
HOUSE BILL 1145

State of Washington 61st Legislature 2009 Regular Session

By Representatives O'Brien, Pearson, Sells, Chase, Wallace, and Kelley

Read first time 01/14/09. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to creating the new crime of wrongfully removing or
2 tampering with an electronic monitoring device; amending RCW 9.94A.507;
3 reenacting and amending RCW 9.94A.515; adding a new section to chapter
4 9A.76 RCW; prescribing penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.76 RCW
7 to read as follows:

8 (1) A person is guilty of wrongfully removing or tampering with an
9 electronic monitoring device if he or she:

10 (a) Is being electronically monitored by the department of
11 corrections while serving a term of community custody imposed pursuant
12 to a conviction for a sex offense; and

13 (b) Without authorization from the department of corrections,
14 intentionally removes, attempts to remove, tampers with, or attempts to
15 tamper with any equipment being used in connection with the electronic
16 monitoring.

17 (2) Wrongfully removing or tampering with an electronic monitoring
18 device is a class B felony.

1 (3) For purposes of this section, "sex offense" has the same
2 meaning as defined in RCW 9.94A.030.

3 **Sec. 2.** RCW 9.94A.507 and 2008 c 231 s 33 are each amended to read
4 as follows:

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

7 (a) Is convicted of:

8 (i) Rape in the first degree, rape in the second degree, rape of a
9 child in the first degree, child molestation in the first degree, rape
10 of a child in the second degree, ~~((or))~~ indecent liberties by forcible
11 compulsion, or wrongfully removing or tampering with an electronic
12 monitoring device;

13 (ii) Any of the following offenses with a finding of sexual
14 motivation: Murder in the first degree, murder in the second degree,
15 homicide by abuse, kidnapping in the first degree, kidnapping in the
16 second degree, assault in the first degree, assault in the second
17 degree, assault of a child in the first degree, assault of a child in
18 the second degree, or burglary in the first degree; or

19 (iii) An attempt to commit any crime listed in this subsection
20 (1)(a); or

21 (b) Has a prior conviction for an offense listed in RCW 9.94A.030
22 (31)(b), and is convicted of any sex offense other than failure to
23 register.

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

28 (3)(a) Upon a finding that the offender is subject to sentencing
29 under this section, the court shall impose a sentence to a maximum term
30 and a minimum term.

31 (b) The maximum term shall consist of the statutory maximum
32 sentence for the offense.

33 (c)(i) Except as provided in (c)(ii) of this subsection, the
34 minimum term shall be either within the standard sentence range for the
35 offense, or outside the standard sentence range pursuant to RCW
36 9.94A.535, if the offender is otherwise eligible for such a sentence.

1 (ii) If the offense that caused the offender to be sentenced under
2 this section was rape of a child in the first degree, rape of a child
3 in the second degree, or child molestation in the first degree, and
4 there has been a finding that the offense was predatory under RCW
5 9.94A.836, the minimum term shall be either the maximum of the standard
6 sentence range for the offense or twenty-five years, whichever is
7 greater. If the offense that caused the offender to be sentenced under
8 this section was rape in the first degree, rape in the second degree,
9 indecent liberties by forcible compulsion, or kidnapping in the first
10 degree with sexual motivation, and there has been a finding that the
11 victim was under the age of fifteen at the time of the offense under
12 RCW 9.94A.837, the minimum term shall be either the maximum of the
13 standard sentence range for the offense or twenty-five years, whichever
14 is greater. If the offense that caused the offender to be sentenced
15 under this section is rape in the first degree, rape in the second
16 degree with forcible compulsion, indecent liberties with forcible
17 compulsion, or kidnapping in the first degree with sexual motivation,
18 and there has been a finding under RCW 9.94A.838 that the victim was,
19 at the time of the offense, developmentally disabled, mentally
20 disordered, or a frail elder or vulnerable adult, the minimum sentence
21 shall be either the maximum of the standard sentence range for the
22 offense or twenty-five years, whichever is greater.

23 (d) The minimum terms in (c)(ii) of this subsection do not apply to
24 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or
25 (v). The minimum term for such a juvenile shall be imposed under
26 (c)(i) of this subsection.

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

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

36 (6)(a) As part of any sentence under this section, the court shall
37 also require the offender to comply with any conditions imposed by the
38 board under RCW 9.95.420 through 9.95.435.

1 (b) An offender released by the board under RCW 9.95.420 is subject
2 to the supervision of the department until the expiration of the
3 maximum term of the sentence. The department shall monitor the
4 offender's compliance with conditions of community custody imposed by
5 the court, department, or board, and promptly report any violations to
6 the board. Any violation of conditions of community custody
7 established or modified by the board are subject to the provisions of
8 RCW 9.95.425 through 9.95.440.

9 **Sec. 3.** RCW 9.94A.515 and 2008 c 108 s 23 and 2008 c 38 s 1 are
10 each reenacted and amended to read as follows:
11

12 TABLE 2
13 CRIMES INCLUDED WITHIN
14 EACH SERIOUSNESS LEVEL

15	XVI	Aggravated Murder 1 (RCW
16		10.95.020)
17	XV	Homicide by abuse (RCW 9A.32.055)
18		Malicious explosion 1 (RCW
19		70.74.280(1))
20		Murder 1 (RCW 9A.32.030)
21	XIV	Murder 2 (RCW 9A.32.050)
22		Trafficking 1 (RCW 9A.40.100(1))
23	XIII	Malicious explosion 2 (RCW
24		70.74.280(2))
25		Malicious placement of an explosive 1
26		(RCW 70.74.270(1))
27	XII	Assault 1 (RCW 9A.36.011)
28		Assault of a Child 1 (RCW 9A.36.120)
29		Malicious placement of an imitation
30		device 1 (RCW 70.74.272(1)(a))
31		Rape 1 (RCW 9A.44.040)
32		Rape of a Child 1 (RCW 9A.44.073)
33		Trafficking 2 (RCW 9A.40.100(2))
34	XI	Manslaughter 1 (RCW 9A.32.060)
35		Rape 2 (RCW 9A.44.050)
36		Rape of a Child 2 (RCW 9A.44.076)

1 X Child Molestation 1 (RCW 9A.44.083)
2 Criminal Mistreatment 1 (RCW
3 9A.42.020)
4 Indecent Liberties (with forcible
5 compulsion) (RCW
6 9A.44.100(1)(a))
7 Kidnapping 1 (RCW 9A.40.020)
8 Leading Organized Crime (RCW
9 9A.82.060(1)(a))
10 Malicious explosion 3 (RCW
11 70.74.280(3))
12 Sexually Violent Predator Escape
13 (RCW 9A.76.115)
14 Wrongfully Removing or Tampering
15 with an Electronic Monitoring
16 Device (section 1 of this act)
17 IX Abandonment of Dependent Person 1
18 (RCW 9A.42.060)
19 Assault of a Child 2 (RCW 9A.36.130)
20 Explosive devices prohibited (RCW
21 70.74.180)
22 Hit and Run--Death (RCW
23 46.52.020(4)(a))
24 Homicide by Watercraft, by being
25 under the influence of intoxicating
26 liquor or any drug (RCW
27 79A.60.050)
28 Inciting Criminal Profiteering (RCW
29 9A.82.060(1)(b))
30 Malicious placement of an explosive 2
31 (RCW 70.74.270(2))
32 Robbery 1 (RCW 9A.56.200)
33 Sexual Exploitation (RCW 9.68A.040)
34 Vehicular Homicide, by being under
35 the influence of intoxicating liquor
36 or any drug (RCW 46.61.520)
37 VIII Arson 1 (RCW 9A.48.020)

1 Homicide by Watercraft, by the
2 operation of any vessel in a
3 reckless manner (RCW
4 79A.60.050)
5 Manslaughter 2 (RCW 9A.32.070)
6 Promoting Commercial Sexual Abuse
7 of a Minor (RCW 9.68A.101)
8 Promoting Prostitution 1 (RCW
9 9A.88.070)
10 Theft of Ammonia (RCW 69.55.010)
11 Vehicular Homicide, by the operation
12 of any vehicle in a reckless manner
13 (RCW 46.61.520)
14 VII Burglary 1 (RCW 9A.52.020)
15 Child Molestation 2 (RCW 9A.44.086)
16 Civil Disorder Training (RCW
17 9A.48.120)
18 Dealing in depictions of minor engaged
19 in sexually explicit conduct (RCW
20 9.68A.050)
21 Drive-by Shooting (RCW 9A.36.045)
22 Homicide by Watercraft, by disregard
23 for the safety of others (RCW
24 79A.60.050)
25 Indecent Liberties (without forcible
26 compulsion) (RCW 9A.44.100(1)
27 (b) and (c))
28 Introducing Contraband 1 (RCW
29 9A.76.140)
30 Malicious placement of an explosive 3
31 (RCW 70.74.270(3))
32 Negligently Causing Death By Use of a
33 Signal Preemption Device (RCW
34 46.37.675)
35 Sending, bringing into state depictions
36 of minor engaged in sexually
37 explicit conduct (RCW 9.68A.060)

1 Unlawful Possession of a Firearm in
2 the first degree (RCW 9A.41.040(1))
3 Use of a Machine Gun in Commission
4 of a Felony (RCW 9A.41.225)
5 Vehicular Homicide, by disregard for
6 the safety of others (RCW
7 46.61.520)
8 VI Bail Jumping with Murder 1 (RCW
9 9A.76.170(3)(a))
10 Bribery (RCW 9A.68.010)
11 Incest 1 (RCW 9A.64.020(1))
12 Intimidating a Judge (RCW 9A.72.160)
13 Intimidating a Juror/Witness (RCW
14 9A.72.110, 9A.72.130)
15 Malicious placement of an imitation
16 device 2 (RCW 70.74.272(1)(b))
17 Possession of Depictions of a Minor
18 Engaged in Sexually Explicit
19 Conduct (RCW 9.68A.070)
20 Rape of a Child 3 (RCW 9A.44.079)
21 Theft of a Firearm (RCW 9A.56.300)
22 Unlawful Storage of Ammonia (RCW
23 69.55.020)
24 V Abandonment of Dependent Person 2
25 (RCW 9A.42.070)
26 Advancing money or property for
27 extortionate extension of credit
28 (RCW 9A.82.030)
29 Bail Jumping with class A Felony
30 (RCW 9A.76.170(3)(b))
31 Child Molestation 3 (RCW 9A.44.089)
32 Criminal Mistreatment 2 (RCW
33 9A.42.030)
34 Custodial Sexual Misconduct 1 (RCW
35 9A.44.160)

1 Domestic Violence Court Order
2 Violation (RCW 10.99.040,
3 10.99.050, 26.09.300, 26.10.220,
4 26.26.138, 26.50.110, 26.52.070,
5 or 74.34.145)
6 Driving While Under the Influence
7 (RCW 46.61.502(6))
8 Extortion 1 (RCW 9A.56.120)
9 Extortionate Extension of Credit (RCW
10 9A.82.020)
11 Extortionate Means to Collect
12 Extensions of Credit (RCW
13 9A.82.040)
14 Incest 2 (RCW 9A.64.020(2))
15 Kidnapping 2 (RCW 9A.40.030)
16 Perjury 1 (RCW 9A.72.020)
17 Persistent prison misbehavior (RCW
18 9.94.070)
19 Physical Control of a Vehicle While
20 Under the Influence (RCW
21 46.61.504(6))
22 Possession of a Stolen Firearm (RCW
23 9A.56.310)
24 Rape 3 (RCW 9A.44.060)
25 Rendering Criminal Assistance 1
26 (RCW 9A.76.070)
27 Sexual Misconduct with a Minor 1
28 (RCW 9A.44.093)
29 Sexually Violating Human Remains
30 (RCW 9A.44.105)
31 Stalking (RCW 9A.46.110)
32 Taking Motor Vehicle Without
33 Permission 1 (RCW 9A.56.070)
34 IV Arson 2 (RCW 9A.48.030)
35 Assault 2 (RCW 9A.36.021)

1 Assault 3 (of a Peace Officer with a
2 Projectile Stun Gun) (RCW
3 9A.36.031(1)(h))
4 Assault by Watercraft (RCW
5 79A.60.060)
6 Bribing a Witness/Bribe Received by
7 Witness (RCW 9A.72.090,
8 9A.72.100)
9 Cheating 1 (RCW 9.46.1961)
10 Commercial Bribery (RCW 9A.68.060)
11 Counterfeiting (RCW 9.16.035(4))
12 Endangerment with a Controlled
13 Substance (RCW 9A.42.100)
14 Escape 1 (RCW 9A.76.110)
15 Hit and Run--Injury (RCW
16 46.52.020(4)(b))
17 Hit and Run with Vessel--Injury
18 Accident (RCW 79A.60.200(3))
19 Identity Theft 1 (RCW 9.35.020(2))
20 Indecent Exposure to Person Under
21 Age Fourteen (subsequent sex
22 offense) (RCW 9A.88.010)
23 Influencing Outcome of Sporting Event
24 (RCW 9A.82.070)
25 Malicious Harassment (RCW
26 9A.36.080)
27 Residential Burglary (RCW
28 9A.52.025)
29 Robbery 2 (RCW 9A.56.210)
30 Theft of Livestock 1 (RCW 9A.56.080)
31 Threats to Bomb (RCW 9.61.160)
32 Trafficking in Stolen Property 1 (RCW
33 9A.82.050)
34 Unlawful factoring of a credit card or
35 payment card transaction (RCW
36 9A.56.290(4)(b))

1 Unlawful transaction of health
2 coverage as a health care service
3 contractor (RCW 48.44.016(3))
4 Unlawful transaction of health
5 coverage as a health maintenance
6 organization (RCW 48.46.033(3))
7 Unlawful transaction of insurance
8 business (RCW 48.15.023(3))
9 Unlicensed practice as an insurance
10 professional (RCW
11 48.17.063(~~(3)~~) (2))
12 Use of Proceeds of Criminal
13 Profiteering (RCW 9A.82.080 (1)
14 and (2))
15 Vehicular Assault, by being under the
16 influence of intoxicating liquor or
17 any drug, or by the operation or
18 driving of a vehicle in a reckless
19 manner (RCW 46.61.522)
20 Willful Failure to Return from
21 Furlough (RCW 72.66.060)
22 III Animal Cruelty 1 (Sexual Conduct or
23 Contact) (RCW 16.52.205(3))
24 Assault 3 (Except Assault 3 of a Peace
25 Officer With a Projectile Stun
26 Gun) (RCW 9A.36.031 except
27 subsection (1)(h))
28 Assault of a Child 3 (RCW 9A.36.140)
29 Bail Jumping with class B or C Felony
30 (RCW 9A.76.170(3)(c))
31 Burglary 2 (RCW 9A.52.030)
32 Commercial Sexual Abuse of a Minor
33 (RCW 9.68A.100)
34 Communication with a Minor for
35 Immoral Purposes (RCW
36 9.68A.090)

1 Criminal Gang Intimidation (RCW
2 9A.46.120)
3 Custodial Assault (RCW 9A.36.100)
4 Cyberstalking (subsequent conviction
5 or threat of death) (RCW
6 9.61.260(3))
7 Escape 2 (RCW 9A.76.120)
8 Extortion 2 (RCW 9A.56.130)
9 Harassment (RCW 9A.46.020)
10 Intimidating a Public Servant (RCW
11 9A.76.180)
12 Introducing Contraband 2 (RCW
13 9A.76.150)
14 Malicious Injury to Railroad Property
15 (RCW 81.60.070)
16 Mortgage Fraud (RCW 19.144.080)
17 Negligently Causing Substantial Bodily
18 Harm By Use of a Signal
19 Preemption Device (RCW
20 46.37.674)
21 Organized Retail Theft 1 (RCW
22 9A.56.350(2))
23 Perjury 2 (RCW 9A.72.030)
24 Possession of Incendiary Device (RCW
25 9.40.120)
26 Possession of Machine Gun or Short-
27 Barreled Shotgun or Rifle (RCW
28 9.41.190)
29 Promoting Prostitution 2 (RCW
30 9A.88.080)
31 Retail Theft with Extenuating
32 Circumstances 1 (RCW
33 9A.56.360(2))
34 Securities Act violation (RCW
35 21.20.400)
36 Tampering with a Witness (RCW
37 9A.72.120)

1 Telephone Harassment (subsequent
2 conviction or threat of death)
3 (RCW 9.61.230(2))
4 Theft of Livestock 2 (RCW 9A.56.083)
5 Theft with the Intent to Resell 1 (RCW
6 9A.56.340(2))
7 Trafficking in Stolen Property 2 (RCW
8 9A.82.055)
9 Unlawful Imprisonment (RCW
10 9A.40.040)
11 Unlawful possession of firearm in the
12 second degree (RCW 9.41.040(2))
13 Vehicular Assault, by the operation or
14 driving of a vehicle with disregard
15 for the safety of others (RCW
16 46.61.522)
17 Willful Failure to Return from Work
18 Release (RCW 72.65.070)
19 II Computer Trespass 1 (RCW
20 9A.52.110)
21 Counterfeiting (RCW 9.16.035(3))
22 Escape from Community Custody
23 (RCW 72.09.310)
24 Failure to Register as a Sex Offender
25 (second or subsequent offense)
26 (RCW 9A.44.130(11)(a))
27 Health Care False Claims (RCW
28 48.80.030)
29 Identity Theft 2 (RCW 9.35.020(3))
30 Improperly Obtaining Financial
31 Information (RCW 9.35.010)
32 Malicious Mischief 1 (RCW
33 9A.48.070)
34 Organized Retail Theft 2 (RCW
35 9A.56.350(3))
36 Possession of Stolen Property 1 (RCW
37 9A.56.150)

1 Possession of a Stolen Vehicle (RCW
2 9A.56.068)
3 Retail Theft with Extenuating
4 Circumstances 2 (RCW
5 9A.56.360(3))
6 Theft 1 (RCW 9A.56.030)
7 Theft of a Motor Vehicle (RCW
8 9A.56.065)
9 Theft of Rental, Leased, or Lease-
10 purchased Property (valued at one
11 thousand five hundred dollars or
12 more) (RCW 9A.56.096(5)(a))
13 Theft with the Intent to Resell 2 (RCW
14 9A.56.340(3))
15 Trafficking in Insurance Claims (RCW
16 48.30A.015)
17 Unlawful factoring of a credit card or
18 payment card transaction (RCW
19 9A.56.290(4)(a))
20 Unlawful Practice of Law (RCW
21 2.48.180)
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Voyeurism (RCW 9A.44.115)
25 I Attempting to Elude a Pursuing Police
26 Vehicle (RCW 46.61.024)
27 False Verification for Welfare (RCW
28 74.08.055)
29 Forgery (RCW 9A.60.020)
30 Fraudulent Creation or Revocation of a
31 Mental Health Advance Directive
32 (RCW 9A.60.060)
33 Malicious Mischief 2 (RCW
34 9A.48.080)
35 Mineral Trespass (RCW 78.44.330)
36 Possession of Stolen Property 2 (RCW
37 9A.56.160)

1 Reckless Burning 1 (RCW 9A.48.040)
2 Taking Motor Vehicle Without
3 Permission 2 (RCW 9A.56.075)
4 Theft 2 (RCW 9A.56.040)
5 Theft of Rental, Leased, or Lease-
6 purchased Property (valued at two
7 hundred fifty dollars or more but
8 less than one thousand five
9 hundred dollars) (RCW
10 9A.56.096(5)(b))
11 Transaction of insurance business
12 beyond the scope of licensure
13 (RCW 48.17.063(((4))))
14 Unlawful Issuance of Checks or Drafts
15 (RCW 9A.56.060)
16 Unlawful Possession of Fictitious
17 Identification (RCW 9A.56.320)
18 Unlawful Possession of Instruments of
19 Financial Fraud (RCW 9A.56.320)
20 Unlawful Possession of Payment
21 Instruments (RCW 9A.56.320)
22 Unlawful Possession of a Personal
23 Identification Device (RCW
24 9A.56.320)
25 Unlawful Production of Payment
26 Instruments (RCW 9A.56.320)
27 Unlawful Trafficking in Food Stamps
28 (RCW 9.91.142)
29 Unlawful Use of Food Stamps (RCW
30 9.91.144)
31 Vehicle Prowl 1 (RCW 9A.52.095)

32 NEW SECTION. **Sec. 4.** This act takes effect August 1, 2009.

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