
SENATE BILL 5532

State of Washington 59th Legislature 2005 Regular Session

By Senators Kohl-Welles, Esser and Poulsen

Read first time 01/27/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to animal cruelty; amending RCW 16.52.205,
2 16.52.207, 16.52.117, 16.52.190, 16.52.200, 16.08.020, and 9.94A.030;
3 reenacting and amending RCW 9.94A.515; adding a new section to chapter
4 16.52 RCW; repealing RCW 16.08.030; prescribing penalties; providing an
5 effective date; and declaring an emergency.

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

7 **Sec. 1.** RCW 16.52.205 and 1994 c 261 s 8 are each amended to read
8 as follows:

9 (1) A person is guilty of animal cruelty in the first degree
10 when(~~(, except as authorized in law, he or she intentionally (a)~~
11 ~~inflicts substantial pain on, (b) causes physical injury to, or (c)~~
12 ~~kills an animal by a means causing undue suffering, or forces a minor~~
13 ~~to inflict unnecessary pain, injury, or death on an animal)) he or she
14 with the intent to cause the pain or suffering of an animal, or with
15 willful or wanton disregard for the pain or suffering of an animal,
16 intentionally kills the animal by a means causing undue pain or
17 suffering, or kills an animal by a means intended to cause undue pain
18 or suffering irrespective of whether the animal suffers undue pain or
19 suffering, or forces a minor to kill an animal by a means causing undue~~

1 pain or suffering, or forces a minor to kill an animal by a means
2 intended to cause undue pain or suffering irrespective of whether the
3 animal suffers undue pain or suffering.

4 (2) For purposes of this section, "kills an animal by a means
5 causing undue suffering" includes, but is not limited to, a person's
6 physical injury to an animal, not directly resulting in the animal's
7 death, but which causes the animal's condition to warrant its
8 euthanization as determined by a licensed veterinarian, and the animal
9 is euthanized.

10 ~~((+2))~~ (3) Animal cruelty in the first degree is a class ~~((C))~~ B
11 felony.

12 **Sec. 2.** RCW 16.52.207 and 1994 c 261 s 9 are each amended to read
13 as follows:

14 (1) A person is guilty of animal cruelty in the second degree ~~((if,~~
15 ~~under circumstances not amounting to first degree animal cruelty, the~~
16 ~~person knowingly, recklessly, or with criminal negligence inflicts~~
17 ~~unnecessary suffering or pain upon an animal.~~

18 ~~(2) An owner of an animal is guilty of animal cruelty in the second~~
19 ~~degree if, under circumstances not amounting to first degree animal~~
20 ~~cruelty, the owner knowingly, recklessly, or with criminal negligence:~~

21 ~~(a) Fails to provide the animal with necessary food, water,~~
22 ~~shelter, rest, sanitation, ventilation, space, or medical attention and~~
23 ~~the animal suffers unnecessary or unjustifiable physical pain as a~~
24 ~~result of the failure; or~~

25 ~~(b) Abandons the animal.~~

26 ~~(3) Animal cruelty in the second degree is a misdemeanor.~~

27 ~~(4) In any prosecution of animal cruelty in the second degree, it~~
28 ~~shall be an affirmative defense, if established by the defendant by a~~
29 ~~preponderance of the evidence, that the defendant's failure was due to~~
30 ~~economic distress beyond the defendant's control)) when he or she~~

31 intentionally, knowingly, recklessly, or with criminal negligence (a)
32 inflicts substantial pain on, (b) causes physical injury to, or (c)
33 kills an animal by a means causing undue suffering, or forces a minor
34 to inflict unnecessary pain, injury, or death on an animal.

35 (2) For purposes of this section, "kills an animal by a means
36 causing undue suffering" includes, but is not limited to, a person's
37 physical injury to, or neglect of an animal, not directly resulting in

1 the animal's death, but which causes the animal's condition to warrant
2 its euthanization as determined by a licensed veterinarian, and the
3 animal is euthanized.

4 (3) Animal cruelty in the second degree is a class C felony.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 16.52 RCW
6 to read as follows:

7 (1) A person is guilty of animal cruelty in the third degree if,
8 under circumstances not amounting to second degree animal cruelty, the
9 person knowingly, recklessly, or with criminal negligence inflicts
10 unnecessary suffering or pain upon an animal.

11 (2) An owner of an animal is guilty of animal cruelty in the third
12 degree if, under circumstances not amounting to second degree animal
13 cruelty, the owner knowingly, recklessly, or with criminal negligence:

14 (a) Fails to provide the animal with necessary food, water,
15 shelter, rest, sanitation, ventilation, space, or medical attention and
16 the animal suffers unnecessary or unjustifiable physical pain as a
17 result of the failure; or

18 (b) Abandons the animal.

19 (3) Animal cruelty in the third degree is a gross misdemeanor.

20 **Sec. 4.** RCW 16.52.117 and 1994 c 261 s 11 are each amended to read
21 as follows:

22 (1) Any person who does any of the following is guilty of a (~~gross~~
23 ~~misdemeanor~~) class C felony punishable by imprisonment not to exceed
24 (~~one year~~) five years, or by a fine not to exceed (~~five~~) ten
25 thousand dollars, or by both fine and imprisonment:

26 (a) Owns, possesses, keeps, or trains any animal with the intent
27 that the animal shall be engaged in an exhibition of fighting with
28 another animal;

29 (b) For amusement or gain causes any animal to fight with another
30 animal, or causes any animals to injure each other; or

31 (c) Permits any act in violation of (a) or (b) of this subsection
32 to be done on any premises under his or her charge or control, or
33 promotes or aids or abets any such act.

34 (2) Any person who is knowingly present, as a spectator, at any
35 place or building where preparations are being made for an exhibition
36 of the fighting of animals, with the intent to be present at such

1 preparations, or is knowingly present at such exhibition or at any
2 other fighting or injuring as described in subsection (1)(b) of this
3 section, with the intent to be present at such exhibition, fighting, or
4 injuring, is guilty of a gross misdemeanor.

5 (3) Nothing in this section may prohibit the following:

6 (a) The use of dogs in the management of livestock, as defined by
7 chapter 16.57 RCW, by the owner of the livestock or the owner's
8 employees or agents or other persons in lawful custody of the
9 livestock;

10 (b) The use of dogs in hunting as permitted by law; or

11 (c) The training of animals or the use of equipment in the training
12 of animals for any purpose not prohibited by law.

13 **Sec. 5.** RCW 16.52.190 and 2003 c 53 s 111 are each amended to read
14 as follows:

15 (1) Except as provided in subsections (2) and (3) of this section,
16 a person is guilty of the crime of poisoning animals if the person
17 intentionally or knowingly poisons an animal under circumstances which
18 do not constitute animal cruelty in the (~~first~~) second degree.

19 (2) Subsection (1) of this section shall not apply to euthanizing
20 by poison an animal in a lawful and humane manner by the animal's
21 owner, or by a duly authorized servant or agent of the owner, or by a
22 person acting pursuant to instructions from a duly constituted public
23 authority.

24 (3) Subsection (1) of this section shall not apply to the
25 reasonable use of rodent or pest poison, insecticides, fungicides, or
26 slug bait for their intended purposes. As used in this section, the
27 term "rodent" includes but is not limited to Columbia ground squirrels,
28 other ground squirrels, rats, mice, gophers, rabbits, and any other
29 rodent designated as injurious to the agricultural interests of the
30 state (~~as provided in chapter 17.16 RCW~~). The term "pest" as used in
31 this section includes any pest as defined in RCW 17.21.020.

32 (4) A person violating this section is guilty of a (~~gross~~
33 ~~misdemeanor~~) class C felony.

34 **Sec. 6.** RCW 16.52.200 and 2003 c 53 s 113 are each amended to read
35 as follows:

36 (1) The sentence imposed for a (~~misdemeanor or~~) gross misdemeanor

1 violation of this chapter may be deferred or suspended in accordance
2 with RCW 3.66.067 and 3.66.068, however the probationary period shall
3 be two years.

4 (2) In case of multiple (~~misdemeanor~~) gross misdemeanor
5 convictions, the sentences shall be consecutive, however the
6 probationary period shall remain two years.

7 (3) In addition to the penalties imposed by the court, the court
8 shall order the forfeiture of all animals held by law enforcement or
9 animal care and control authorities under the provisions of this
10 chapter if any one of the animals involved dies as a result of a
11 violation of this chapter or if the defendant has a prior conviction
12 under this chapter. In other cases the court may enter an order
13 requiring the owner to forfeit the animal if the court deems the
14 animal's treatment to have been severe and likely to reoccur. If
15 forfeiture is ordered, the owner shall be prohibited from owning or
16 caring for any similar animals for a period of two years. The court
17 may delay its decision on forfeiture under this subsection until the
18 end of the probationary period.

19 (4) In addition to fines and court costs, the defendant, only if
20 convicted or in agreement, shall be liable for reasonable costs
21 incurred pursuant to this chapter by law enforcement agencies, animal
22 care and control agencies, or authorized private or public entities
23 involved with the care of the animals. Reasonable costs include
24 expenses of the investigation, and the animal's care, euthanization, or
25 adoption.

26 (5) If convicted, the defendant shall also pay a civil penalty of
27 one thousand dollars to the county to prevent cruelty to animals.
28 These funds shall be used to prosecute offenses under this chapter and
29 to care for forfeited animals pending trial.

30 (6) As a condition of the sentence imposed under this chapter or
31 RCW 9.08.070 through 9.08.078, the court (~~may~~) shall also order the
32 defendant to participate in an available animal cruelty prevention or
33 education program or obtain available psychological counseling to treat
34 mental health problems contributing to the violation's commission. The
35 defendant shall bear the costs of the program or treatment.

36 **Sec. 7.** RCW 16.08.020 and 1929 c 198 s 6 are each amended to read
37 as follows:

1 It shall be (~~lawful for any person who shall see any dog or dogs~~
2 ~~chasing, biting, injuring or killing any sheep, swine or other domestic~~
3 ~~animal, including poultry, belonging to such person, on any real~~
4 ~~property owned or leased by, or under the control of, such person, or~~
5 ~~on any public highway, to kill such dog or dogs, and it shall be the~~
6 ~~duty of the owner or keeper of any dog or dogs so found chasing, biting~~
7 ~~or injuring any domestic animal, including poultry, upon being notified~~
8 ~~of that fact by the owner of such domestic animals or poultry, to~~
9 ~~thereafter keep such dog or dogs in leash or confined upon the premises~~
10 ~~of the owner or keeper thereof, and in case any such owner or keeper of~~
11 ~~a dog or dogs shall fail or neglect to comply with the provisions of~~
12 ~~this section, it shall be lawful for the owner of such domestic animals~~
13 ~~or poultry to kill such dog or dogs found running at large)) the duty
14 of the owner or keeper of any dog or dogs found chasing, biting, or
15 injuring any domestic animal, including poultry, upon being notified of
16 that fact by the owner of such domestic animals or poultry, to
17 thereafter keep such dog or dogs in leash or confined upon the premises
18 of the owner or keeper thereof. In case any such owner or keeper of a
19 dog or dogs fails or neglects to comply with this section, the owner is
20 civilly liable for treble damages and reasonable attorneys' fees and
21 costs arising from injuries, including death, to any domestic animal,
22 including poultry, subsequently caused by the same dog or dogs. This
23 section does not bar recovery under RCW 16.08.010 for a first
24 occurrence of any dog or dogs found injuring any domestic animal,
25 including poultry.~~

26 NEW SECTION. Sec. 8. RCW 16.08.030 (Marauding dog--Duty of owner
27 to kill) and 1929 c 198 s 7 are each repealed.

28 **Sec. 9.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
29 as follows:

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

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

34 (2) "Collect," or any derivative thereof, "collect and remit," or
35 "collect and deliver," when used with reference to the department,
36 means that the department, either directly or through a collection

1 agreement authorized by RCW 9.94A.760, is responsible for monitoring
2 and enforcing the offender's sentence with regard to the legal
3 financial obligation, receiving payment thereof from the offender, and,
4 consistent with current law, delivering daily the entire payment to the
5 superior court clerk without depositing it in a departmental account.

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

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

11 (5) "Community custody" means that portion of an offender's
12 sentence of confinement in lieu of earned release time or imposed
13 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
14 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
15 community subject to controls placed on the offender's movement and
16 activities by the department. For offenders placed on community
17 custody for crimes committed on or after July 1, 2000, the department
18 shall assess the offender's risk of reoffense and may establish and
19 modify conditions of community custody, in addition to those imposed by
20 the court, based upon the risk to community safety.

21 (6) "Community custody range" means the minimum and maximum period
22 of community custody included as part of a sentence under RCW
23 9.94A.715, as established by the commission or the legislature under
24 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

32 (8) "Community restitution" means compulsory service, without
33 compensation, performed for the benefit of the community by the
34 offender.

35 (9) "Community supervision" means a period of time during which a
36 convicted offender is subject to crime-related prohibitions and other
37 sentence conditions imposed by a court pursuant to this chapter or RCW
38 16.52.200(6) or 46.61.524. Where the court finds that any offender has

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

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

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

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

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

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

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

29 (c) The determination of a defendant's criminal history is distinct
30 from the determination of an offender score. A prior conviction that
31 was not included in an offender score calculated pursuant to a former
32 version of the sentencing reform act remains part of the defendant's
33 criminal history.

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

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

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

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

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

27 (19) "Drug offender sentencing alternative" is a sentencing option
28 available to persons convicted of a felony offense other than a violent
29 offense or a sex offense and who are eligible for the option under RCW
30 9.94A.660.

31 (20) "Drug offense" means:

32 (a) Any felony violation of chapter 69.50 RCW except possession of
33 a controlled substance (RCW 69.50.4013) or forged prescription for a
34 controlled substance (RCW 69.50.403);

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

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

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

6 (22) "Escape" means:

7 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
8 first degree (RCW 9A.76.110), escape in the second degree (RCW
9 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
10 willful failure to return from work release (RCW 72.65.070), or willful
11 failure to be available for supervision by the department while in
12 community custody (RCW 72.09.310); or

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

16 (23) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
18 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
19 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

32 (27) "Legal financial obligation" means a sum of money that is
33 ordered by a superior court of the state of Washington for legal
34 financial obligations which may include restitution to the victim,
35 statutorily imposed crime victims' compensation fees as assessed
36 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
37 court-appointed attorneys' fees, and costs of defense, fines, and any
38 other financial obligation that is assessed to the offender as a result

1 of a felony conviction. Upon conviction for vehicular assault while
2 under the influence of intoxicating liquor or any drug, RCW
3 46.61.522(1)(b), or vehicular homicide while under the influence of
4 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
5 obligations may also include payment to a public agency of the expense
6 of an emergency response to the incident resulting in the conviction,
7 subject to RCW 38.52.430.

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

10 (a) Any felony defined under any law as a class A felony or
11 criminal solicitation of or criminal conspiracy to commit a class A
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

28 (q) Vehicular assault, when caused by the operation or driving of
29 a vehicle by a person while under the influence of intoxicating liquor
30 or any drug or by the operation or driving of a vehicle in a reckless
31 manner;

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

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

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

8 (v)(i) A prior conviction for indecent liberties under RCW
9 (~~9A.88.100~~) 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975
10 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a),
11 (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and
12 RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
13 until July 1, 1988;

14 (ii) A prior conviction for indecent liberties under RCW
15 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
16 if: (A) The crime was committed against a child under the age of
17 fourteen; or (B) the relationship between the victim and perpetrator is
18 included in the definition of indecent liberties under RCW
19 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
20 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
21 through July 27, 1997.

22 (29) "Nonviolent offense" means an offense which is not a violent
23 offense.

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

31 (31) "Partial confinement" means confinement for no more than one
32 year in a facility or institution operated or utilized under contract
33 by the state or any other unit of government, or, if home detention or
34 work crew has been ordered by the court, in an approved residence, for
35 a substantial portion of each day with the balance of the day spent in
36 the community. Partial confinement includes work release, home
37 detention, work crew, and a combination of work crew and home
38 detention.

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

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

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

12 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
13 of a child in the first degree, child molestation in the first degree,
14 rape in the second degree, rape of a child in the second degree, or
15 indecent liberties by forcible compulsion; (B) any of the following
16 offenses with a finding of sexual motivation: Murder in the first
17 degree, murder in the second degree, homicide by abuse, kidnapping in
18 the first degree, kidnapping in the second degree, assault in the first
19 degree, assault in the second degree, assault of a child in the first
20 degree, or burglary in the first degree; or (C) an attempt to commit
21 any crime listed in this subsection (32)(b)(i); and

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

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

36 (34) "Restitution" means a specific sum of money ordered by the
37 sentencing court to be paid by the offender to the court over a

1 specified period of time as payment of damages. The sum may include
2 both public and private costs.

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

11 (36) "Serious traffic offense" means:

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

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

20 (37) "Serious violent offense" is a subcategory of violent offense
21 and means:

- 22 (a)(i) Murder in the first degree;
- 23 (ii) Homicide by abuse;
- 24 (iii) Murder in the second degree;
- 25 (iv) Manslaughter in the first degree;
- 26 (v) Assault in the first degree;
- 27 (vi) Kidnapping in the first degree;
- 28 (vii) Rape in the first degree;
- 29 (viii) Assault of a child in the first degree; or
- 30 (ix) An attempt, criminal solicitation, or criminal conspiracy to
31 commit one of these felonies; or

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

35 (38) "Sex offense" means:

- 36 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
37 RCW 9A.44.130(11);
- 38 (ii) A violation of RCW 9A.64.020;

1 (iii) A felony that is a violation of chapter 9.68A RCW other than
2 RCW 9.68A.070 or 9.68A.080; or
3 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
4 criminal solicitation, or criminal conspiracy to commit such crimes;
5 (b) Any conviction for a felony offense in effect at any time prior
6 to July 1, 1976, that is comparable to a felony classified as a sex
7 offense in (a) of this subsection;
8 (c) A felony with a finding of sexual motivation under RCW
9 9.94A.835 or 13.40.135; or
10 (d) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as a sex
12 offense under (a) of this subsection.
13 (39) "Sexual motivation" means that one of the purposes for which
14 the defendant committed the crime was for the purpose of his or her
15 sexual gratification.
16 (40) "Standard sentence range" means the sentencing court's
17 discretionary range in imposing a nonappealable sentence.
18 (41) "Statutory maximum sentence" means the maximum length of time
19 for which an offender may be confined as punishment for a crime as
20 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
21 crime, or other statute defining the maximum penalty for a crime.
22 (42) "Total confinement" means confinement inside the physical
23 boundaries of a facility or institution operated or utilized under
24 contract by the state or any other unit of government for twenty-four
25 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
26 (43) "Transition training" means written and verbal instructions
27 and assistance provided by the department to the offender during the
28 two weeks prior to the offender's successful completion of the work
29 ethic camp program. The transition training shall include instructions
30 in the offender's requirements and obligations during the offender's
31 period of community custody.
32 (44) "Victim" means any person who has sustained emotional,
33 psychological, physical, or financial injury to person or property as
34 a direct result of the crime charged.
35 (45) "Violent offense" means:
36 (a) Any of the following felonies:
37 (i) Any felony defined under any law as a class A felony or an
38 attempt to commit a class A felony;

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

3 (iii) Manslaughter in the first degree;

4 (iv) Manslaughter in the second degree;

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

6 (vi) Kidnapping in the second degree;

7 (vii) Arson in the second degree;

8 (viii) Assault in the second degree;

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

10 (x) Extortion in the first degree;

11 (xi) Robbery in the second degree;

12 (xii) Drive-by shooting;

13 (xiii) Vehicular assault, when caused by the operation or driving
14 of a vehicle by a person while under the influence of intoxicating
15 liquor or any drug or by the operation or driving of a vehicle in a
16 reckless manner; (~~and~~)

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

21 (xv) Animal cruelty in the first degree;

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

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

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

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

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

4 **Sec. 10.** RCW 9.94A.515 and 2004 c 176 s 2 and 2004 c 94 s 3 are
5 each reenacted and amended to read as follows:
6

7

8 TABLE 2

9 CRIMES INCLUDED WITHIN

10 EACH SERIOUSNESS LEVEL

11 XVI Aggravated Murder 1 (RCW

12 10.95.020)

13 XV Homicide by abuse (RCW 9A.32.055)

14 Malicious explosion 1 (RCW

15 70.74.280(1))

16 Murder 1 (RCW 9A.32.030)

17 XIV Murder 2 (RCW 9A.32.050)

18 Trafficking 1 (RCW 9A.40.100(1))

19 XIII Malicious explosion 2 (RCW

20 70.74.280(2))

21 Malicious placement of an explosive 1

22 (RCW 70.74.270(1))

23 XII Assault 1 (RCW 9A.36.011)

24 Assault of a Child 1 (RCW 9A.36.120)

25 Malicious placement of an imitation

26 device 1 (RCW 70.74.272(1)(a))

27 Rape 1 (RCW 9A.44.040)

28 Rape of a Child 1 (RCW 9A.44.073)

29 Trafficking 2 (RCW 9A.40.100(2))

30 XI Manslaughter 1 (RCW 9A.32.060)

31 Rape 2 (RCW 9A.44.050)

32 Rape of a Child 2 (RCW 9A.44.076)

33 X Child Molestation 1 (RCW 9A.44.083)

34 Indecent Liberties (with forcible

35 compulsion) (RCW

9A.44.100(1)(a))

1 Kidnapping 1 (RCW 9A.40.020)
2 Leading Organized Crime (RCW
3 9A.82.060(1)(a))
4 Malicious explosion 3 (RCW
5 70.74.280(3))
6 Sexually Violent Predator Escape
7 (RCW 9A.76.115)
8 IX Assault of a Child 2 (RCW 9A.36.130)
9 Explosive devices prohibited (RCW
10 70.74.180)
11 Hit and Run--Death (RCW
12 46.52.020(4)(a))
13 Homicide by Watercraft, by being
14 under the influence of intoxicating
15 liquor or any drug (RCW
16 79A.60.050)
17 Inciting Criminal Profiteering (RCW
18 9A.82.060(1)(b))
19 Malicious placement of an explosive 2
20 (RCW 70.74.270(2))
21 Robbery 1 (RCW 9A.56.200)
22 Sexual Exploitation (RCW 9.68A.040)
23 Vehicular Homicide, by being under
24 the influence of intoxicating
25 liquor or any drug (RCW
26 46.61.520)
27 VIII Arson 1 (RCW 9A.48.020)
28 Homicide by Watercraft, by the
29 operation of any vessel in a
30 reckless manner (RCW
31 79A.60.050)
32 Manslaughter 2 (RCW 9A.32.070)
33 Promoting Prostitution 1 (RCW
34 9A.88.070)
35 Theft of Ammonia (RCW 69.55.010)

1 Vehicular Homicide, by the operation
2 of any vehicle in a reckless
3 manner (RCW 46.61.520)
4 VII Burglary 1 (RCW 9A.52.020)
5 Child Molestation 2 (RCW 9A.44.086)
6 Civil Disorder Training (RCW
7 9A.48.120)
8 Dealing in depictions of minor
9 engaged in sexually explicit
10 conduct (RCW 9.68A.050)
11 Drive-by Shooting (RCW 9A.36.045)
12 Homicide by Watercraft, by disregard
13 for the safety of others (RCW
14 79A.60.050)
15 Indecent Liberties (without forcible
16 compulsion) (RCW 9A.44.100(1)
17 (b) and (c))
18 Introducing Contraband 1 (RCW
19 9A.76.140)
20 Malicious placement of an explosive 3
21 (RCW 70.74.270(3))
22 Sending, bringing into state depictions
23 of minor engaged in sexually
24 explicit conduct (RCW
25 9.68A.060)
26 Unlawful Possession of a Firearm in
27 the first degree (RCW
28 9.41.040(1))
29 Use of a Machine Gun in Commission
30 of a Felony (RCW 9.41.225)
31 Vehicular Homicide, by disregard for
32 the safety of others (RCW
33 46.61.520)
34 VI Bail Jumping with Murder 1 (RCW
35 9A.76.170(3)(a))
36 Bribery (RCW 9A.68.010)
37 Incest 1 (RCW 9A.64.020(1))

1 Intimidating a Judge (RCW
2 9A.72.160)
3 Intimidating a Juror/Witness (RCW
4 9A.72.110, 9A.72.130)
5 Malicious placement of an imitation
6 device 2 (RCW 70.74.272(1)(b))
7 Rape of a Child 3 (RCW 9A.44.079)
8 Theft of a Firearm (RCW 9A.56.300)
9 Unlawful Storage of Ammonia (RCW
10 69.55.020)
11 V Abandonment of dependent person 1
12 (RCW 9A.42.060)
13 Advancing money or property for
14 extortionate extension of credit
15 (RCW 9A.82.030)
16 Bail Jumping with class A Felony
17 (RCW 9A.76.170(3)(b))
18 Child Molestation 3 (RCW 9A.44.089)
19 Criminal Mistreatment 1 (RCW
20 9A.42.020)
21 Custodial Sexual Misconduct 1 (RCW
22 9A.44.160)
23 Domestic Violence Court Order
24 Violation (RCW 10.99.040,
25 10.99.050, 26.09.300, 26.10.220,
26 26.26.138, 26.50.110, 26.52.070,
27 or 74.34.145)
28 Extortion 1 (RCW 9A.56.120)
29 Extortionate Extension of Credit
30 (RCW 9A.82.020)
31 Extortionate Means to Collect
32 Extensions of Credit (RCW
33 9A.82.040)
34 Incest 2 (RCW 9A.64.020(2))
35 Kidnapping 2 (RCW 9A.40.030)
36 Perjury 1 (RCW 9A.72.020)

1 Persistent prison misbehavior (RCW
2 9.94.070)
3 Possession of a Stolen Firearm (RCW
4 9A.56.310)
5 Rape 3 (RCW 9A.44.060)
6 Rendering Criminal Assistance 1
7 (RCW 9A.76.070)
8 Sexual Misconduct with a Minor 1
9 (RCW 9A.44.093)
10 Sexually Violating Human Remains
11 (RCW 9A.44.105)
12 Stalking (RCW 9A.46.110)
13 Taking Motor Vehicle Without
14 Permission 1 (RCW 9A.56.070)
15 IV Animal cruelty in the first degree
16 (RCW 16.52.205)
17 Arson 2 (RCW 9A.48.030)
18 Assault 2 (RCW 9A.36.021)
19 Assault by Watercraft (RCW
20 79A.60.060)
21 Bribing a Witness/Bribe Received by
22 Witness (RCW 9A.72.090,
23 9A.72.100)
24 Cheating 1 (RCW 9.46.1961)
25 Commercial Bribery (RCW
26 9A.68.060)
27 Counterfeiting (RCW 9.16.035(4))
28 Endangerment with a Controlled
29 Substance (RCW 9A.42.100)
30 Escape 1 (RCW 9A.76.110)
31 Hit and Run--Injury (RCW
32 46.52.020(4)(b))
33 Hit and Run with Vessel--Injury
34 Accident (RCW 79A.60.200(3))
35 Identity Theft 1 (RCW 9.35.020(2))

1 Indecent Exposure to Person Under
2 Age Fourteen (subsequent sex
3 offense) (RCW 9A.88.010)
4 Influencing Outcome of Sporting
5 Event (RCW 9A.82.070)
6 Malicious Harassment (RCW
7 9A.36.080)
8 Residential Burglary (RCW
9 9A.52.025)
10 Robbery 2 (RCW 9A.56.210)
11 Theft of Livestock 1 (RCW 9A.56.080)
12 Threats to Bomb (RCW 9.61.160)
13 Trafficking in Stolen Property 1 (RCW
14 9A.82.050)
15 Unlawful factoring of a credit card or
16 payment card transaction (RCW
17 9A.56.290(4)(b))
18 Unlawful transaction of health
19 coverage as a health care service
20 contractor (RCW 48.44.016(3))
21 Unlawful transaction of health
22 coverage as a health maintenance
23 organization (RCW 48.46.033(3))
24 Unlawful transaction of insurance
25 business (RCW 48.15.023(3))
26 Unlicensed practice as an insurance
27 professional (RCW 48.17.063(3))
28 Use of Proceeds of Criminal
29 Profiteering (RCW 9A.82.080 (1)
30 and (2))
31 Vehicular Assault, by being under the
32 influence of intoxicating liquor or
33 any drug, or by the operation or
34 driving of a vehicle in a reckless
35 manner (RCW 46.61.522)
36 Willful Failure to Return from
37 Furlough (RCW 72.66.060)

1 III Abandonment of dependent person 2
2 (RCW 9A.42.070)
3 Animal cruelty in the second degree
4 (RCW 16.52.207)
5 Animal fighting (RCW 16.52.117)
6 Animal poisoning (RCW 16.52.190)
7 Assault 3 (RCW 9A.36.031)
8 Assault of a Child 3 (RCW 9A.36.140)
9 Bail Jumping with class B or C Felony
10 (RCW 9A.76.170(3)(c))
11 Burglary 2 (RCW 9A.52.030)
12 Communication with a Minor for
13 Immoral Purposes (RCW
14 9.68A.090)
15 Criminal Gang Intimidation (RCW
16 9A.46.120)
17 Criminal Mistreatment 2 (RCW
18 9A.42.030)
19 Custodial Assault (RCW 9A.36.100)
20 Cyberstalking (subsequent conviction
21 or threat of death) (RCW
22 9.61.260(3))
23 Escape 2 (RCW 9A.76.120)
24 Extortion 2 (RCW 9A.56.130)
25 Harassment (RCW 9A.46.020)
26 Intimidating a Public Servant (RCW
27 9A.76.180)
28 Introducing Contraband 2 (RCW
29 9A.76.150)
30 Malicious Injury to Railroad Property
31 (RCW 81.60.070)
32 Patronizing a Juvenile Prostitute
33 (RCW 9.68A.100)
34 Perjury 2 (RCW 9A.72.030)
35 Possession of Incendiary Device (RCW
36 9.40.120)

1 Possession of Machine Gun or Short-
2 Barreled Shotgun or Rifle (RCW
3 9.41.190)
4 Promoting Prostitution 2 (RCW
5 9A.88.080)
6 Securities Act violation (RCW
7 21.20.400)
8 Tampering with a Witness (RCW
9 9A.72.120)
10 Telephone Harassment (subsequent
11 conviction or threat of death)
12 (RCW 9.61.230(2))
13 Theft of Livestock 2 (RCW 9A.56.083)
14 Trafficking in Stolen Property 2 (RCW
15 9A.82.055)
16 Unlawful Imprisonment (RCW
17 9A.40.040)
18 Unlawful possession of firearm in the
19 second degree (RCW 9.41.040(2))
20 Vehicular Assault, by the operation or
21 driving of a vehicle with disregard
22 for the safety of others (RCW
23 46.61.522)
24 Willful Failure to Return from Work
25 Release (RCW 72.65.070)
26 II Computer Trespass 1 (RCW
27 9A.52.110)
28 Counterfeiting (RCW 9.16.035(3))
29 Escape from Community Custody
30 (RCW 72.09.310)
31 Health Care False Claims (RCW
32 48.80.030)
33 Identity Theft 2 (RCW 9.35.020(3))
34 Improperly Obtaining Financial
35 Information (RCW 9.35.010)
36 Malicious Mischief 1 (RCW
37 9A.48.070)

1 Possession of Stolen Property 1 (RCW
2 9A.56.150)
3 Theft 1 (RCW 9A.56.030)
4 Theft of Rental, Leased, or Lease-
5 purchased Property (valued at one
6 thousand five hundred dollars or
7 more) (RCW 9A.56.096(5)(a))
8 Trafficking in Insurance Claims (RCW
9 48.30A.015)
10 Unlawful factoring of a credit card or
11 payment card transaction (RCW
12 9A.56.290(4)(a))
13 Unlawful Practice of Law (RCW
14 2.48.180)
15 Unlicensed Practice of a Profession or
16 Business (RCW 18.130.190(7))
17 I Attempting to Elude a Pursuing Police
18 Vehicle (RCW 46.61.024)
19 False Verification for Welfare (RCW
20 74.08.055)
21 Forgery (RCW 9A.60.020)
22 Fraudulent Creation or Revocation of a
23 Mental Health Advance Directive
24 (RCW 9A.60.060)
25 Malicious Mischief 2 (RCW
26 9A.48.080)
27 Mineral Trespass (RCW 78.44.330)
28 Possession of Stolen Property 2 (RCW
29 9A.56.160)
30 Reckless Burning 1 (RCW 9A.48.040)
31 Taking Motor Vehicle Without
32 Permission 2 (RCW 9A.56.075)
33 Theft 2 (RCW 9A.56.040)

1 Theft of Rental, Leased, or Lease-
2 purchased Property (valued at two
3 hundred fifty dollars or more but
4 less than one thousand five
5 hundred dollars) (RCW
6 9A.56.096(5)(b))
7 Transaction of insurance business
8 beyond the scope of licensure
9 (RCW 48.17.063(4))
10 Unlawful Issuance of Checks or Drafts
11 (RCW 9A.56.060)
12 Unlawful Possession of Fictitious
13 Identification (RCW 9A.56.320)
14 Unlawful Possession of Instruments of
15 Financial Fraud (RCW
16 9A.56.320)
17 Unlawful Possession of Payment
18 Instruments (RCW 9A.56.320)
19 Unlawful Possession of a Personal
20 Identification Device (RCW
21 9A.56.320)
22 Unlawful Production of Payment
23 Instruments (RCW 9A.56.320)
24 Unlawful Trafficking in Food Stamps
25 (RCW 9.91.142)
26 Unlawful Use of Food Stamps (RCW
27 9.91.144)
28 Vehicle Prowl 1 (RCW 9A.52.095)

29 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 July 1, 2005.

--- END ---