
HOUSE BILL 2968

State of Washington 60th Legislature 2008 Regular Session

By Representatives Pearson, O'Brien, Kelley, Simpson, and Kretz

Read first time 01/18/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to crimes against persons; amending RCW 9.94A.421,
2 9.94A.431, 9.94A.470, 9.94A.501, 9.94A.545, 9.94A.640, 9.94A.728,
3 10.77.092, 10.97.050, 13.40.070, 13.40.077, 43.43.8321, and 43.43.842;
4 and reenacting and amending RCW 9.94A.030, 9.94A.411, and 9.94A.715.

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

6 **Sec. 1.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c
7 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
8 amended to read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

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

13 (2) "Collect," or any derivative thereof, "collect and remit," or
14 "collect and deliver," when used with reference to the department,
15 means that the department, either directly or through a collection
16 agreement authorized by RCW 9.94A.760, is responsible for monitoring
17 and enforcing the offender's sentence with regard to the legal
18 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

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

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

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

18 (6) "Community custody range" means the minimum and maximum period
19 of community custody included as part of a sentence under RCW
20 9.94A.715, as established by the commission or the legislature under
21 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

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

35 (10) "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 (11) "Confinement" means total or partial confinement.

8 (12) "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 (13) "Crime against persons" means any of the following felonies or
12 a felony attempt, solicitation, or conspiracy to commit any of the
13 following felonies:

14 (a) Aggravated first degree murder;

15 (b) Arson in the first degree;

16 (c) Assault in the first degree;

17 (d) Assault in the second degree;

18 (e) Assault in the third degree;

19 (f) Assault of a child in the first degree;

20 (g) Assault of a child in the second degree;

21 (h) Assault of a child in the third degree;

22 (i) Bomb threat (if against a person);

23 (j) Burglary in the first degree;

24 (k) Child molestation in the first degree;

25 (l) Child molestation in the second degree;

26 (m) Child molestation in the third degree;

27 (n) Child selling or buying;

28 (o) Commercial sexual abuse of a minor;

29 (p) Communicating with a minor for immoral purposes;

30 (q) Counterfeiting (if a violation of RCW 9.16.035(4));

31 (r) Criminal mistreatment in the first degree;

32 (s) Criminal mistreatment in the second degree;

33 (t) Custodial assault;

34 (u) Custodial sexual misconduct;

35 (v) Cyberstalking

36 (w) Dealing in depictions of a minor engaged in sexually explicit
37 conduct;

1 (x) Domestic violence court order violation (RCW 10.99.040,
2 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or
3 74.34.145);
4 (y) Drive-by shooting;
5 (z) Driving under the influence of intoxicating liquor or any drug;
6 (aa) Extortion in the first degree;
7 (bb) Extortion in the second degree;
8 (cc) Harassment;
9 (dd) Hit and run - death;
10 (ee) Hit and run - injury;
11 (ff) Homicide by abuse;
12 (gg) Homicide by watercraft;
13 (hh) Incest in the first degree;
14 (ii) Incest in the second degree;
15 (jj) Identity theft in the first degree;
16 (kk) Identity theft in the second degree;
17 (ll) Indecent liberties;
18 (mm) Intimidating a juror;
19 (nn) Intimidating a public servant;
20 (oo) Intimidating a witness;
21 (pp) Kidnapping in the first degree;
22 (qq) Kidnapping in the second degree;
23 (rr) Luring;
24 (ss) Malicious harassment;
25 (tt) Manslaughter in the first degree;
26 (uu) Manslaughter in the second degree;
27 (vv) Murder in the first degree;
28 (ww) Murder in the second degree;
29 (xx) Possession of depictions of a minor engaged in sexually
30 explicit conduct;
31 (yy) Promoting a suicide attempt;
32 (zz) Promoting prostitution in the first degree;
33 (aaa) Rape in the first degree;
34 (bbb) Rape in the second degree;
35 (ccc) Rape in the third degree;
36 (ddd) Rape of a child in the first degree;
37 (eee) Rape of a child in the second degree;
38 (fff) Rape of a child in the third degree;

1 (ggg) Residential burglary;
2 (hhh) Riot (against a person);
3 (iii) Robbery in the first degree;
4 (jjj) Robbery in the second degree;
5 (kkk) Sending or bringing into the state depictions of a minor
6 engaged in sexually explicit conduct;
7 (lll) Sexual exploitation of a minor;
8 (mmm) Sexual misconduct with a minor in the first degree;
9 (nnn) Sexually violating human remains;
10 (ooo) Sexually violent predator escape;
11 (ppp) Stalking;
12 (qqq) Telephone harassment;
13 (rrr) Unlawful imprisonment;
14 (sss) Vehicular assault;
15 (ttt) Vehicular homicide; or
16 (uuu) Voyeurism.

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

24 ~~((+14))~~ (15) "Criminal history" means the list of a defendant's
25 prior convictions and juvenile adjudications, whether in this state, in
26 federal court, or elsewhere.

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

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

35 (c) The determination of a defendant's criminal history is distinct
36 from the determination of an offender score. A prior conviction that
37 was not included in an offender score calculated pursuant to a former

1 version of the sentencing reform act remains part of the defendant's
2 criminal history.

3 ~~((+15+))~~ (16) "Day fine" means a fine imposed by the sentencing
4 court that equals the difference between the offender's net daily
5 income and the reasonable obligations that the offender has for the
6 support of the offender and any dependents.

7 ~~((+16+))~~ (17) "Day reporting" means a program of enhanced
8 supervision designed to monitor the offender's daily activities and
9 compliance with sentence conditions, and in which the offender is
10 required to report daily to a specific location designated by the
11 department or the sentencing court.

12 ~~((+17+))~~ (18) "Department" means the department of corrections.

13 ~~((+18+))~~ (19) "Determinate sentence" means a sentence that states
14 with exactitude the number of actual years, months, or days of total
15 confinement, of partial confinement, of community supervision, the
16 number of actual hours or days of community restitution work, or
17 dollars or terms of a legal financial obligation. The fact that an
18 offender through earned release can reduce the actual period of
19 confinement shall not affect the classification of the sentence as a
20 determinate sentence.

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

33 ~~((+20+))~~ (21) "Drug offender sentencing alternative" is a
34 sentencing option available to persons convicted of a felony offense
35 other than a violent offense or a sex offense and who are eligible for
36 the option under RCW 9.94A.660.

37 ~~((+21+))~~ (22) "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 ~~((+22+))~~ (23) "Earned release" means earned release from
11 confinement as provided in RCW 9.94A.728.

12 ~~((+23+))~~ (24) "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 ~~((+24+))~~ (25) "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), felony hit-and-
25 run injury-accident (RCW 46.52.020(4)), felony driving while under the
26 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
27 felony physical control of a vehicle while under the influence of
28 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

32 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the
33 sentencing court to be paid by the offender to the court over a
34 specific period of time.

35 ~~((+26+))~~ (27) "First-time offender" means any person who has no
36 prior convictions for a felony and is eligible for the first-time
37 offender waiver under RCW 9.94A.650.

1 (~~(27)~~) (28) "Home detention" means a program of partial
2 confinement available to offenders wherein the offender is confined in
3 a private residence subject to electronic surveillance.

4 (~~(28)~~) (29) "Legal financial obligation" means a sum of money
5 that is ordered by a superior court of the state of Washington for
6 legal financial obligations which may include restitution to the
7 victim, statutorily imposed crime victims' compensation fees as
8 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
9 drug funds, court-appointed attorneys' fees, and costs of defense,
10 fines, and any other financial obligation that is assessed to the
11 offender as a result of a felony conviction. Upon conviction for
12 vehicular assault while under the influence of intoxicating liquor or
13 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
14 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
15 legal financial obligations may also include payment to a public agency
16 of the expense of an emergency response to the incident resulting in
17 the conviction, subject to RCW 38.52.430.

18 (~~(29)~~) (30) "Most serious offense" means any of the following
19 felonies or a felony attempt to commit any of the following felonies:

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

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

1 (q) Vehicular assault, when caused by the operation or driving of
2 a vehicle by a person while under the influence of intoxicating liquor
3 or any drug or by the operation or driving of a vehicle in a reckless
4 manner;

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

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

11 (t) Any other felony with a deadly weapon verdict under RCW
12 9.94A.602;

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

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

23 (ii) A prior conviction for indecent liberties under RCW
24 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
25 if: (A) The crime was committed against a child under the age of
26 fourteen; or (B) the relationship between the victim and perpetrator is
27 included in the definition of indecent liberties under RCW
28 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
29 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
30 through July 27, 1997.

31 (~~(+30+)~~) (31) "Nonviolent offense" means an offense which is not a
32 violent offense.

33 (~~(+31+)~~) (32) "Offender" means a person who has committed a felony
34 established by state law and is eighteen years of age or older or is
35 less than eighteen years of age but whose case is under superior court
36 jurisdiction under RCW 13.04.030 or has been transferred by the
37 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

3 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more
4 than one year in a facility or institution operated or utilized under
5 contract by the state or any other unit of government, or, if home
6 detention or work crew has been ordered by the court, in an approved
7 residence, for a substantial portion of each day with the balance of
8 the day spent in the community. Partial confinement includes work
9 release, home detention, work crew, and a combination of work crew and
10 home detention.

11 ~~((+33+))~~ (34) "Persistent offender" is an offender who:

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

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

22 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
23 of a child in the first degree, child molestation in the first degree,
24 rape in the second degree, rape of a child in the second degree, or
25 indecent liberties by forcible compulsion; (B) any of the following
26 offenses with a finding of sexual motivation: Murder in the first
27 degree, murder in the second degree, homicide by abuse, kidnapping in
28 the first degree, kidnapping in the second degree, assault in the first
29 degree, assault in the second degree, assault of a child in the first
30 degree, assault of a child in the second degree, or burglary in the
31 first degree; or (C) an attempt to commit any crime listed in this
32 subsection ~~((+33+))~~ (34)(b)(i); and

33 (ii) Has, before the commission of the offense under (b)(i) of this
34 subsection, been convicted as an offender on at least one occasion,
35 whether in this state or elsewhere, of an offense listed in (b)(i) of
36 this subsection or any federal or out-of-state offense or offense under
37 prior Washington law that is comparable to the offenses listed in
38 (b)(i) of this subsection. A conviction for rape of a child in the

1 first degree constitutes a conviction under (b)(i) of this subsection
2 only when the offender was sixteen years of age or older when the
3 offender committed the offense. A conviction for rape of a child in
4 the second degree constitutes a conviction under (b)(i) of this
5 subsection only when the offender was eighteen years of age or older
6 when the offender committed the offense.

7 ~~((+34+))~~ (35) "Postrelease supervision" is that portion of an
8 offender's community placement that is not community custody.

9 ~~((+35+))~~ (36) "Predatory" means: (a) The perpetrator of the crime
10 was a stranger to the victim, as defined in this section; (b) the
11 perpetrator established or promoted a relationship with the victim
12 prior to the offense and the victimization of the victim was a
13 significant reason the perpetrator established or promoted the
14 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
15 volunteer, or other person in authority in any public or private school
16 and the victim was a student of the school under his or her authority
17 or supervision. For purposes of this subsection, "school" does not
18 include home-based instruction as defined in RCW 28A.225.010; (ii) a
19 coach, trainer, volunteer, or other person in authority in any
20 recreational activity and the victim was a participant in the activity
21 under his or her authority or supervision; or (iii) a pastor, elder,
22 volunteer, or other person in authority in any church or religious
23 organization, and the victim was a member or participant of the
24 organization under his or her authority.

25 ~~((+36+))~~ (37) "Private school" means a school regulated under
26 chapter 28A.195 or 28A.205 RCW.

27 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW
28 28A.150.010.

29 ~~((+38+))~~ (39) "Restitution" means a specific sum of money ordered
30 by the sentencing court to be paid by the offender to the court over a
31 specified period of time as payment of damages. The sum may include
32 both public and private costs.

33 ~~((+39+))~~ (40) "Risk assessment" means the application of an
34 objective instrument supported by research and adopted by the
35 department for the purpose of assessing an offender's risk of
36 reoffense, taking into consideration the nature of the harm done by the
37 offender, place and circumstances of the offender related to risk, the

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

4 ~~((40))~~ (41) "Serious traffic offense" means:

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

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

13 ~~((41))~~ (42) "Serious violent offense" is a subcategory of violent
14 offense and means:

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

16 (ii) Homicide by abuse;

17 (iii) Murder in the second degree;

18 (iv) Manslaughter in the first degree;

19 (v) Assault in the first degree;

20 (vi) Kidnapping in the first degree;

21 (vii) Rape in the first degree;

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

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

25 (b) 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 serious
27 violent offense under (a) of this subsection.

28 ~~((42))~~ (43) "Sex offense" means:

29 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
30 RCW 9A.44.130~~((11))~~ (12);

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

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

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

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

1 (c) A felony with a finding of sexual motivation under RCW
2 9.94A.835 or 13.40.135; or
3 (d) Any federal or out-of-state conviction for an offense that
4 under the laws of this state would be a felony classified as a sex
5 offense under (a) of this subsection.
6 ~~((43))~~ (44) "Sexual motivation" means that one of the purposes
7 for which the defendant committed the crime was for the purpose of his
8 or her sexual gratification.
9 ~~((44))~~ (45) "Standard sentence range" means the sentencing
10 court's discretionary range in imposing a nonappealable sentence.
11 ~~((45))~~ (46) "Statutory maximum sentence" means the maximum length
12 of time for which an offender may be confined as punishment for a crime
13 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
14 the crime, or other statute defining the maximum penalty for a crime.
15 ~~((46))~~ (47) "Stranger" means that the victim did not know the
16 offender twenty-four hours before the offense.
17 ~~((47))~~ (48) "Total confinement" means confinement inside the
18 physical boundaries of a facility or institution operated or utilized
19 under contract by the state or any other unit of government for twenty-
20 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
21 ~~((48))~~ (49) "Transition training" means written and verbal
22 instructions and assistance provided by the department to the offender
23 during the two weeks prior to the offender's successful completion of
24 the work ethic camp program. The transition training shall include
25 instructions in the offender's requirements and obligations during the
26 offender's period of community custody.
27 ~~((49))~~ (50) "Victim" means any person who has sustained
28 emotional, psychological, physical, or financial injury to person or
29 property as a direct result of the crime charged.
30 ~~((50))~~ (51) "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 ~~((+51+))~~ (52) "Work crew" means a program of partial confinement
23 consisting of civic improvement tasks for the benefit of the community
24 that complies with RCW 9.94A.725.

25 ~~((+52+))~~ (53) "Work ethic camp" means an alternative incarceration
26 program as provided in RCW 9.94A.690 designed to reduce recidivism and
27 lower 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 ~~((+53+))~~ (54) "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. 2.** RCW 9.94A.411 and 2006 c 271 s 1 and 2006 c 73 s 13 are
36 each reenacted and amended to read as follows:

37 (1) Decision not to prosecute.

1 STANDARD: A prosecuting attorney may decline to prosecute, even
2 though technically sufficient evidence to prosecute exists, in
3 situations where prosecution would serve no public purpose, would
4 defeat the underlying purpose of the law in question or would result in
5 decreased respect for the law.

6 GUIDELINE/COMMENTARY:

7 Examples

8 The following are examples of reasons not to prosecute which could
9 satisfy the standard.

10 (a) Contrary to Legislative Intent - It may be proper to decline to
11 charge where the application of criminal sanctions would be clearly
12 contrary to the intent of the legislature in enacting the particular
13 statute.

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

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

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

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

21 (iv) The statute has not been recently reconsidered by the
22 legislature.

23 This reason is not to be construed as the basis for declining cases
24 because the law in question is unpopular or because it is difficult to
25 enforce.

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

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

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

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

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

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

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

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

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

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

11 (f) High Disproportionate Cost of Prosecution - It may be proper to
12 decline to charge where the cost of locating or transporting, or the
13 burden on, prosecution witnesses is highly disproportionate to the
14 importance of prosecuting the offense in question. This reason should
15 be limited to minor cases and should not be relied upon in serious
16 cases.

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

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

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

30 (i) Assault cases where the victim has suffered little or no
31 injury;

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

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

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

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

1 Notification

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

4 (2) Decision to prosecute.

5 (a) STANDARD:

6 Crimes against persons will be filed if sufficient admissible
7 evidence exists, which, when considered with the most plausible,
8 reasonably foreseeable defense that could be raised under the evidence,
9 would justify conviction by a reasonable and objective fact-finder.
10 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
11 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
12 9A.64.020 the prosecutor should avoid prefiling agreements or
13 diversions intended to place the accused in a program of treatment or
14 counseling, so that treatment, if determined to be beneficial, can be
15 provided pursuant to RCW 9.94A.670.

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

21 See table below for the crimes within these categories.

22 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

23 CRIMES ((~~AGAINST~~)) AFFECTING PERSONS

24 Aggravated Murder

25 1st Degree Murder

26 2nd Degree Murder

27 1st Degree Manslaughter

28 2nd Degree Manslaughter

29 1st Degree Kidnapping

30 2nd Degree Kidnapping

31 1st Degree Assault

32 2nd Degree Assault

33 3rd Degree Assault

34 1st Degree Assault of a Child

35 2nd Degree Assault of a Child

36 3rd Degree Assault of a Child

37 1st Degree Rape

38 2nd Degree Rape

1 3rd Degree Rape
2 1st Degree Rape of a Child
3 2nd Degree Rape of a Child
4 3rd Degree Rape of a Child
5 1st Degree Robbery
6 2nd Degree Robbery
7 1st Degree Arson
8 1st Degree Burglary
9 1st Degree Identity Theft
10 2nd Degree Identity Theft
11 1st Degree Extortion
12 2nd Degree Extortion
13 Indecent Liberties
14 Incest
15 Vehicular Homicide
16 Vehicular Assault
17 1st Degree Child Molestation
18 2nd Degree Child Molestation
19 3rd Degree Child Molestation
20 1st Degree Promoting Prostitution
21 Intimidating a Juror
22 Communication with a Minor
23 Intimidating a Witness
24 Intimidating a Public Servant
25 Bomb Threat (if against person)
26 Unlawful Imprisonment
27 Promoting a Suicide Attempt
28 Riot (if against person)
29 Stalking
30 Custodial Assault
31 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
32 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
33 Counterfeiting (if a violation of RCW 9.16.035(4))
34 Felony Driving a Motor Vehicle While Under the Influence of
35 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
36 Felony Physical Control of a Motor Vehicle While Under the
37 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
38 CRIMES AGAINST PROPERTY/OTHER CRIMES

1 2nd Degree Arson
2 1st Degree Escape
3 2nd Degree Escape
4 2nd Degree Burglary
5 1st Degree Theft
6 2nd Degree Theft
7 1st Degree Perjury
8 2nd Degree Perjury
9 1st Degree Introducing Contraband
10 2nd Degree Introducing Contraband
11 1st Degree Possession of Stolen Property
12 2nd Degree Possession of Stolen Property
13 Bribery
14 Bribing a Witness
15 Bribe received by a Witness
16 Bomb Threat (if against property)
17 1st Degree Malicious Mischief
18 2nd Degree Malicious Mischief
19 1st Degree Reckless Burning
20 Taking a Motor Vehicle without Authorization
21 Forgery
22 2nd Degree Promoting Prostitution
23 Tampering with a Witness
24 Trading in Public Office
25 Trading in Special Influence
26 Receiving/Granting Unlawful Compensation
27 Bigamy
28 Eluding a Pursuing Police Vehicle
29 Willful Failure to Return from Furlough
30 Escape from Community Custody
31 Riot (if against property)
32 1st Degree Theft of Livestock
33 2nd Degree Theft of Livestock

34 ALL OTHER UNCLASSIFIED FELONIES

35 Selection of Charges/Degree of Charge

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

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

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

4 (ii) The prosecutor should not overcharge to obtain a guilty plea.
5 Overcharging includes:

6 (A) Charging a higher degree;

7 (B) Charging additional counts.

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

14 (b) GUIDELINES/COMMENTARY:

15 (i) Police Investigation

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

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

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

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

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

30 (ii) Exceptions

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

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

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

36 (C) The arrest of the suspect is necessary to complete the
37 investigation of the crime.

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

6 (iii) Investigation Techniques

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

9 (A) Polygraph testing;

10 (B) Hypnosis;

11 (C) Electronic surveillance;

12 (D) Use of informants.

13 (iv) Pre-Filing Discussions with Defendant

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

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

18 Discussions with the victim(s) or victims' representatives
19 regarding the selection or disposition of charges may occur before the
20 filing of charges. The discussions may be considered by the prosecutor
21 in charging and disposition decisions, and should be considered before
22 reaching any agreement with the defendant regarding these decisions.

23 **Sec. 3.** RCW 9.94A.421 and 1995 c 288 s 1 are each amended to read
24 as follows:

25 The prosecutor and the attorney for the defendant, or the defendant
26 when acting pro se, may engage in discussions with a view toward
27 reaching an agreement that, upon the entering of a plea to a charged
28 offense or to a lesser or related offense, the prosecutor will do any
29 of the following:

30 (1) Move for dismissal of other charges or counts;

31 (2) Recommend a particular sentence within the sentence range
32 applicable to the offense or offenses to which the offender pled
33 guilty;

34 (3) Recommend a particular sentence outside of the sentence range;

35 (4) Agree to file a particular charge or count;

36 (5) Agree not to file other charges or counts; or

1 (6) Make any other promise to the defendant, except that in no
2 instance may the prosecutor agree not to allege prior convictions.

3 In a case involving a crime (~~against~~) affecting persons as
4 defined in RCW 9.94A.411, the prosecutor shall make reasonable efforts
5 to inform the victim of the violent offense of the nature of and
6 reasons for the plea agreement, including all offenses the prosecutor
7 has agreed not to file, and ascertain any objections or comments the
8 victim has to the plea agreement.

9 The court shall not participate in any discussions under this
10 section.

11 **Sec. 4.** RCW 9.94A.431 and 1995 c 288 s 2 are each amended to read
12 as follows:

13 (1) If a plea agreement has been reached by the prosecutor and the
14 defendant pursuant to RCW 9.94A.421, they shall at the time of the
15 defendant's plea state to the court, on the record, the nature of the
16 agreement and the reasons for the agreement. The prosecutor shall
17 inform the court on the record whether the victim or victims of all
18 crimes (~~against~~) affecting persons, as defined in RCW 9.94A.411,
19 covered by the plea agreement have expressed any objections to or
20 comments on the nature of and reasons for the plea agreement. The
21 court, at the time of the plea, shall determine if the agreement is
22 consistent with the interests of justice and with the prosecuting
23 standards. If the court determines it is not consistent with the
24 interests of justice and with the prosecuting standards, the court
25 shall, on the record, inform the defendant and the prosecutor that they
26 are not bound by the agreement and that the defendant may withdraw the
27 defendant's plea of guilty, if one has been made, and enter a plea of
28 not guilty.

29 (2) The sentencing judge is not bound by any recommendations
30 contained in an allowed plea agreement and the defendant shall be so
31 informed at the time of plea.

32 **Sec. 5.** RCW 9.94A.470 and 2002 c 290 s 14 are each amended to read
33 as follows:

34 Notwithstanding the current placement or listing of crimes in
35 categories or classifications of prosecuting standards for deciding to
36 prosecute under RCW 9.94A.411(2), any and all felony crimes involving

1 any deadly weapon special verdict under RCW 9.94A.602, any deadly
2 weapon enhancements under RCW 9.94A.533 (3) or (4), or both, and any
3 and all felony crimes as defined in RCW 9.94A.533 (3)(f) or (4)(f), or
4 both, which are excluded from the deadly weapon enhancements shall all
5 be treated as crimes against a person and subject to the prosecuting
6 standards for deciding to prosecute under RCW 9.94A.411(2) as crimes
7 (~~against~~) affecting persons.

8 **Sec. 6.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read
9 as follows:

10 (1) When the department performs a risk assessment pursuant to RCW
11 9.94A.500, or to determine a person's conditions of supervision, the
12 risk assessment shall classify the offender or a probationer sentenced
13 in superior court into one of at least four risk categories.

14 (2) The department shall supervise every offender sentenced to a
15 term of community custody, community placement, or community
16 supervision and every misdemeanor and gross misdemeanor probationer
17 ordered by a superior court to probation under the supervision of the
18 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

19 (a) Whose risk assessment places that offender or probationer in
20 one of the two highest risk categories; or

21 (b) Regardless of the offender's or probationer's risk category if:

22 (i) The offender's or probationer's current conviction is for:

23 (A) A sex offense;

24 (B) A violent offense;

25 (C) A crime against persons as defined in RCW (~~9.94A.411~~)
26 9.94A.030;

27 (D) A felony that is domestic violence as defined in RCW 10.99.020;

28 (E) A violation of RCW 9A.52.025 (residential burglary);

29 (F) A violation of, or an attempt, solicitation, or conspiracy to
30 violate, RCW 69.50.401 by manufacture or delivery or possession with
31 intent to deliver methamphetamine; or

32 (G) A violation of, or an attempt, solicitation, or conspiracy to
33 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

34 (ii) The offender or probationer has a prior conviction for:

35 (A) A sex offense;

36 (B) A violent offense;

1 (C) A crime against persons as defined in RCW ((9.94A.411))
2 9.94A.030;

3 (D) A felony that is domestic violence as defined in RCW 10.99.020;

4 (E) A violation of RCW 9A.52.025 (residential burglary);

5 (F) A violation of, or an attempt, solicitation, or conspiracy to
6 violate, RCW 69.50.401 by manufacture or delivery or possession with
7 intent to deliver methamphetamine; or

8 (G) A violation of, or an attempt, solicitation, or conspiracy to
9 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

10 (iii) The conditions of the offender's community custody, community
11 placement, or community supervision or the probationer's supervision
12 include chemical dependency treatment;

13 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;
14 or

15 (v) The offender is subject to supervision pursuant to RCW
16 9.94A.745.

17 (3) The department is not authorized to, and may not, supervise any
18 offender sentenced to a term of community custody, community placement,
19 or community supervision or any probationer unless the offender or
20 probationer is one for whom supervision is required under subsection
21 (2) of this section.

22 (4) This section expires July 1, 2010.

23 **Sec. 7.** RCW 9.94A.545 and 2006 c 128 s 4 are each amended to read
24 as follows:

25 (1) Except as provided in RCW 9.94A.650 and in subsection (2) of
26 this section, on all sentences of confinement for one year or less, in
27 which the offender is convicted of a sex offense, a violent offense, a
28 crime against ((a person under RCW 9.94A.411)) persons as defined in
29 RCW 9.94A.030, or felony violation of chapter 69.50 or 69.52 RCW or an
30 attempt, conspiracy, or solicitation to commit such a crime, the court
31 may impose up to one year of community custody, subject to conditions
32 and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An
33 offender shall be on community custody as of the date of sentencing.
34 However, during the time for which the offender is in total or partial
35 confinement pursuant to the sentence or a violation of the sentence,
36 the period of community custody shall toll.

1 (2) If the offender is guilty of failure to register under RCW
2 9A.44.130(~~(+10+)~~) (11)(a), the court shall impose a term of community
3 custody under RCW 9.94A.715.

4 **Sec. 8.** RCW 9.94A.640 and 2006 c 73 s 8 are each amended to read
5 as follows:

6 (1) Every offender who has been discharged under RCW 9.94A.637 may
7 apply to the sentencing court for a vacation of the offender's record
8 of conviction. If the court finds the offender meets the tests
9 prescribed in subsection (2) of this section, the court may clear the
10 record of conviction by: (a) Permitting the offender to withdraw the
11 offender's plea of guilty and to enter a plea of not guilty; or (b) if
12 the offender has been convicted after a plea of not guilty, by the
13 court setting aside the verdict of guilty; and (c) by the court
14 dismissing the information or indictment against the offender.

15 (2) An offender may not have the record of conviction cleared if:
16 (a) There are any criminal charges against the offender pending in any
17 court of this state or another state, or in any federal court; (b) the
18 offense was a violent offense as defined in RCW 9.94A.030; (c) the
19 offense was a crime against children or other persons as defined in RCW
20 43.43.830; (d) the offender has been convicted of a new crime in this
21 state, another state, or federal court since the date of the offender's
22 discharge under RCW 9.94A.637; (e) the offense is a class B felony and
23 less than ten years have passed since the date the applicant was
24 discharged under RCW 9.94A.637; (f) the offense was a class C felony,
25 other than a class C felony described in RCW 46.61.502(6) or
26 46.61.504(6), and less than five years have passed since the date the
27 applicant was discharged under RCW 9.94A.637; or (g) the offense was a
28 class C felony described in RCW 46.61.502(6) or 46.61.504(6) and less
29 than ten years have passed since the applicant was discharged under RCW
30 9.94A.637.

31 (3) Once the court vacates a record of conviction under subsection
32 (1) of this section, the fact that the offender has been convicted of
33 the offense shall not be included in the offender's criminal history
34 for purposes of determining a sentence in any subsequent conviction,
35 and the offender shall be released from all penalties and disabilities
36 resulting from the offense. For all purposes, including responding to
37 questions on employment applications, an offender whose conviction has

1 been vacated may state that the offender has never been convicted of
2 that crime. Nothing in this section affects or prevents the use of an
3 offender's prior conviction in a later criminal prosecution.

4 **Sec. 9.** RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are
5 each reenacted and amended to read as follows:

6 (1) When a court sentences a person to the custody of the
7 department for a sex offense not sentenced under RCW 9.94A.712, a
8 violent offense, any crime against persons (~~under RCW 9.94A.411(2))~~)
9 as defined in RCW 9.94A.030, or a felony offense under chapter 69.50 or
10 69.52 RCW, committed on or after July 1, 2000, or when a court
11 sentences a person to a term of confinement of one year or less for a
12 violation of RCW 9A.44.130(~~(+10)~~) (11)(a) committed on or after June
13 7, 2006, the court shall in addition to the other terms of the
14 sentence, sentence the offender to community custody for the community
15 custody range established under RCW 9.94A.850 or up to the period of
16 earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever
17 is longer. The community custody shall begin: (a) Upon completion of
18 the term of confinement; (b) at such time as the offender is
19 transferred to community custody in lieu of earned release in
20 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
21 offenders sentenced under RCW 9.94A.660, upon failure to complete or
22 administrative termination from the special drug offender sentencing
23 alternative program. Except as provided in RCW 9.94A.501, the
24 department shall supervise any sentence of community custody imposed
25 under this section.

26 (2)(a) Unless a condition is waived by the court, the conditions of
27 community custody shall include those provided for in RCW 9.94A.700(4).
28 The conditions may also include those provided for in RCW 9.94A.700(5).
29 The court may also order the offender to participate in rehabilitative
30 programs or otherwise perform affirmative conduct reasonably related to
31 the circumstances of the offense, the offender's risk of reoffending,
32 or the safety of the community, and the department shall enforce such
33 conditions pursuant to subsection (6) of this section.

34 (b) As part of any sentence that includes a term of community
35 custody imposed under this subsection, the court shall also require the
36 offender to comply with any conditions imposed by the department under
37 RCW 9.94A.720. The department shall assess the offender's risk of

1 reoffense and may establish and modify additional conditions of the
2 offender's community custody based upon the risk to community safety.
3 In addition, the department may require the offender to participate in
4 rehabilitative programs, or otherwise perform affirmative conduct, and
5 to obey all laws. The department may impose electronic monitoring as
6 a condition of community custody for an offender sentenced to a term of
7 community custody under this section pursuant to a conviction for a sex
8 offense. Within the resources made available by the department for
9 this purpose, the department shall carry out any electronic monitoring
10 imposed under this section using the most appropriate technology given
11 the individual circumstances of the offender. As used in this section,
12 "electronic monitoring" means the monitoring of an offender using an
13 electronic offender tracking system including, but not limited to, a
14 system using radio frequency or active or passive global positioning
15 system technology.

16 (c) The department may not impose conditions that are contrary to
17 those ordered by the court and may not contravene or decrease court
18 imposed conditions. The department shall notify the offender in
19 writing of any such conditions or modifications. In setting,
20 modifying, and enforcing conditions of community custody, the
21 department shall be deemed to be performing a quasi-judicial function.

22 (3) If an offender violates conditions imposed by the court or the
23 department pursuant to this section during community custody, the
24 department may transfer the offender to a more restrictive confinement
25 status and impose other available sanctions as provided in RCW
26 9.94A.737 and 9.94A.740.

27 (4) Except for terms of community custody under RCW 9.94A.670, the
28 department shall discharge the offender from community custody on a
29 date determined by the department, which the department may modify,
30 based on risk and performance of the offender, within the range or at
31 the end of the period of earned release, whichever is later.

32 (5) At any time prior to the completion or termination of a sex
33 offender's term of community custody, if the court finds that public
34 safety would be enhanced, the court may impose and enforce an order
35 extending any or all of the conditions imposed pursuant to this section
36 for a period up to the maximum allowable sentence for the crime as it
37 is classified in chapter 9A.20 RCW, regardless of the expiration of the
38 offender's term of community custody. If a violation of a condition

1 extended under this subsection occurs after the expiration of the
2 offender's term of community custody, it shall be deemed a violation of
3 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
4 contempt of court as provided for in RCW 7.21.040. If the court
5 extends a condition beyond the expiration of the term of community
6 custody, the department is not responsible for supervision of the
7 offender's compliance with the condition.

8 (6) Within the funds available for community custody, the
9 department shall determine conditions and duration of community custody
10 on the basis of risk to community safety, and shall supervise offenders
11 during community custody on the basis of risk to community safety and
12 conditions imposed by the court. The secretary shall adopt rules to
13 implement the provisions of this subsection.

14 (7) By the close of the next business day after receiving notice of
15 a condition imposed or modified by the department, an offender may
16 request an administrative review under rules adopted by the department.
17 The condition shall remain in effect unless the reviewing officer finds
18 that it is not reasonably related to any of the following: (a) The
19 crime of conviction; (b) the offender's risk of reoffending; or (c) the
20 safety of the community.

21 **Sec. 10.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to
22 read as follows:

23 No person serving a sentence imposed pursuant to this chapter and
24 committed to the custody of the department shall leave the confines of
25 the correctional facility or be released prior to the expiration of the
26 sentence except as follows:

27 (1) Except as otherwise provided for in subsection (2) of this
28 section, the term of the sentence of an offender committed to a
29 correctional facility operated by the department may be reduced by
30 earned release time in accordance with procedures that shall be
31 developed and promulgated by the correctional agency having
32 jurisdiction in which the offender is confined. The earned release
33 time shall be for good behavior and good performance, as determined by
34 the correctional agency having jurisdiction. The correctional agency
35 shall not credit the offender with earned release credits in advance of
36 the offender actually earning the credits. Any program established
37 pursuant to this section shall allow an offender to earn early release

1 credits for presentence incarceration. If an offender is transferred
2 from a county jail to the department, the administrator of a county
3 jail facility shall certify to the department the amount of time spent
4 in custody at the facility and the amount of earned release time. An
5 offender who has been convicted of a felony committed after July 23,
6 1995, that involves any applicable deadly weapon enhancements under RCW
7 9.94A.533 (3) or (4), or both, shall not receive any good time credits
8 or earned release time for that portion of his or her sentence that
9 results from any deadly weapon enhancements.

10 (a) In the case of an offender convicted of a serious violent
11 offense, or a sex offense that is a class A felony, committed on or
12 after July 1, 1990, and before July 1, 2003, the aggregate earned
13 release time may not exceed fifteen percent of the sentence. In the
14 case of an offender convicted of a serious violent offense, or a sex
15 offense that is a class A felony, committed on or after July 1, 2003,
16 the aggregate earned release time may not exceed ten percent of the
17 sentence.

18 (b)(i) In the case of an offender who qualifies under (b)(ii) of
19 this subsection, the aggregate earned release time may not exceed fifty
20 percent of the sentence.

21 (ii) An offender is qualified to earn up to fifty percent of
22 aggregate earned release time under this subsection (1)(b) if he or
23 she:

24 (A) Is classified in one of the two lowest risk categories under
25 (b)(iii) of this subsection;

26 (B) Is not confined pursuant to a sentence for:

27 (I) A sex offense;

28 (II) A violent offense;

29 (III) A crime against persons as defined in RCW (~~9.94A.411~~)
30 9.94A.030;

31 (IV) A felony that is domestic violence as defined in RCW
32 10.99.020;

33 (V) A violation of RCW 9A.52.025 (residential burglary);

34 (VI) A violation of, or an attempt, solicitation, or conspiracy to
35 violate, RCW 69.50.401 by manufacture or delivery or possession with
36 intent to deliver methamphetamine; or

37 (VII) A violation of, or an attempt, solicitation, or conspiracy to
38 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

1 (C) Has no prior conviction for:
2 (I) A sex offense;
3 (II) A violent offense;
4 (III) A crime against persons as defined in RCW (~~9.94A.411~~)
5 9.94A.030;
6 (IV) A felony that is domestic violence as defined in RCW
7 10.99.020;
8 (V) A violation of RCW 9A.52.025 (residential burglary);
9 (VI) A violation of, or an attempt, solicitation, or conspiracy to
10 violate, RCW 69.50.401 by manufacture or delivery or possession with
11 intent to deliver methamphetamine; or
12 (VII) A violation of, or an attempt, solicitation, or conspiracy to
13 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
14 (D) Participates in programming or activities as directed by the
15 offender's individual reentry plan as provided under RCW 72.09.270 to
16 the extent that such programming or activities are made available by
17 the department; and
18 (E) Has not committed a new felony after July 22, 2007, while under
19 community supervision, community placement, or community custody.
20 (iii) For purposes of determining an offender's eligibility under
21 this subsection (1)(b), the department shall perform a risk assessment
22 of every offender committed to a correctional facility operated by the
23 department who has no current or prior conviction for a sex offense, a
24 violent offense, a crime against persons as defined in RCW
25 (~~9.94A.411~~) 9.94A.030, a felony that is domestic violence as defined
26 in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary),
27 a violation of, or an attempt, solicitation, or conspiracy to violate,
28 RCW 69.50.401 by manufacture or delivery or possession with intent to
29 deliver methamphetamine, or a violation of, or an attempt,
30 solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a
31 controlled substance to a minor). The department must classify each
32 assessed offender in one of four risk categories between highest and
33 lowest risk.
34 (iv) The department shall recalculate the earned release time and
35 reschedule the expected release dates for each qualified offender under
36 this subsection (1)(b).
37 (v) This subsection (1)(b) applies retroactively to eligible

1 offenders serving terms of total confinement in a state correctional
2 facility as of July 1, 2003.

3 (vi) This subsection (1)(b) does not apply to offenders convicted
4 after July 1, 2010.

5 (c) In no other case shall the aggregate earned release time exceed
6 one-third of the total sentence;

7 (2)(a) A person convicted of a sex offense or an offense
8 categorized as a serious violent offense, assault in the second degree,
9 vehicular homicide, vehicular assault, assault of a child in the second
10 degree, any crime against persons where it is determined in accordance
11 with RCW 9.94A.602 that the offender or an accomplice was armed with a
12 deadly weapon at the time of commission, or any felony offense under
13 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
14 eligible, in accordance with a program developed by the department, for
15 transfer to community custody status in lieu of earned release time
16 pursuant to subsection (1) of this section;

17 (b) A person convicted of a sex offense, a violent offense, any
18 crime against persons (~~((under RCW 9.94A.411(2)))~~) as defined in RCW
19 9.94A.030, or a felony offense under chapter 69.50 or 69.52 RCW,
20 committed on or after July 1, 2000, may become eligible, in accordance
21 with a program developed by the department, for transfer to community
22 custody status in lieu of earned release time pursuant to subsection
23 (1) of this section;

24 (c) The department shall, as a part of its program for release to
25 the community in lieu of earned release, require the offender to
26 propose a release plan that includes an approved residence and living
27 arrangement. All offenders with community placement or community
28 custody terms eligible for release to community custody status in lieu
29 of earned release shall provide an approved residence and living
30 arrangement prior to release to the community;

31 (d) The department may deny transfer to community custody status in
32 lieu of earned release time pursuant to subsection (1) of this section
33 if the department determines an offender's release plan, including
34 proposed residence location and living arrangements, may violate the
35 conditions of the sentence or conditions of supervision, place the
36 offender at risk to violate the conditions of the sentence, place the
37 offender at risk to reoffend, or present a risk to victim safety or
38 community safety. The department's authority under this section is

1 independent of any court-ordered condition of sentence or statutory
2 provision regarding conditions for community custody or community
3 placement;

4 (e) If the department denies transfer to community custody status
5 in lieu of earned early release pursuant to (d) of this subsection, the
6 department may transfer an offender to partial confinement in lieu of
7 earned early release up to three months. The three months in partial
8 confinement is in addition to that portion of the offender's term of
9 confinement that may be served in partial confinement as provided in
10 this section;

11 (f) An offender serving a term of confinement imposed under RCW
12 9.94A.670(4)(a) is not eligible for earned release credits under this
13 section;

14 (3) An offender may leave a correctional facility pursuant to an
15 authorized furlough or leave of absence. In addition, offenders may
16 leave a correctional facility when in the custody of a corrections
17 officer or officers;

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

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

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

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

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

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

37 (d) The secretary may revoke an extraordinary medical placement
38 under this subsection at any time;

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

5 (6) No more than the final six months of the offender's term of
6 confinement may be served in partial confinement designed to aid the
7 offender in finding work and reestablishing himself or herself in the
8 community. This is in addition to that period of earned early release
9 time that may be exchanged for partial confinement pursuant to
10 subsection (2)(e) of this section;

11 (7) The governor may pardon any offender;

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

15 (9) An offender may leave a correctional facility prior to
16 completion of his or her sentence if the sentence has been reduced as
17 provided in RCW 9.94A.870.

18 Notwithstanding any other provisions of this section, an offender
19 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
20 mandatory minimum sentence of total confinement shall not be released
21 from total confinement before the completion of the listed mandatory
22 minimum sentence for that felony crime of conviction unless allowed
23 under RCW 9.94A.540, however persistent offenders are not eligible for
24 extraordinary medical placement.

25 **Sec. 11.** RCW 10.77.092 and 2004 c 157 s 3 are each amended to read
26 as follows:

27 (1) For purposes of determining whether a court may authorize
28 involuntary medication for the purpose of competency restoration
29 pursuant to RCW 10.77.090, a pending charge involving any one or more
30 of the following crimes is a serious offense per se in the context of
31 competency restoration:

32 (a) Any violent offense, sex offense, serious traffic offense,
33 crimes against persons, and most serious offense, as those terms are
34 defined in RCW 9.94A.030;

35 (b) ~~((Any offense, except nonfelony counterfeiting offenses,
36 included in crimes against persons in RCW 9.94A.411;~~

1 ~~(e)~~) Any offense contained in chapter 9.41 RCW (firearms and
2 dangerous weapons);

3 ~~((d))~~ (c) Any offense listed as domestic violence in RCW
4 10.99.020;

5 ~~((e))~~ (d) Any offense listed as a harassment offense in chapter
6 9A.46 RCW;

7 ~~((f))~~ (e) Any violation of chapter 69.50 RCW that is a class B
8 felony; or

9 ~~((g))~~ (f) Any city or county ordinance or statute that is
10 equivalent to an offense referenced in this subsection.

11 (2)(a) In a particular case, a court may determine that a pending
12 charge not otherwise defined as serious by state or federal law or by
13 a city or county ordinance is, nevertheless, a serious offense within
14 the context of competency restoration treatment when the conduct in the
15 charged offense falls within the standards established in (b) of this
16 subsection.

17 (b) To determine that the particular case is a serious offense
18 within the context of competency restoration, the court must consider
19 the following factors and determine that one or more of the following
20 factors creates a situation in which the offense is serious:

21 (i) The charge includes an allegation that the defendant actually
22 inflicted bodily or emotional harm on another person or that the
23 defendant created a reasonable apprehension of bodily or emotional harm
24 to another;

25 (ii) The extent of the impact of the alleged offense on the basic
26 human need for security of the citizens within the jurisdiction;

27 (iii) The number and nature of related charges pending against the
28 defendant;

29 (iv) The length of potential confinement if the defendant is
30 convicted; and

31 (v) The number of potential and actual victims or persons impacted
32 by the defendant's alleged acts.

33 **Sec. 12.** RCW 10.97.050 and 2005 c 421 s 9 are each amended to read
34 as follows:

35 (1) Conviction records may be disseminated without restriction.

36 (2) Any criminal history record information which pertains to an
37 incident that occurred within the last twelve months for which a person

1 is currently being processed by the criminal justice system, including
2 the entire period of correctional supervision extending through final
3 discharge from parole, when applicable, may be disseminated without
4 restriction with the exception of a record being disseminated in
5 response to a request for a conviction record under RCW 43.43.832. A
6 request for a conviction record under RCW 43.43.832 shall not contain
7 information for a person who, within the last twelve months, is
8 currently being processed by the criminal justice system unless it
9 pertains to information relating to a crime against a person as defined
10 in RCW (~~(9.94A.411)~~) 9.94A.030.

11 (3) Criminal history record information which includes
12 nonconviction data may be disseminated by a criminal justice agency to
13 another criminal justice agency for any purpose associated with the
14 administration of criminal justice, or in connection with the
15 employment of the subject of the record by a criminal justice or
16 juvenile justice agency. A criminal justice agency may respond to any
17 inquiry from another criminal justice agency without any obligation to
18 ascertain the purpose for which the information is to be used by the
19 agency making the inquiry.

20 (4) Criminal history record information which includes
21 nonconviction data may be disseminated by a criminal justice agency to
22 implement a statute, ordinance, executive order, or a court rule,
23 decision, or order which expressly refers to records of arrest,
24 charges, or allegations of criminal conduct or other nonconviction data
25 and authorizes or directs that it be available or accessible for a
26 specific purpose.

27 (5) Criminal history record information which includes
28 nonconviction data may be disseminated to individuals and agencies
29 pursuant to a contract with a criminal justice agency to provide
30 services related to the administration of criminal justice. Such
31 contract must specifically authorize access to criminal history record
32 information, but need not specifically state that access to
33 nonconviction data is included. The agreement must limit the use of
34 the criminal history record information to stated purposes and insure
35 the confidentiality and security of the information consistent with
36 state law and any applicable federal statutes and regulations.

37 (6) Criminal history record information which includes
38 nonconviction data may be disseminated to individuals and agencies for

1 the express purpose of research, evaluative, or statistical activities
2 pursuant to an agreement with a criminal justice agency. Such
3 agreement must authorize the access to nonconviction data, limit the
4 use of that information which identifies specific individuals to
5 research, evaluative, or statistical purposes, and contain provisions
6 giving notice to the person or organization to which the records are
7 disseminated that the use of information obtained therefrom and further
8 dissemination of such information are subject to the provisions of this
9 chapter and applicable federal statutes and regulations, which shall be
10 cited with express reference to the penalties provided for a violation
11 thereof.

12 (7) Every criminal justice agency that maintains and disseminates
13 criminal history record information must maintain information
14 pertaining to every dissemination of criminal history record
15 information except a dissemination to the effect that the agency has no
16 record concerning an individual. Information pertaining to
17 disseminations shall include:

18 (a) An indication of to whom (agency or person) criminal history
19 record information was disseminated;

20 (b) The date on which the information was disseminated;

21 (c) The individual to whom the information relates; and

22 (d) A brief description of the information disseminated.

23 The information pertaining to dissemination required to be
24 maintained shall be retained for a period of not less than one year.

25 (8) In addition to the other provisions in this section allowing
26 dissemination of criminal history record information, RCW 4.24.550
27 governs dissemination of information concerning offenders who commit
28 sex offenses as defined by RCW 9.94A.030. Criminal justice agencies,
29 their employees, and officials shall be immune from civil liability for
30 dissemination on criminal history record information concerning sex
31 offenders as provided in RCW 4.24.550.

32 **Sec. 13.** RCW 13.40.070 and 2003 c 53 s 98 are each amended to read
33 as follows:

34 (1) Complaints referred to the juvenile court alleging the
35 commission of an offense shall be referred directly to the prosecutor.
36 The prosecutor, upon receipt of a complaint, shall screen the complaint
37 to determine whether:

1 (a) The alleged facts bring the case within the jurisdiction of the
2 court; and

3 (b) On a basis of available evidence there is probable cause to
4 believe that the juvenile did commit the offense.

5 (2) If the identical alleged acts constitute an offense under both
6 the law of this state and an ordinance of any city or county of this
7 state, state law shall govern the prosecutor's screening and charging
8 decision for both filed and diverted cases.

9 (3) If the requirements of subsections (1)(a) and (b) of this
10 section are met, the prosecutor shall either file an information in
11 juvenile court or divert the case, as set forth in subsections (5),
12 (6), and (7) of this section. If the prosecutor finds that the
13 requirements of subsection (1)(a) and (b) of this section are not met,
14 the prosecutor shall maintain a record, for one year, of such decision
15 and the reasons therefor. In lieu of filing an information or
16 diverting an offense a prosecutor may file a motion to modify community
17 supervision where such offense constitutes a violation of community
18 supervision.

19 (4) An information shall be a plain, concise, and definite written
20 statement of the essential facts constituting the offense charged. It
21 shall be signed by the prosecuting attorney and conform to chapter
22 10.37 RCW.

23 (5) Where a case is legally sufficient, the prosecutor shall file
24 an information with the juvenile court if:

25 (a) An alleged offender is accused of a class A felony, a class B
26 felony, an attempt to commit a class B felony, a class C felony listed
27 in RCW (~~(9.94A.411(2))~~) 9.94A.030 as a crime against persons or listed
28 in RCW 9A.46.060 as a crime of harassment, or a class C felony that is
29 a violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

30 (b) An alleged offender is accused of a felony and has a criminal
31 history of any felony, or at least two gross misdemeanors, or at least
32 two misdemeanors; or

33 (c) An alleged offender has previously been committed to the
34 department; or

35 (d) An alleged offender has been referred by a diversion unit for
36 prosecution or desires prosecution instead of diversion; or

37 (e) An alleged offender has two or more diversion agreements on the
38 alleged offender's criminal history; or

1 (f) A special allegation has been filed that the offender or an
2 accomplice was armed with a firearm when the offense was committed.

3 (6) Where a case is legally sufficient the prosecutor shall divert
4 the case if the alleged offense is a misdemeanor or gross misdemeanor
5 or violation and the alleged offense is the offender's first offense or
6 violation. If the alleged offender is charged with a related offense
7 that must or may be filed under subsections (5) and (7) of this
8 section, a case under this subsection may also be filed.

9 (7) Where a case is legally sufficient and falls into neither
10 subsection (5) nor (6) of this section, it may be filed or diverted.
11 In deciding whether to file or divert an offense under this section the
12 prosecutor shall be guided only by the length, seriousness, and recency
13 of the alleged offender's criminal history and the circumstances
14 surrounding the commission of the alleged offense.

15 (8) Whenever a juvenile is placed in custody or, where not placed
16 in custody, referred to a diversion interview, the parent or legal
17 guardian of the juvenile shall be notified as soon as possible
18 concerning the allegation made against the juvenile and the current
19 status of the juvenile. Where a case involves victims of crimes
20 against persons or victims whose property has not been recovered at the
21 time a juvenile is referred to a diversion unit, the victim shall be
22 notified of the referral and informed how to contact the unit.

23 (9) The responsibilities of the prosecutor under subsections (1)
24 through (8) of this section may be performed by a juvenile court
25 probation counselor for any complaint referred to the court alleging
26 the commission of an offense which would not be a felony if committed
27 by an adult, if the prosecutor has given sufficient written notice to
28 the juvenile court that the prosecutor will not review such complaints.

29 (10) The prosecutor, juvenile court probation counselor, or
30 diversion unit may, in exercising their authority under this section or
31 RCW 13.40.080, refer juveniles to mediation or victim offender
32 reconciliation programs. Such mediation or victim offender
33 reconciliation programs shall be voluntary for victims.

34 **Sec. 14.** RCW 13.40.077 and 1997 c 338 s 18 are each amended to
35 read as follows:
36

37 RECOMMENDED PROSECUTING STANDARDS

1 FOR CHARGING AND PLEA DISPOSITIONS

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

7 Evidentiary sufficiency.

8 (1) Decision not to prosecute.

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

16 GUIDELINES/COMMENTARY:

17 Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Notification

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

13 (2) Decision to prosecute.

14 STANDARD:

15 Crimes (~~(against)~~) affecting persons will be filed if sufficient
16 admissible evidence exists, which, when considered with the most
17 plausible, reasonably foreseeable defense that could be raised under
18 the evidence, would justify conviction by a reasonable and objective
19 fact-finder. With regard to offenses prohibited by RCW 9A.44.040,
20 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,
21 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling
22 agreements or diversions intended to place the accused in a program of
23 treatment or counseling, so that treatment, if determined to be
24 beneficial, can be proved under RCW 13.40.160(~~(+4)~~) (3).

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

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

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

34 (3) Selection of Charges/Degree of Charge

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

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

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

4 (b) The prosecutor should not overcharge to obtain a guilty plea.
5 Overcharging includes:

6 (i) Charging a higher degree;

7 (ii) Charging additional counts.

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

14 (4) Police Investigation

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

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

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

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

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

29 (5) Exceptions

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

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

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

35 (c) The arrest of the suspect is necessary to complete the
36 investigation of the crime.

37 In the event that the exception to the standard is applied, the
38 prosecuting attorney shall obtain a commitment from the law enforcement

1 agency involved to complete the investigation in a timely manner. If
2 the subsequent investigation does not produce sufficient evidence to
3 meet the normal charging standard, the complaint should be dismissed.

4 (6) Investigation Techniques

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

- 7 (a) Polygraph testing;
- 8 (b) Hypnosis;
- 9 (c) Electronic surveillance;
- 10 (d) Use of informants.

11 (7) Prefiling Discussions with Defendant

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

15 (8) Plea dispositions:

16 STANDARD

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

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

25 (i) Evidentiary problems which make conviction of the original
26 charges doubtful;

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

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

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

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

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

36 (vii) The nature and seriousness of the offense or offenses
37 charged;

38 (viii) The probable effect of witnesses.

1 (c) No plea agreement shall be influenced by the race, gender,
2 religion, or creed of the respondent. This includes but is not limited
3 to the prosecutor's decision to utilize such disposition alternatives
4 as the Special Sex Offender Disposition Alternative, the Chemical
5 Dependency Disposition Alternative, and manifest injustice.

6 (9) Disposition recommendations:

7 STANDARD

8 The prosecutor may reach an agreement regarding disposition
9 recommendations.

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

12 **Sec. 15.** RCW 43.43.8321 and 2005 c 421 s 10 are each amended to
13 read as follows:

14 When the Washington state patrol disseminates conviction record
15 information in response to a request under RCW 43.43.832, it shall
16 clearly state that: (1) The conviction record data does not include
17 information on civil adjudications, administrative findings, or
18 disciplinary board final decisions and that all such information must
19 be obtained from the courts and licensing agencies; (2) the conviction
20 record that is being disseminated includes information for which a
21 person is currently being processed by the criminal justice system
22 relating to only crimes against a person as defined in RCW
23 (~~(9.94A.411)~~) 9.94A.030 and that it does not include any other current
24 or pending charge information for which a person could be in the
25 current process of being processed by the criminal justice system; and
26 (3) an arrest is not a conviction or a finding of guilt.

27 **Sec. 16.** RCW 43.43.842 and 2007 c 387 s 4 are each amended to read
28 as follows:

29 (1)(a) The secretary of social and health services and the
30 secretary of health shall adopt additional requirements for the
31 licensure or relicensure of agencies, facilities, and licensed
32 individuals who provide care and treatment to vulnerable adults,
33 including nursing pools registered under chapter 18.52C RCW. These
34 additional requirements shall ensure that any person associated with a
35 licensed agency or facility having unsupervised access with a
36 vulnerable adult shall not be the respondent in an active protective

1 order under RCW 74.34.130, nor have been: (i) Convicted of a crime
2 against children or other persons as defined in RCW 43.43.830, except
3 as provided in this section; (ii) convicted of crimes relating to
4 financial exploitation as defined in RCW 43.43.830, except as provided
5 in this section; or (iii) found in any disciplinary board final
6 decision to have abused a vulnerable adult under RCW 43.43.830.

7 (b) A person associated with a licensed agency or facility who has
8 unsupervised access with a vulnerable adult shall make the disclosures
9 specified in RCW 43.43.834(2). The person shall make the disclosures
10 in writing, sign, and swear to the contents under penalty of perjury.
11 The person shall, in the disclosures, specify all crimes against
12 children or other persons, all crimes relating to financial
13 exploitation, and all crimes relating to drugs as defined in RCW
14 43.43.830, committed by the person.

15 (2) The rules adopted under this section shall permit the licensee
16 to consider the criminal history of an applicant for employment in a
17 licensed facility when the applicant has one or more convictions for a
18 past offense and:

19 (a) The offense was simple assault, assault in the fourth degree,
20 or the same offense as it may be renamed, and three or more years have
21 passed between the most recent conviction and the date of application
22 for employment;

23 (b) The offense was prostitution, or the same offense as it may be
24 renamed, and three or more years have passed between the most recent
25 conviction and the date of application for employment;

26 (c) The offense was theft in the third degree, or the same offense
27 as it may be renamed, and three or more years have passed between the
28 most recent conviction and the date of application for employment;

29 (d) The offense was theft in the second degree, or the same offense
30 as it may be renamed, and five or more years have passed between the
31 most recent conviction and the date of application for employment;

32 (e) The offense was forgery, or the same offense as it may be
33 renamed, and five or more years have passed between the most recent
34 conviction and the date of application for employment.

35 The offenses set forth in (a) through (e) of this subsection do not
36 automatically disqualify an applicant from employment by a licensee.
37 Nothing in this section may be construed to require the employment of
38 any person against a licensee's judgment.

1 (3) In consultation with law enforcement personnel, the secretary
2 of social and health services and the secretary of health shall
3 investigate, or cause to be investigated, the conviction record and the
4 protection proceeding record information under this chapter of the
5 staff of each agency or facility under their respective jurisdictions
6 seeking licensure or relicensure. An individual responding to a
7 criminal background inquiry request from his or her employer or
8 potential employer shall disclose the information about his or her
9 criminal history under penalty of perjury. The secretaries shall use
10 the information solely for the purpose of determining eligibility for
11 licensure or relicensure. Criminal justice agencies shall provide the
12 secretaries such information as they may have and that the secretaries
13 may require for such purpose.

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