial
26 Information (RCW 9.35.010)
27 Malicious Mischief 1 (RCW
28 9A.48.070)
29 Possession of Stolen Property 1 (RCW
30 9A.56.150)
31 Theft 1 (RCW 9A.56.030)
32 Theft of Rental, Leased, or Lease-
33 purchased Property (valued at one
34 thousand five hundred dollars or
35 more) (RCW 9A.56.096(5)(a))
36 Trafficking in Insurance Claims (RCW
37 48.30A.015)

1 Unlawful factoring of a credit card or
2 payment card transaction (RCW
3 9A.56.290(4)(a))
4 Unlawful Practice of Law (RCW
5 2.48.180)
6 Unlicensed Practice of a Profession or
7 Business (RCW 18.130.190(7))
8 I Attempting to Elude a Pursuing Police
9 Vehicle (RCW 46.61.024)
10 False Verification for Welfare (RCW
11 74.08.055)
12 Forgery (RCW 9A.60.020)
13 Fraudulent Creation or Revocation of a
14 Mental Health Advance Directive
15 (RCW 9A.60.060)
16 Malicious Mischief 2 (RCW
17 9A.48.080)
18 Mineral Trespass (RCW 78.44.330)
19 Possession of Stolen Property 2 (RCW
20 9A.56.160)
21 Reckless Burning 1 (RCW 9A.48.040)
22 Taking Motor Vehicle Without
23 Permission 2 (RCW 9A.56.075)
24 Theft 2 (RCW 9A.56.040)
25 Theft of Rental, Leased, or Lease-
26 purchased Property (valued at two
27 hundred fifty dollars or more but
28 less than one thousand five
29 hundred dollars) (RCW
30 9A.56.096(5)(b))
31 Transaction of insurance business
32 beyond the scope of licensure
33 (RCW 48.17.063(4))
34 Unlawful Issuance of Checks or Drafts
35 (RCW 9A.56.060)
36 Unlawful Possession of Fictitious
37 Identification (RCW 9A.56.320)

1 Unlawful Possession of Instruments of
2 Financial Fraud (RCW
3 9A.56.320)
4 Unlawful Possession of Payment
5 Instruments (RCW 9A.56.320)
6 Unlawful Possession of a Personal
7 Identification Device (RCW
8 9A.56.320)
9 Unlawful Production of Payment
10 Instruments (RCW 9A.56.320)
11 Unlawful Trafficking in Food Stamps
12 (RCW 9.91.142)
13 Unlawful Use of Food Stamps (RCW
14 9.91.144)
15 Vehicle Prowl 1 (RCW 9A.52.095)

16 **Sec. 29.** RCW 9A.28.020 and 2001 2nd sp.s. c 12 s 354 are each
17 amended to read as follows:

18 (1) A person is guilty of an attempt to commit a crime if, with
19 intent to commit a specific crime, he or she does any act which is a
20 substantial step toward the commission of that crime.

21 (2) If the conduct in which a person engages otherwise constitutes
22 an attempt to commit a crime, it is no defense to a prosecution of such
23 attempt that the crime charged to have been attempted was, under the
24 attendant circumstances, factually or legally impossible of commission.

25 (3) An attempt to commit a crime is a:

26 (a) Class A felony when the crime attempted is murder in the first
27 degree, murder in the second degree, arson in the first degree, child
28 molestation in the first degree, indecent liberties by forcible
29 compulsion, rape in the first degree, rape in the second degree, sexual
30 victimization in the first degree, sexual victimization in the second
31 degree, rape of a child in the first degree, or rape of a child in the
32 second degree;

33 (b) Class B felony when the crime attempted is a class A felony
34 other than an offense listed in (a) of this subsection;

35 (c) Class C felony when the crime attempted is a class B felony;

36 (d) Gross misdemeanor when the crime attempted is a class C felony;

1 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
2 misdemeanor.

3 **Sec. 30.** RCW 9A.32.030 and 1990 c 200 s 1 are each amended to read
4 as follows:

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

6 (a) With a premeditated intent to cause the death of another
7 person, he or she causes the death of such person or of a third person;
8 or

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

12 (c) He or she commits or attempts to commit the crime of either (1)
13 robbery in the first or second degree, (2) rape in the first or second
14 degree, (3) sexual victimization in the first or second degree, (4)
15 burglary in the first degree, (~~(4)~~) (5) arson in the first or second
16 degree, or (~~(5)~~) (6) kidnapping in the first or second degree, and in
17 the course of or in furtherance of such crime or in immediate flight
18 therefrom, he or she, or another participant, causes the death of a
19 person other than one of the participants: Except that in any
20 prosecution under this subdivision (1)(c) in which the defendant was
21 not the only participant in the underlying crime, if established by the
22 defendant by a preponderance of the evidence, it is a defense that the
23 defendant:

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

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

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

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

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

1 **Sec. 31.** RCW 10.64.025 and 1996 c 275 s 10 are each amended to
2 read as follows:

3 (1) A defendant who has been found guilty of a felony and is
4 awaiting sentencing shall be detained unless the court finds by clear
5 and convincing evidence that the defendant is not likely to flee or to
6 pose a danger to the safety of any other person or the community if
7 released. Any bail bond that was posted on behalf of a defendant
8 shall, upon the defendant's conviction, be exonerated.

9 (2) A defendant who has been found guilty of one of the following
10 offenses shall be detained pending sentencing: Rape in the first or
11 second degree (RCW 9A.44.040 and 9A.44.050); sexual victimization in
12 the first or second degree (section 2 and 3 of this act); rape of a
13 child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076,
14 and 9A.44.079); child molestation in the first, second, or third degree
15 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a
16 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);
17 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW
18 9A.40.090); any class A or B felony that is a sexually motivated
19 offense as defined in RCW 9.94A.030; a felony violation of RCW
20 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal
21 attempt, solicitation, or conspiracy to commit one of those offenses.

22 **Sec. 32.** RCW 10.99.020 and 2004 c 18 s 2 are each amended to read
23 as follows:

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

26 (1) "Agency" means a general authority Washington law enforcement
27 agency as defined in RCW 10.93.020.

28 (2) "Association" means the Washington association of sheriffs and
29 police chiefs.

30 (3) "Family or household members" means spouses, former spouses,
31 persons who have a child in common regardless of whether they have been
32 married or have lived together at any time, adult persons related by
33 blood or marriage, adult persons who are presently residing together or
34 who have resided together in the past, persons sixteen years of age or
35 older who are presently residing together or who have resided together
36 in the past and who have or have had a dating relationship, persons
37 sixteen years of age or older with whom a person sixteen years of age

1 or older has or has had a dating relationship, and persons who have a
2 biological or legal parent-child relationship, including stepparents
3 and stepchildren and grandparents and grandchildren.

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

5 (5) "Domestic violence" includes but is not limited to any of the
6 following crimes when committed by one family or household member
7 against another:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (r) Violation of the provisions of a restraining order, no-contact
26 order, or protection order restraining or enjoining the person or
27 restraining the person from going onto the grounds of or entering a
28 residence, workplace, school, or day care, or prohibiting the person
29 from knowingly coming within, or knowingly remaining within, a
30 specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300,
31 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070,
32 26.50.130, 26.52.070, or 74.34.145);

33 (s) Rape in the first degree (RCW 9A.44.040);

34 (t) Rape in the second degree (RCW 9A.44.050);

35 (u) Sexual victimization in the first degree (section 2 of this
36 act);

37 (v) Sexual victimization in the second degree (section 3 of this
38 act);

1 (w) Residential burglary (RCW 9A.52.025);
 2 (~~(v)~~) (x) Stalking (RCW 9A.46.110); and
 3 (~~(w)~~) (y) Interference with the reporting of domestic violence
 4 (RCW 9A.36.150).

5 (6) "Employee" means any person currently employed with an agency.

6 (7) "Sworn employee" means a general authority Washington peace
 7 officer as defined in RCW 10.93.020, any person appointed under RCW
 8 35.21.333, and any person appointed or elected to carry out the duties
 9 of the sheriff under chapter 36.28 RCW.

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

12 **Sec. 33.** RCW 13.40.0357 and 2004 c 117 s 1 are each amended to
 13 read as follows:

DESCRIPTION AND OFFENSE CATEGORY

		JUVENILE DISPOSITION
JUVENILE	DISPOSITION	CATEGORY FOR
OFFENSE	CATEGORY DESCRIPTION (RCW CITATION)	ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
.....		

Arson and Malicious Mischief

A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090(2) (a) and (c))	E
E	Malicious Mischief 3 (9A.48.090(2)(b))	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+

1		Assault and Other Crimes Involving	
2		Physical Harm	
3	A	Assault 1 (9A.36.011)	B+
4	B+	Assault 2 (9A.36.021)	C+
5	C+	Assault 3 (9A.36.031)	D+
6	D+	Assault 4 (9A.36.041)	E
7	B+	Drive-By Shooting (9A.36.045)	C+
8	D+	Reckless Endangerment (9A.36.050)	E
9	C+	Promoting Suicide Attempt (9A.36.060)	D+
10	D+	Coercion (9A.36.070)	E
11	C+	Custodial Assault (9A.36.100)	D+
12		Burglary and Trespass	
13	B+	Burglary 1 (9A.52.020)	C+
14	B	Residential Burglary (9A.52.025)	C
15	B	Burglary 2 (9A.52.030)	C
16	D	Burglary Tools (Possession of) (9A.52.060)	E
17	D	Criminal Trespass 1 (9A.52.070)	E
18	E	Criminal Trespass 2 (9A.52.080)	E
19	C	Mineral Trespass (78.44.330)	C
20	C	Vehicle Prowling 1 (9A.52.095)	D
21	D	Vehicle Prowling 2 (9A.52.100)	E
22		Drugs	
23	E	Possession/Consumption of Alcohol	
24		(66.44.270)	E
25	C	Illegally Obtaining Legend Drug	
26		(69.41.020)	D
27	C+	Sale, Delivery, Possession of Legend Drug	
28		with Intent to Sell (69.41.030(2)(a))	D+
29	E	Possession of Legend Drug	
30		(69.41.030(2)(b))	E
31	B+	Violation of Uniform Controlled Substances	
32		Act - Narcotic, Methamphetamine, or	
33		Flunitrazepam Sale (69.50.401(2) (a) or	
34		(b))	B+
35	C	Violation of Uniform Controlled Substances	
36		Act - Nonnarcotic Sale (69.50.401(2)(c))	C

1	E	Possession of Marihuana <40 grams	
2		(69.50.4014)	E
3	C	Fraudulently Obtaining Controlled	
4		Substance (69.50.403)	C
5	C+	Sale of Controlled Substance for Profit	
6		(69.50.410)	C+
7	E	Unlawful Inhalation (9.47A.020)	E
8	B	Violation of Uniform Controlled Substances	
9		Act - Narcotic, Methamphetamine, or	
10		Flunitrazepam Counterfeit Substances	
11		(69.50.4011(2) (a) or (b))	B
12	C	Violation of Uniform Controlled Substances	
13		Act - Nonnarcotic Counterfeit Substances	
14		(69.50.4011(2) (c), (d), or (e))	C
15	C	Violation of Uniform Controlled Substances	
16		Act - Possession of a Controlled Substance	
17		(69.50.4013)	C
18	C	Violation of Uniform Controlled Substances	
19		Act - Possession of a Controlled Substance	
20		(69.50.4012)	C
21		Firearms and Weapons	
22	B	Theft of Firearm (9A.56.300)	C
23	B	Possession of Stolen Firearm (9A.56.310)	C
24	E	Carrying Loaded Pistol Without Permit	
25		(9.41.050)	E
26	C	Possession of Firearms by Minor (<18)	
27		(9.41.040(2)(a)(iii))	C
28	D+	Possession of Dangerous Weapon	
29		(9.41.250)	E
30	D	Intimidating Another Person by use of	
31		Weapon (9.41.270)	E
32		Homicide	
33	A+	Murder 1 (9A.32.030)	A
34	A+	Murder 2 (9A.32.050)	B+
35	B+	Manslaughter 1 (9A.32.060)	C+
36	C+	Manslaughter 2 (9A.32.070)	D+
37	B+	Vehicle Homicide (46.61.520)	C+

1		Kidnapping	
2	A	Kidnap 1 (9A.40.020)	B+
3	B+	Kidnap 2 (9A.40.030)	C+
4	C+	Unlawful Imprisonment (9A.40.040)	D+
5		Obstructing Governmental Operation	
6	D	Obstructing a Law Enforcement Officer	
7		(9A.76.020)	E
8	E	Resisting Arrest (9A.76.040)	E
9	B	Introducing Contraband 1 (9A.76.140)	C
10	C	Introducing Contraband 2 (9A.76.150)	D
11	E	Introducing Contraband 3 (9A.76.160)	E
12	B+	Intimidating a Public Servant (9A.76.180)	C+
13	B+	Intimidating a Witness (9A.72.110)	C+
14		Public Disturbance	
15	C+	Riot with Weapon (9A.84.010(2)(b))	D+
16	D+	Riot Without Weapon (9A.84.010(2)(a))	E
17	E	Failure to Disperse (9A.84.020)	E
18	E	Disorderly Conduct (9A.84.030)	E
19		Sex Crimes	
20	A	Rape 1 (9A.44.040)	B+
21	A-	Rape 2 (9A.44.050)	B+
22	C+	Rape 3 (9A.44.060)	D+
23	<u>A</u>	<u>Sexual Victimization 1</u>	<u>B+</u>
24	<u>A</u>	<u>Sexual Victimization 2</u>	<u>B+</u>
25	A-	Rape of a Child 1 (9A.44.073)	B+
26	B+	Rape of a Child 2 (9A.44.076)	C+
27	B	Incest 1 (9A.64.020(1))	C
28	C	Incest 2 (9A.64.020(2))	D
29	D+	Indecent Exposure (Victim <14)	
30		(9A.88.010)	E
31	E	Indecent Exposure (Victim 14 or over)	
32		(9A.88.010)	E
33	B+	Promoting Prostitution 1 (9A.88.070)	C+
34	C+	Promoting Prostitution 2 (9A.88.080)	D+
35	E	O & A (Prostitution) (9A.88.030)	E
36	B+	Indecent Liberties (9A.44.100)	C+

1	A-	Child Molestation 1 (9A.44.083)	B+
2	B	Child Molestation 2 (9A.44.086)	C+
3		Theft, Robbery, Extortion, and Forgery	
4	B	Theft 1 (9A.56.030)	C
5	C	Theft 2 (9A.56.040)	D
6	D	Theft 3 (9A.56.050)	E
7	B	Theft of Livestock 1 and 2 (9A.56.080 and	
8		9A.56.083)	C
9	C	Forgery (9A.60.020)	D
10	A	Robbery 1 (9A.56.200)	B+
11	B+	Robbery 2 (9A.56.210)	C+
12	B+	Extortion 1 (9A.56.120)	C+
13	C+	Extortion 2 (9A.56.130)	D+
14	C	Identity Theft 1 (9.35.020(2))	D
15	D	Identity Theft 2 (9.35.020(3))	E
16	D	Improperly Obtaining Financial Information	
17		(9.35.010)	E
18	B	Possession of Stolen Property 1	
19		(9A.56.150)	C
20	C	Possession of Stolen Property 2	
21		(9A.56.160)	D
22	D	Possession of Stolen Property 3	
23		(9A.56.170)	E
24	C	Taking Motor Vehicle Without Permission	
25		1 and 2 (9A.56.070 and 9A.56.075)	D
26		Motor Vehicle Related Crimes	
27	E	Driving Without a License (46.20.005)	E
28	B+	Hit and Run - Death (46.52.020(4)(a))	C+
29	C	Hit and Run - Injury (46.52.020(4)(b))	D
30	D	Hit and Run-Attended (46.52.020(5))	E
31	E	Hit and Run-Unattended (46.52.010)	E
32	C	Vehicular Assault (46.61.522)	D
33	C	Attempting to Elude Pursuing Police	
34		Vehicle (46.61.024)	D
35	E	Reckless Driving (46.61.500)	E
36	D	Driving While Under the Influence	
37		(46.61.502 and 46.61.504)	E

1		Other	
2	B	Animal Cruelty 1 (16.52.205)	C
3	B	Bomb Threat (9.61.160)	C
4	C	Escape 1 ¹ (9A.76.110)	C
5	C	Escape 2 ¹ (9A.76.120)	C
6	D	Escape 3 (9A.76.130)	E
7	E	Obscene, Harassing, Etc., Phone Calls	
8		(9.61.230)	E
9	A	Other Offense Equivalent to an Adult Class	
10		A Felony	B+
11	B	Other Offense Equivalent to an Adult Class	
12		B Felony	C
13	C	Other Offense Equivalent to an Adult Class	
14		C Felony	D
15	D	Other Offense Equivalent to an Adult Gross	
16		Misdemeanor	E
17	E	Other Offense Equivalent to an Adult	
18		Misdemeanor	E
19	V	Violation of Order of Restitution,	
20		Community Supervision, or Confinement	
21		(13.40.200) ²	V

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

24 1st escape or attempted escape during 12-month period - 4 weeks
25 confinement

26 2nd escape or attempted escape during 12-month period - 8 weeks
27 confinement

28 3rd and subsequent escape or attempted escape during 12-month
29 period - 12 weeks confinement

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

32 **JUVENILE SENTENCING STANDARDS**

33 This schedule must be used for juvenile offenders. The court may
34 select sentencing option A, B, C, D, or RCW 13.40.167.

OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE

A+ 180 WEEKS TO AGE 21 YEARS

A 103 WEEKS TO 129 WEEKS

A-	15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS
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Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS
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B	LOCAL SANCTIONS (LS)	15-36 WEEKS	52-65 WEEKS
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C+	LS	15-36 WEEKS
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C	LS	15-36 WEEKS
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Local Sanctions:

0 to 30 Days

D+ LS 0 to 12 Months Community Supervision

0 to 150 Hours Community Restitution

D LS \$0 to \$500 Fine

E LS

0 1 2 3 4
or more

PRIOR ADJUDICATIONS

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

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

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

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

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

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

14 **OR**

15 **OPTION B**

16 **SUSPENDED DISPOSITION ALTERNATIVE**

17 (1) If the offender is subject to a standard range disposition
18 involving confinement by the department, the court may impose the
19 standard range and suspend the disposition on condition that the
20 offender comply with one or more local sanctions and any educational or
21 treatment requirement. The treatment programs provided to the offender
22 must be research-based best practice programs as identified by the
23 Washington state institute for public policy or the joint legislative
24 audit and review committee.

25 (2) If the offender fails to comply with the suspended disposition,
26 the court may impose sanctions pursuant to RCW 13.40.200 or may revoke
27 the suspended disposition and order the disposition's execution.

28 (3) An offender is ineligible for the suspended disposition option
29 under this section if the offender is:

30 (a) Adjudicated of an A+ offense;

31 (b) Fourteen years of age or older and is adjudicated of one or
32 more of the following offenses:

33 (i) A class A offense, or an attempt, conspiracy, or solicitation
34 to commit a class A offense;

35 (ii) Manslaughter in the first degree (RCW 9A.32.060); or

36 (iii) Assault in the second degree (RCW 9A.36.021), extortion in
37 the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW

1 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential
2 burglary (RCW 9A.52.025), burglary in the second degree (RCW
3 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW
4 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a
5 witness (RCW 9A.72.110), violation of the uniform controlled substances
6 act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070),
7 when the offense includes infliction of bodily harm upon another or
8 when during the commission or immediate withdrawal from the offense the
9 respondent was armed with a deadly weapon;

10 (c) Ordered to serve a disposition for a firearm violation under
11 RCW 13.40.193; or

12 (d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

13 OR

14 **OPTION C**

15 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

16 If the juvenile offender is subject to a standard range disposition
17 of local sanctions or 15 to 36 weeks of confinement and has not
18 committed an A- or B+ offense, the court may impose a disposition under
19 RCW 13.40.160(4) and 13.40.165.

20 OR

21 **OPTION D**

22 **MANIFEST INJUSTICE**

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

26 **Sec. 34.** RCW 13.40.040 and 2002 c 171 s 2 are each amended to read
27 as follows:

28 (1) A juvenile may be taken into custody:

29 (a) Pursuant to a court order if a complaint is filed with the
30 court alleging, and the court finds probable cause to believe, that the
31 juvenile has committed an offense or has violated terms of a
32 disposition order or release order; or

33 (b) Without a court order, by a law enforcement officer if grounds
34 exist for the arrest of an adult in identical circumstances. Admission

1 to, and continued custody in, a court detention facility shall be
2 governed by subsection (2) of this section; or

3 (c) Pursuant to a court order that the juvenile be held as a
4 material witness; or

5 (d) Where the secretary or the secretary's designee has suspended
6 the parole of a juvenile offender.

7 (2) A juvenile may not be held in detention unless there is
8 probable cause to believe that:

9 (a) The juvenile has committed an offense or has violated the terms
10 of a disposition order; and

11 (i) The juvenile will likely fail to appear for further
12 proceedings; or

13 (ii) Detention is required to protect the juvenile from himself or
14 herself; or

15 (iii) The juvenile is a threat to community safety; or

16 (iv) The juvenile will intimidate witnesses or otherwise unlawfully
17 interfere with the administration of justice; or

18 (v) The juvenile has committed a crime while another case was
19 pending; or

20 (b) The juvenile is a fugitive from justice; or

21 (c) The juvenile's parole has been suspended or modified; or

22 (d) The juvenile is a material witness.

23 (3) Notwithstanding subsection (2) of this section, and within
24 available funds, a juvenile who has been found guilty of one of the
25 following offenses shall be detained pending disposition: Rape in the
26 first or second degree (RCW 9A.44.040 and 9A.44.050); sexual
27 victimization in the first or second degree (sections 2 and 3 of this
28 act); or rape of a child in the first degree (RCW 9A.44.073).

29 (4) Upon a finding that members of the community have threatened
30 the health of a juvenile taken into custody, at the juvenile's request
31 the court may order continued detention pending further order of the
32 court.

33 (5) Except as provided in RCW 9.41.280, a juvenile detained under
34 this section may be released upon posting a probation bond set by the
35 court. The juvenile's parent or guardian may sign for the probation
36 bond. A court authorizing such a release shall issue an order
37 containing a statement of conditions imposed upon the juvenile and
38 shall set the date of his or her next court appearance. The court

1 shall advise the juvenile of any conditions specified in the order and
2 may at any time amend such an order in order to impose additional or
3 different conditions of release upon the juvenile or to return the
4 juvenile to custody for failing to conform to the conditions imposed.
5 In addition to requiring the juvenile to appear at the next court date,
6 the court may condition the probation bond on the juvenile's compliance
7 with conditions of release. The juvenile's parent or guardian may
8 notify the court that the juvenile has failed to conform to the
9 conditions of release or the provisions in the probation bond. If the
10 parent notifies the court of the juvenile's failure to comply with the
11 probation bond, the court shall notify the surety. As provided in the
12 terms of the bond, the surety shall provide notice to the court of the
13 offender's noncompliance. A juvenile may be released only to a
14 responsible adult or the department of social and health services.
15 Failure to appear on the date scheduled by the court pursuant to this
16 section shall constitute the crime of bail jumping.

17 **Sec. 35.** RCW 13.40.077 and 1997 c 338 s 18 are each amended to
18 read as follows:

19 RECOMMENDED PROSECUTING STANDARDS
20 FOR CHARGING AND PLEA DISPOSITIONS

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

26 Evidentiary sufficiency.

27 (1) Decision not to prosecute.

28 STANDARD: A prosecuting attorney may decline to prosecute, even
29 though technically sufficient evidence to prosecute exists, in
30 situations where prosecution would serve no public purpose, would
31 defeat the underlying purpose of the law in question, or would result
32 in decreased respect for the law. The decision not to prosecute or
33 divert shall not be influenced by the race, gender, religion, or creed
34 of the suspect.

35 GUIDELINES/COMMENTARY:

36 Examples

1 The following are examples of reasons not to prosecute which could
2 satisfy the standard.

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

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

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

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

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

14 (iv) The statute has not been recently reconsidered by the
15 legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (i) Assault cases where the victim has suffered little or no
23 injury;

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

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

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

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

31 Notification

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

34 (2) Decision to prosecute.

35 STANDARD:

36 Crimes against persons will be filed if sufficient admissible
37 evidence exists, which, when considered with the most plausible,
38 reasonably foreseeable defense that could be raised under the evidence,

1 would justify conviction by a reasonable and objective fact-finder.
2 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, section
3 2 or 3 of this act, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083,
4 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid
5 prefiling agreements or diversions intended to place the accused in a
6 program of treatment or counseling, so that treatment, if determined to
7 be beneficial, can be proved under RCW 13.40.160(~~(+4)~~) (3).

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

13 The categorization of crimes for these charging standards shall be
14 the same as found in RCW 9.94A.411(2).

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

17 (3) Selection of Charges/Degree of Charge

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

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

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

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

25 Overcharging includes:

26 (i) Charging a higher degree;

27 (ii) Charging additional counts.

28 This standard is intended to direct prosecutors to charge those
29 crimes which demonstrate the nature and seriousness of a respondent's
30 criminal conduct, but to decline to charge crimes which are not
31 necessary to such an indication. Crimes which do not merge as a matter
32 of law, but which arise from the same course of conduct, do not all
33 have to be charged.

34 (4) Police Investigation

35 A prosecuting attorney is dependent upon law enforcement agencies
36 to conduct the necessary factual investigation which must precede the
37 decision to prosecute. The prosecuting attorney shall ensure that a

1 thorough factual investigation has been conducted before a decision to
2 prosecute is made. In ordinary circumstances the investigation should
3 include the following:

- 4 (a) The interviewing of all material witnesses, together with the
5 obtaining of written statements whenever possible;
- 6 (b) The completion of necessary laboratory tests; and
- 7 (c) The obtaining, in accordance with constitutional requirements,
8 of the suspect's version of the events.

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

12 (5) Exceptions

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

- 15 (a) Probable cause exists to believe the suspect is guilty; and
- 16 (b) The suspect presents a danger to the community or is likely to
17 flee if not apprehended; or
- 18 (c) The arrest of the suspect is necessary to complete the
19 investigation of the crime.

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

25 (6) Investigation Techniques

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

- 28 (a) Polygraph testing;
- 29 (b) Hypnosis;
- 30 (c) Electronic surveillance;
- 31 (d) Use of informants.

32 (7) Prefiling Discussions with Defendant

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

36 (8) Plea dispositions:

37 STANDARD

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

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

9 (i) Evidentiary problems which make conviction of the original
10 charges doubtful;

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

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

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

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

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

20 (vii) The nature and seriousness of the offense or offenses
21 charged;

22 (viii) The probable effect of witnesses.

23 (c) No plea agreement shall be influenced by the race, gender,
24 religion, or creed of the respondent. This includes but is not limited
25 to the prosecutor's decision to utilize such disposition alternatives
26 as the Special Sex Offender Disposition Alternative, the Chemical
27 Dependency Disposition Alternative, and manifest injustice.

28 (9) Disposition recommendations:

29 STANDARD

30 The prosecutor may reach an agreement regarding disposition
31 recommendations.

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

34 **Sec. 36.** RCW 43.43.830 and 2005 c 421 s 1 are each amended to read
35 as follows:

36 Unless the context clearly requires otherwise, the definitions in
37 this section apply throughout RCW 43.43.830 through 43.43.845.

1 (1) "Applicant" means:

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

6 (b) Any prospective volunteer who will have regularly scheduled
7 unsupervised access to children under sixteen years of age,
8 developmentally disabled persons, or vulnerable adults during the
9 course of his or her employment or involvement with the business or
10 organization under circumstances where such access will or may involve
11 groups of (i) five or fewer children under twelve years of age, (ii)
12 three or fewer children between twelve and sixteen years of age, (iii)
13 developmentally disabled persons, or (iv) vulnerable adults;

14 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
15 or

16 (d) Any prospective custodian in a nonparental custody proceeding
17 under chapter 26.10 RCW.

18 (2) "Business or organization" means a business or organization
19 licensed in this state, any agency of the state, or other governmental
20 entity, that educates, trains, treats, supervises, houses, or provides
21 recreation to developmentally disabled persons, vulnerable adults, or
22 children under sixteen years of age, including but not limited to
23 public housing authorities, school districts, and educational service
24 districts.

25 (3) "Civil adjudication proceeding" is a judicial or administrative
26 adjudicative proceeding that results in a finding of, or upholds an
27 agency finding of, domestic violence, abuse, sexual abuse, neglect, or
28 exploitation or financial exploitation of a child or vulnerable adult
29 under chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under
30 chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also
31 includes judicial or administrative orders that become final due to the
32 failure of the alleged perpetrator to timely exercise a right afforded
33 to him or her to administratively challenge findings made by the
34 department of social and health services or the department of health
35 under chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under
36 chapters 18.51 and 74.42 RCW.

37 (4) "Conviction record" means "conviction record" information as
38 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by

1 either an adult or a juvenile. It does not include a conviction for an
2 offense that has been the subject of an expungement, pardon, annulment,
3 certificate of rehabilitation, or other equivalent procedure based on
4 a finding of the rehabilitation of the person convicted, or a
5 conviction that has been the subject of a pardon, annulment, or other
6 equivalent procedure based on a finding of innocence. It does include
7 convictions for offenses for which the defendant received a deferred or
8 suspended sentence, unless the record has been expunged according to
9 law.

10 (5) "Crime against children or other persons" means a conviction of
11 any of the following offenses: Aggravated murder; first or second
12 degree murder; first or second degree kidnaping; first, second, or
13 third degree assault; first, second, or third degree assault of a
14 child; first, second, or third degree rape; first or second degree
15 sexual victimization; first, second, or third degree rape of a child;
16 first or second degree robbery; first degree arson; first degree
17 burglary; first or second degree manslaughter; first or second degree
18 extortion; indecent liberties; incest; vehicular homicide; first degree
19 promoting prostitution; communication with a minor; unlawful
20 imprisonment; simple assault; sexual exploitation of minors; first or
21 second degree criminal mistreatment; endangerment with a controlled
22 substance; child abuse or neglect as defined in RCW 26.44.020; first or
23 second degree custodial interference; first or second degree custodial
24 sexual misconduct; malicious harassment; first, second, or third degree
25 child molestation; first or second degree sexual misconduct with a
26 minor; patronizing a juvenile prostitute; child abandonment; promoting
27 pornography; selling or distributing erotic material to a minor;
28 custodial assault; violation of child abuse restraining order; child
29 buying or selling; prostitution; felony indecent exposure; criminal
30 abandonment; or any of these crimes as they may be renamed in the
31 future.

32 (6) "Crimes relating to drugs" means a conviction of a crime to
33 manufacture, delivery, or possession with intent to manufacture or
34 deliver a controlled substance.

35 (7) "Crimes relating to financial exploitation" means a conviction
36 for first, second, or third degree extortion; first, second, or third
37 degree theft; first or second degree robbery; forgery; or any of these
38 crimes as they may be renamed in the future.

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

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

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

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

13 (10) "Financial exploitation" means "financial exploitation" as
14 defined in RCW 74.34.020.

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

18 NEW SECTION. **Sec. 37.** The sum of dollars, or as much
19 thereof as may be necessary, is appropriated from the general fund to
20 the office of the attorney general for the fiscal year ending June 30,
21 2007, to carry out a public education and awareness campaign regarding
22 sex offenders and kidnapping offenders. The campaign must include, but
23 not be limited to, public service announcements and educational
24 materials to be distributed to public and private schools, preschools,
25 day-care centers, public libraries, and any other place where children
26 and vulnerable adults regularly congregate.

27 NEW SECTION. **Sec. 38.** (1) Sections 9 and 11 of this act expire
28 July 1, 2006.

29 (2) Section 23 of this act expires September 1, 2006.

30 NEW SECTION. **Sec. 39.** (1) Sections 10 and 12 of this act take
31 effect July 1, 2006.

32 (2) Section 24 of this act takes effect September 1, 2006.

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