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HOUSE BILL 1188

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State of Washington

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**By** Representatives Goodman, Kelley, Hurst, Kenney, Moscoso, Warnick, Roberts, Maxwell, Lias, Frockt, Rolfes, Sullivan, Carlyle, Finn, Hudgins, Kagi, Miloscia, Appleton, Ladenburg, and Fitzgibbon

Read first time 01/14/11. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to suffocation and other domestic violence  
2 offenses; amending RCW 9A.36.021, 9A.04.110, and 9.94A.525; reenacting  
3 and amending RCW 9.94A.030; and prescribing penalties.

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

5 **Sec. 1.** RCW 9A.36.021 and 2007 c 79 s 2 are each amended to read  
6 as follows:

7 (1) A person is guilty of assault in the second degree if he or  
8 she, under circumstances not amounting to assault in the first degree:

9 (a) Intentionally assaults another and thereby recklessly inflicts  
10 substantial bodily harm; or

11 (b) Intentionally and unlawfully causes substantial bodily harm to  
12 an unborn quick child by intentionally and unlawfully inflicting any  
13 injury upon the mother of such child; or

14 (c) Assaults another with a deadly weapon; or

15 (d) With intent to inflict bodily harm, administers to or causes to  
16 be taken by another, poison or any other destructive or noxious  
17 substance; or

18 (e) With intent to commit a felony, assaults another; or

1 (f) Knowingly inflicts bodily harm which by design causes such pain  
2 or agony as to be the equivalent of that produced by torture; or

3 (g) Assaults another by strangulation or suffocation.

4 (2)(a) Except as provided in (b) of this subsection, assault in the  
5 second degree is a class B felony.

6 (b) Assault in the second degree with a finding of sexual  
7 motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

8 **Sec. 2.** RCW 9A.04.110 and 2007 c 79 s 3 are each amended to read  
9 as follows:

10 In this title unless a different meaning plainly is required:

11 (1) "Acted" includes, where relevant, omitted to act;

12 (2) "Actor" includes, where relevant, a person failing to act;

13 (3) "Benefit" is any gain or advantage to the beneficiary,  
14 including any gain or advantage to a third person pursuant to the  
15 desire or consent of the beneficiary;

16 (4)(a) "Bodily injury," "physical injury," or "bodily harm" means  
17 physical pain or injury, illness, or an impairment of physical  
18 condition;

19 (b) "Substantial bodily harm" means bodily injury which involves a  
20 temporary but substantial disfigurement, or which causes a temporary  
21 but substantial loss or impairment of the function of any bodily part  
22 or organ, or which causes a fracture of any bodily part;

23 (c) "Great bodily harm" means bodily injury which creates a  
24 probability of death, or which causes significant serious permanent  
25 disfigurement, or which causes a significant permanent loss or  
26 impairment of the function of any bodily part or organ;

27 (5) "Building", in addition to its ordinary meaning, includes any  
28 dwelling, fenced area, vehicle, railway car, cargo container, or any  
29 other structure used for lodging of persons or for carrying on business  
30 therein, or for the use, sale or deposit of goods; each unit of a  
31 building consisting of two or more units separately secured or occupied  
32 is a separate building;

33 (6) "Deadly weapon" means any explosive or loaded or unloaded  
34 firearm, and shall include any other weapon, device, instrument,  
35 article, or substance, including a "vehicle" as defined in this  
36 section, which, under the circumstances in which it is used, attempted

1 to be used, or threatened to be used, is readily capable of causing  
2 death or substantial bodily harm;

3 (7) "Dwelling" means any building or structure, though movable or  
4 temporary, or a portion thereof, which is used or ordinarily used by a  
5 person for lodging;

6 (8) "Government" includes any branch, subdivision, or agency of the  
7 government of this state and any county, city, district, or other local  
8 governmental unit;

9 (9) "Governmental function" includes any activity which a public  
10 servant is legally authorized or permitted to undertake on behalf of a  
11 government;

12 (10) "Indicted" and "indictment" include "informed against" and  
13 "information", and "informed against" and "information" include  
14 "indicted" and "indictment";

15 (11) "Judge" includes every judicial officer authorized alone or  
16 with others, to hold or preside over a court;

17 (12) "Malice" and "maliciously" shall import an evil intent, wish,  
18 or design to vex, annoy, or injure another person. Malice may be  
19 inferred from an act done in (~~wilful~~) willfull disregard of the  
20 rights of another, or an act wrongfully done without just cause or  
21 excuse, or an act or omission of duty betraying a (~~wilful~~) willfull  
22 disregard of social duty;

23 (13) "Officer" and "public officer" means a person holding office  
24 under a city, county, or state government, or the federal government  
25 who performs a public function and in so doing is vested with the  
26 exercise of some sovereign power of government, and includes all  
27 assistants, deputies, clerks, and employees of any public officer and  
28 all persons lawfully exercising or assuming to exercise any of the  
29 powers or functions of a public officer;

30 (14) "Omission" means a failure to act;

31 (15) "Peace officer" means a duly appointed city, county, or state  
32 law enforcement officer;

33 (16) "Pecuniary benefit" means any gain or advantage in the form of  
34 money, property, commercial interest, or anything else the primary  
35 significance of which is economic gain;

36 (17) "Person", "he", and "actor" include any natural person and,  
37 where relevant, a corporation, joint stock association, or an  
38 unincorporated association;

1 (18) "Place of work" includes but is not limited to all the lands  
2 and other real property of a farm or ranch in the case of an actor who  
3 owns, operates, or is employed to work on such a farm or ranch;

4 (19) "Prison" means any place designated by law for the keeping of  
5 persons held in custody under process of law, or under lawful arrest,  
6 including but not limited to any state correctional institution or any  
7 county or city jail;

8 (20) "Prisoner" includes any person held in custody under process  
9 of law, or under lawful arrest;

10 (21) "Projectile stun gun" means an electronic device that projects  
11 wired probes attached to the device that emit an electrical charge and  
12 that is designed and primarily employed to incapacitate a person or  
13 animal;

14 (22) "Property" means anything of value, whether tangible or  
15 intangible, real or personal;

16 (23) "Public servant" means any person other than a witness who  
17 presently occupies the position of or has been elected, appointed, or  
18 designated to become any officer or employee of government, including  
19 a legislator, judge, judicial officer, juror, and any person  
20 participating as an advisor, consultant, or otherwise in performing a  
21 governmental function;

22 (24) "Signature" includes any memorandum, mark, or sign made with  
23 intent to authenticate any instrument or writing, or the subscription  
24 of any person thereto;

25 (25) "Statute" means the Constitution or an act of the legislature  
26 or initiative or referendum of this state;

27 (26) "Strangulation" means to compress a person's neck, thereby  
28 obstructing the person's blood flow or ability to breathe, or doing so  
29 with the intent to obstruct the person's blood flow or ability to  
30 breathe;

31 (27) "Suffocation" means to intentionally obstruct a person's  
32 ability to breathe by blocking or impairing intake at the nose or  
33 mouth, whether by smothering or other means;

34 (28) "Threat" means to communicate, directly or indirectly the  
35 intent:

36 (a) To cause bodily injury in the future to the person threatened  
37 or to any other person; or

1 (b) To cause physical damage to the property of a person other than  
2 the actor; or

3 (c) To subject the person threatened or any other person to  
4 physical confinement or restraint; or

5 (d) To accuse any person of a crime or cause criminal charges to be  
6 instituted against any person; or

7 (e) To expose a secret or publicize an asserted fact, whether true  
8 or false, tending to subject any person to hatred, contempt, or  
9 ridicule; or

10 (f) To reveal any information sought to be concealed by the person  
11 threatened; or

12 (g) To testify or provide information or withhold testimony or  
13 information with respect to another's legal claim or defense; or

14 (h) To take wrongful action as an official against anyone or  
15 anything, or wrongfully withhold official action, or cause such action  
16 or withholding; or

17 (i) To bring about or continue a strike, boycott, or other similar  
18 collective action to obtain property which is not demanded or received  
19 for the benefit of the group which the actor purports to represent; or

20 (j) To do any other act which is intended to harm substantially the  
21 person threatened or another with respect to his health, safety,  
22 business, financial condition, or personal relationships;

23 ~~((+28+))~~ (29) "Vehicle" means a "motor vehicle" as defined in the  
24 vehicle and traffic laws, any aircraft, or any vessel equipped for  
25 propulsion by mechanical means or by sail;

26 ~~((+29+))~~ (30) Words in the present tense shall include the future  
27 tense; and in the masculine shall include the feminine and neuter  
28 genders; and in the singular shall include the plural; and in the  
29 plural shall include the singular.

30 **Sec. 3.** RCW 9.94A.030 and 2010 c 274 s 401, 2010 c 267 s 9, 2010  
31 c 227 s 11, and 2010 c 224 s 1 are each reenacted and amended to read  
32 as follows:

33 Unless the context clearly requires otherwise, the definitions in  
34 this section apply throughout this chapter.

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

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

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

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

14 (5) "Community custody" means that portion of an offender's  
15 sentence of confinement in lieu of earned release time or imposed as  
16 part of a sentence under this chapter and served in the community  
17 subject to controls placed on the offender's movement and activities by  
18 the department.

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

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

25 (8) "Confinement" means total or partial confinement.

26 (9) "Conviction" means an adjudication of guilt pursuant to Title  
27 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
28 acceptance of a plea of guilty.

29 (10) "Crime-related prohibition" means an order of a court  
30 prohibiting conduct that directly relates to the circumstances of the  
31 crime for which the offender has been convicted, and shall not be  
32 construed to mean orders directing an offender affirmatively to  
33 participate in rehabilitative programs or to otherwise perform  
34 affirmative conduct. However, affirmative acts necessary to monitor  
35 compliance with the order of a court may be required by the department.

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

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

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

9 (c) The determination of a defendant's criminal history is distinct  
10 from the determination of an offender score. A prior conviction that  
11 was not included in an offender score calculated pursuant to a former  
12 version of the sentencing reform act remains part of the defendant's  
13 criminal history.

14 (12) "Criminal street gang" means any ongoing organization,  
15 association, or group of three or more persons, whether formal or  
16 informal, having a common name or common identifying sign or symbol,  
17 having as one of its primary activities the commission of criminal  
18 acts, and whose members or associates individually or collectively  
19 engage in or have engaged in a pattern of criminal street gang  
20 activity. This definition does not apply to employees engaged in  
21 concerted activities for their mutual aid and protection, or to the  
22 activities of labor and bona fide nonprofit organizations or their  
23 members or agents.

24 (13) "Criminal street gang associate or member" means any person  
25 who actively participates in any criminal street gang and who  
26 intentionally promotes, furthers, or assists in any criminal act by the  
27 criminal street gang.

28 (14) "Criminal street gang-related offense" means any felony or  
29 misdemeanor offense, whether in this state or elsewhere, that is  
30 committed for the benefit of, at the direction of, or in association  
31 with any criminal street gang, or is committed with the intent to  
32 promote, further, or assist in any criminal conduct by the gang, or is  
33 committed for one or more of the following reasons:

34 (a) To gain admission, prestige, or promotion within the gang;

35 (b) To increase or maintain the gang's size, membership, prestige,  
36 dominance, or control in any geographical area;

37 (c) To exact revenge or retribution for the gang or any member of  
38 the gang;

1 (d) To obstruct justice, or intimidate or eliminate any witness  
2 against the gang or any member of the gang;

3 (e) To directly or indirectly cause any benefit, aggrandizement,  
4 gain, profit, or other advantage for the gang, its reputation,  
5 influence, or membership; or

6 (f) To provide the gang with any advantage in, or any control or  
7 dominance over any criminal market sector, including, but not limited  
8 to, manufacturing, delivering, or selling any controlled substance  
9 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
10 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
11 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
12 (chapter 9.68 RCW).

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

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

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

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

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



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

5 (20) "Domestic violence" has the same meaning as defined in RCW  
6 10.99.020 and 26.50.010.

7 (21) "Drug offender sentencing alternative" is a sentencing option  
8 available to persons convicted of a felony offense other than a violent  
9 offense or a sex offense and who are eligible for the option under RCW  
10 9.94A.660.

11 (22) "Drug offense" means:

12 (a) Any felony violation of chapter 69.50 RCW except possession of  
13 a controlled substance (RCW 69.50.4013) or forged prescription for a  
14 controlled substance (RCW 69.50.403);

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

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

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

23 (24) "Escape" means:

24 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
25 first degree (RCW 9A.76.110), escape in the second degree (RCW  
26 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
27 willful failure to return from work release (RCW 72.65.070), or willful  
28 failure to be available for supervision by the department while in  
29 community custody (RCW 72.09.310); or

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

33 (25) "Felony traffic offense" means:

34 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
35 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
36 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
37 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or

1 felony physical control of a vehicle while under the influence of  
2 intoxicating liquor or any drug (RCW 46.61.504(6)); or

3 (b) 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 felony  
5 traffic offense under (a) of this subsection.

6 (26) "Fine" means a specific sum of money ordered by the sentencing  
7 court to be paid by the offender to the court over a specific period of  
8 time.

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

12 (28) "Home detention" means a program of partial confinement  
13 available to offenders wherein the offender is confined in a private  
14 residence subject to electronic surveillance.

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

29 (30) "Minor child" means a biological or adopted child of the  
30 offender who is under age eighteen at the time of the offender's  
31 current offense.

32 (31) "Most serious offense" means any of the following felonies or  
33 a felony attempt to commit any of the following felonies:

34 (a) Any felony defined under any law as a class A felony or  
35 criminal solicitation of or criminal conspiracy to commit a class A  
36 felony;

37 (b) Assault in the second degree, except when committed by  
38 strangulation or suffocation;

- 1 (c) Assault of a child in the second degree;  
2 (d) Child molestation in the second degree;  
3 (e) Controlled substance homicide;  
4 (f) Extortion in the first degree;  
5 (g) Incest when committed against a child under age fourteen;  
6 (h) Indecent liberties;  
7 (i) Kidnapping in the second degree;  
8 (j) Leading organized crime;  
9 (k) Manslaughter in the first degree;  
10 (l) Manslaughter in the second degree;  
11 (m) Promoting prostitution in the first degree;  
12 (n) Rape in the third degree;  
13 (o) Robbery in the second degree;  
14 (p) Sexual exploitation;  
15 (q) Vehicular assault, when caused by the operation or driving of  
16 a vehicle by a person while under the influence of intoxicating liquor  
17 or any drug or by the operation or driving of a vehicle in a reckless  
18 manner;  
19 (r) Vehicular homicide, when proximately caused by the driving of  
20 any vehicle by any person while under the influence of intoxicating  
21 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
22 any vehicle in a reckless manner;  
23 (s) Any other class B felony offense with a finding of sexual  
24 motivation;  
25 (t) Any other felony with a deadly weapon verdict under RCW  
26 9.94A.825;  
27 (u) Any felony offense in effect at any time prior to December 2,  
28 1993, that is comparable to a most serious offense under this  
29 subsection, or any federal or out-of-state conviction for an offense  
30 that under the laws of this state would be a felony classified as a  
31 most serious offense under this subsection;  
32 (v)(i) A prior conviction for indecent liberties under RCW  
33 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
34 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
35 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
36 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
37 (ii) A prior conviction for indecent liberties under RCW  
38 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,

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

7 (w) Any out-of-state conviction for a felony offense with a finding  
8 of sexual motivation if the minimum sentence imposed was ten years or  
9 more; provided that the out-of-state felony offense must be comparable  
10 to a felony offense under Title 9 or 9A RCW and the out-of-state  
11 definition of sexual motivation must be comparable to the definition of  
12 sexual motivation contained in this section.

13 (32) "Nonviolent offense" means an offense which is not a violent  
14 offense.

15 (33) "Offender" means a person who has committed a felony  
16 established by state law and is eighteen years of age or older or is  
17 less than eighteen years of age but whose case is under superior court  
18 jurisdiction under RCW 13.04.030 or has been transferred by the  
19 appropriate juvenile court to a criminal court pursuant to RCW  
20 13.40.110. In addition, for the purpose of community custody  
21 requirements under this chapter, "offender" also means a misdemeanor or  
22 gross misdemeanor probationer convicted of an offense included in RCW  
23 9.94A.501(1) and ordered by a superior court to probation under the  
24 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or  
25 9.95.210. Throughout this chapter, the terms "offender" and  
26 "defendant" are used interchangeably.

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

36 (35) "Pattern of criminal street gang activity" means:

37 (a) The commission, attempt, conspiracy, or solicitation of, or any

1 prior juvenile adjudication of or adult conviction of, two or more of  
2 the following criminal street gang-related offenses:

- 3 (i) Any "serious violent" felony offense as defined in this  
4 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a  
5 Child 1 (RCW 9A.36.120);
- 6 (ii) Any "violent" offense as defined by this section, excluding  
7 Assault of a Child 2 (RCW 9A.36.130);
- 8 (iii) Deliver or Possession with Intent to Deliver a Controlled  
9 Substance (chapter 69.50 RCW);
- 10 (iv) Any violation of the firearms and dangerous weapon act  
11 (chapter 9.41 RCW);
- 12 (v) Theft of a Firearm (RCW 9A.56.300);
- 13 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
- 14 (vii) Malicious Harassment (RCW 9A.36.080);
- 15 (viii) Harassment where a subsequent violation or deadly threat is  
16 made (RCW 9A.46.020(2)(b));
- 17 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
- 18 (x) Any felony conviction by a person eighteen years of age or  
19 older with a special finding of involving a juvenile in a felony  
20 offense under RCW 9.94A.833;
- 21 (xi) Residential Burglary (RCW 9A.52.025);
- 22 (xii) Burglary 2 (RCW 9A.52.030);
- 23 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
- 24 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
- 25 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
- 26 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
- 27 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
- 28 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
29 9A.56.075);
- 30 (xix) Extortion 1 (RCW 9A.56.120);
- 31 (xx) Extortion 2 (RCW 9A.56.130);
- 32 (xxi) Intimidating a Witness (RCW 9A.72.110);
- 33 (xxii) Tampering with a Witness (RCW 9A.72.120);
- 34 (xxiii) Reckless Endangerment (RCW 9A.36.050);
- 35 (xxiv) Coercion (RCW 9A.36.070);
- 36 (xxv) Harassment (RCW 9A.46.020); or
- 37 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

1 (b) That at least one of the offenses listed in (a) of this  
2 subsection shall have occurred after July 1, 2008;

3 (c) That the most recent committed offense listed in (a) of this  
4 subsection occurred within three years of a prior offense listed in (a)  
5 of this subsection; and

6 (d) Of the offenses that were committed in (a) of this subsection,  
7 the offenses occurred on separate occasions or were committed by two or  
8 more persons.

9 (36) "Persistent offender" is an offender who:

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

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

20 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
21 of a child in the first degree, child molestation in the first degree,  
22 rape in the second degree, rape of a child in the second degree, or  
23 indecent liberties by forcible compulsion; (B) any of the following  
24 offenses with a finding of sexual motivation: Murder in the first  
25 degree, murder in the second degree, homicide by abuse, kidnapping in  
26 the first degree, kidnapping in the second degree, assault in the first  
27 degree, assault in the second degree, assault of a child in the first  
28 degree, assault of a child in the second degree, or burglary in the  
29 first degree; or (C) an attempt to commit any crime listed in this  
30 subsection (36)(b)(i); and

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

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

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

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

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

30 (40) "Repetitive domestic violence offense" means any:

31 (a)(i) Domestic violence assault that is not a felony offense under  
32 RCW 9A.36.041;

33 (ii) Domestic violence violation of a no-contact order under  
34 chapter 10.99 RCW that is not a felony offense;

35 (iii) Domestic violence violation of a protection order under  
36 chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

37 (iv) Domestic violence harassment offense under RCW 9A.46.020 that  
38 is not a felony offense; or

1 (v) Domestic violence stalking offense under RCW 9A.46.110 that is  
2 not a felony offense; or

3 (b) Any federal, out-of-state, tribal court, military, county, or  
4 municipal conviction for an offense that under the laws of this state  
5 would be classified as a repetitive domestic violence offense under (a)  
6 of this subsection.

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

11 (42) "Risk assessment" means the application of the risk instrument  
12 recommended to the department by the Washington state institute for  
13 public policy as having the highest degree of predictive accuracy for  
14 assessing an offender's risk of reoffense.

15 (43) "Serious traffic offense" means:

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

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

24 (44) "Serious violent offense" is a subcategory of violent offense  
25 and means:

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

27 (ii) Homicide by abuse;

28 (iii) Murder in the second degree;

29 (iv) Manslaughter in the first degree;

30 (v) Assault in the first degree;

31 (vi) Kidnapping in the first degree;

32 (vii) Rape in the first degree;

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

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

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



1 (45) "Sex offense" means:  
2 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
3 RCW 9A.44.132;  
4 (ii) A violation of RCW 9A.64.020;  
5 (iii) A felony that is a violation of chapter 9.68A RCW other than  
6 RCW 9.68A.080;  
7 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
8 criminal solicitation, or criminal conspiracy to commit such crimes; or  
9 (v) A felony violation of RCW 9A.44.132(1) (failure to register) if  
10 the person has been convicted of violating RCW 9A.44.132(1) (failure to  
11 register) on at least one prior occasion;  
12 (b) Any conviction for a felony offense in effect at any time prior  
13 to July 1, 1976, that is comparable to a felony classified as a sex  
14 offense in (a) of this subsection;  
15 (c) A felony with a finding of sexual motivation under RCW  
16 9.94A.835 or 13.40.135; or  
17 (d) Any federal or out-of-state conviction for an offense that  
18 under the laws of this state would be a felony classified as a sex  
19 offense under (a) of this subsection.  
20 (46) "Sexual motivation" means that one of the purposes for which  
21 the defendant committed the crime was for the purpose of his or her  
22 sexual gratification.  
23 (47) "Standard sentence range" means the sentencing court's  
24 discretionary range in imposing a nonappealable sentence.  
25 (48) "Statutory maximum sentence" means the maximum length of time  
26 for which an offender may be confined as punishment for a crime as  
27 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
28 crime, or other statute defining the maximum penalty for a crime.  
29 (49) "Stranger" means that the victim did not know the offender  
30 twenty-four hours before the offense.  
31 (50) "Total confinement" means confinement inside the physical  
32 boundaries of a facility or institution operated or utilized under  
33 contract by the state or any other unit of government for twenty-four  
34 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.  
35 (51) "Transition training" means written and verbal instructions  
36 and assistance provided by the department to the offender during the  
37 two weeks prior to the offender's successful completion of the work

1 ethic camp program. The transition training shall include instructions  
2 in the offender's requirements and obligations during the offender's  
3 period of community custody.

4 (52) "Victim" means any person who has sustained emotional,  
5 psychological, physical, or financial injury to person or property as  
6 a direct result of the crime charged.

7 (53) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

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

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

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

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

37 (54) "Work crew" means a program of partial confinement consisting

1 of civic improvement tasks for the benefit of the community that  
2 complies with RCW 9.94A.725.

3 (55) "Work ethic camp" means an alternative incarceration program  
4 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
5 the cost of corrections by requiring offenders to complete a  
6 comprehensive array of real-world job and vocational experiences,  
7 character-building work ethics training, life management skills  
8 development, substance abuse rehabilitation, counseling, literacy  
9 training, and basic adult education.

10 (56) "Work release" means a program of partial confinement  
11 available to offenders who are employed or engaged as a student in a  
12 regular course of study at school.

13 **Sec. 4.** RCW 9.94A.525 and 2010 c 274 s 403 are each amended to  
14 read as follows:

15 The offender score is measured on the horizontal axis of the  
16 sentencing grid. The offender score rules are as follows:

17 The offender score is the sum of points accrued under this section  
18 rounded down to the nearest whole number.

19 (1) A prior conviction is a conviction which exists before the date  
20 of sentencing for the offense for which the offender score is being  
21 computed. Convictions entered or sentenced on the same date as the  
22 conviction for which the offender score is being computed shall be  
23 deemed "other current offenses" within the meaning of RCW 9.94A.589.

24 (2)(a) Class A and sex prior felony convictions shall always be  
25 included in the offender score.

26 (b) Class B prior felony convictions other than sex offenses shall  
27 not be included in the offender score, if since the last date of  
28 release from confinement (including full-time residential treatment)  
29 pursuant to a felony conviction, if any, or entry of judgment and  
30 sentence, the offender had spent ten consecutive years in the community  
31 without committing any crime that subsequently results in a conviction.

32 (c) Except as provided in (e) of this subsection, class C prior  
33 felony convictions other than sex offenses shall not be included in the  
34 offender score if, since the last date of release from confinement  
35 (including full-time residential treatment) pursuant to a felony  
36 conviction, if any, or entry of judgment and sentence, the offender had

1 spent five consecutive years in the community without committing any  
2 crime that subsequently results in a conviction.

3 (d) Except as provided in (e) of this subsection, serious traffic  
4 convictions shall not be included in the offender score if, since the  
5 last date of release from confinement (including full-time residential  
6 treatment) pursuant to a felony conviction, if any, or entry of  
7 judgment and sentence, the offender spent five years in the community  
8 without committing any crime that subsequently results in a conviction.

9 (e) If the present conviction is felony driving while under the  
10 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
11 felony physical control of a vehicle while under the influence of  
12 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions  
13 of felony driving while under the influence of intoxicating liquor or  
14 any drug, felony physical control of a vehicle while under the  
15 influence of intoxicating liquor or any drug, and serious traffic  
16 offenses shall be included in the offender score if: (i) The prior  
17 convictions were committed within five years since the last date of  
18 release from confinement (including full-time residential treatment) or  
19 entry of judgment and sentence; or (ii) the prior convictions would be  
20 considered "prior offenses within ten years" as defined in RCW  
21 46.61.5055.

22 (f) Prior convictions for a repetitive domestic violence offense,  
23 as defined in RCW 9.94A.030, shall not be included in the offender  
24 score if, since the last date of release from confinement or entry of  
25 judgment and sentence, the offender had spent ten consecutive years in  
26 the community without committing any crime that subsequently results in  
27 a conviction.

28 (g) This subsection applies to both adult and juvenile prior  
29 convictions.

30 (3) Out-of-state convictions for offenses shall be classified  
31 according to the comparable offense definitions and sentences provided  
32 by Washington law. Federal convictions for offenses shall be  
33 classified according to the comparable offense definitions and  
34 sentences provided by Washington law. If there is no clearly  
35 comparable offense under Washington law or the offense is one that is  
36 usually considered subject to exclusive federal jurisdiction, the  
37 offense shall be scored as a class C felony equivalent if it was a  
38 felony under the relevant federal statute.

1 (4) Score prior convictions for felony anticipatory offenses  
2 (attempts, criminal solicitations, and criminal conspiracies) the same  
3 as if they were convictions for completed offenses.

4 (5)(a) In the case of multiple prior convictions, for the purpose  
5 of computing the offender score, count all convictions separately,  
6 except:

7 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
8 encompass the same criminal conduct, shall be counted as one offense,  
9 the offense that yields the highest offender score. The current  
10 sentencing court shall determine with respect to other prior adult  
11 offenses for which sentences were served concurrently or prior juvenile  
12 offenses for which sentences were served consecutively, whether those  
13 offenses shall be counted as one offense or as separate offenses using  
14 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
15 if the court finds that they shall be counted as one offense, then the  
16 offense that yields the highest offender score shall be used. The  
17 current sentencing court may presume that such other prior offenses  
18 were not the same criminal conduct from sentences imposed on separate  
19 dates, or in separate counties or jurisdictions, or in separate  
20 complaints, indictments, or informations;

21 (ii) In the case of multiple prior convictions for offenses  
22 committed before July 1, 1986, for the purpose of computing the  
23 offender score, count all adult convictions served concurrently as one  
24 offense, and count all juvenile convictions entered on the same date as  
25 one offense. Use the conviction for the offense that yields the  
26 highest offender score.

27 (b) As used in this subsection (5), "served concurrently" means  
28 that: (i) The latter sentence was imposed with specific reference to  
29 the former; (ii) the concurrent relationship of the sentences was  
30 judicially imposed; and (iii) the concurrent timing of the sentences  
31 was not the result of a probation or parole revocation on the former  
32 offense.

33 (6) If the present conviction is one of the anticipatory offenses  
34 of criminal attempt, solicitation, or conspiracy, count each prior  
35 conviction as if the present conviction were for a completed offense.  
36 When these convictions are used as criminal history, score them the  
37 same as a completed crime.

1 (7) If the present conviction is for a nonviolent offense and not  
2 covered by subsection (11), (12), or (13) of this section, count one  
3 point for each adult prior felony conviction and one point for each  
4 juvenile prior violent felony conviction and 1/2 point for each  
5 juvenile prior nonviolent felony conviction.

6 (8) If the present conviction is for a violent offense and not  
7 covered in subsection (9), (10), (11), (12), or (13) of this section,  
8 count two points for each prior adult and juvenile violent felony  
9 conviction, one point for each prior adult nonviolent felony  
10 conviction, and 1/2 point for each prior juvenile nonviolent felony  
11 conviction.

12 (9) If the present conviction is for a serious violent offense,  
13 count three points for prior adult and juvenile convictions for crimes  
14 in this category, two points for each prior adult and juvenile violent  
15 conviction (not already counted), one point for each prior adult  
16 nonviolent felony conviction, and 1/2 point for each prior juvenile  
17 nonviolent felony conviction.

18 (10) If the present conviction is for Burglary 1, count prior  
19 convictions as in subsection (8) of this section; however count two  
20 points for each prior adult Burglary 2 or residential burglary  
21 conviction, and one point for each prior juvenile Burglary 2 or  
22 residential burglary conviction.

23 (11) If the present conviction is for a felony traffic offense  
24 count two points for each adult or juvenile prior conviction for  
25 Vehicular Homicide or Vehicular Assault; for each felony offense count  
26 one point for each adult and 1/2 point for each juvenile prior  
27 conviction; for each serious traffic offense, other than those used for  
28 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
29 adult and 1/2 point for each juvenile prior conviction; count one point  
30 for each adult and 1/2 point for each juvenile prior conviction for  
31 operation of a vessel while under the influence of intoxicating liquor  
32 or any drug.

33 (12) If the present conviction is for homicide by watercraft or  
34 assault by watercraft count two points for each adult or juvenile prior  
35 conviction for homicide by watercraft or assault by watercraft; for  
36 each felony offense count one point for each adult and 1/2 point for  
37 each juvenile prior conviction; count one point for each adult and 1/2  
38 point for each juvenile prior conviction for driving under the

1 influence of intoxicating liquor or any drug, actual physical control  
2 of a motor vehicle while under the influence of intoxicating liquor or  
3 any drug, or operation of a vessel while under the influence of  
4 intoxicating liquor or any drug.

5 (13) If the present conviction is for manufacture of  
6 methamphetamine count three points for each adult prior manufacture of  
7 methamphetamine conviction and two points for each juvenile manufacture  
8 of methamphetamine offense. If the present conviction is for a drug  
9 offense and the offender has a criminal history that includes a sex  
10 offense or serious violent offense, count three points for each adult  
11 prior felony drug offense conviction and two points for each juvenile  
12 drug offense. All other adult and juvenile felonies are scored as in  
13 subsection (8) of this section if the current drug offense is violent,  
14 or as in subsection (7) of this section if the current drug offense is  
15 nonviolent.

16 (14) If the present conviction is for Escape from Community  
17 Custody, RCW 72.09.310, count only prior escape convictions in the  
18 offender score. Count adult prior escape convictions as one point and  
19 juvenile prior escape convictions as 1/2 point.

20 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or  
21 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
22 juvenile prior convictions as 1/2 point.

23 (16) If the present conviction is for Burglary 2 or residential  
24 burglary, count priors as in subsection (7) of this section; however,  
25 count two points for each adult and juvenile prior Burglary 1  
26 conviction, two points for each adult prior Burglary 2 or residential  
27 burglary conviction, and one point for each juvenile prior Burglary 2  
28 or residential burglary conviction.

29 (17) If the present conviction is for a sex offense, count priors  
30 as in subsections (7) through (11) and (13) through (16) of this  
31 section; however count three points for each adult and juvenile prior  
32 sex offense conviction.

33 (18) If the present conviction is for failure to register as a sex  
34 offender under RCW 9A.44.130(~~((+11))~~) or 9A.44.132, count priors as in  
35 subsections (7) through (11) and (13) through (16) of this section;  
36 however count three points for each adult and juvenile prior sex  
37 offense conviction, excluding prior convictions for failure to register

1 as a sex offender under RCW 9A.44.130(~~((11))~~) or 9A.44.132, which shall  
2 count as one point.

3 (19) If the present conviction is for an offense committed while  
4 the offender was under community custody, add one point. For purposes  
5 of this subsection, community custody includes community placement or  
6 postrelease supervision, as defined in chapter 9.94B RCW.

7 (20) If the present conviction is for Theft of a Motor Vehicle,  
8 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
9 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
10 priors as in subsections (7) through (18) of this section; however  
11 count one point for prior convictions of Vehicle Prowling 2, and three  
12 points for each adult and juvenile prior Theft 1 (of a motor vehicle),  
13 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a  
14 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),  
15 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a  
16 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without  
17 Permission 2 conviction.

18 (21) If the present conviction is for a felony domestic violence  
19 offense where domestic violence as defined in RCW 9.94A.030 was plead  
20 and proven, count priors as in subsections (7) through (20) of this  
21 section; however, count points as follows:

22 (a) Count two points for each adult prior conviction where domestic  
23 violence as defined in RCW 9.94A.030 was plead and proven after August  
24 1, 2011, for the following offenses: A violation of a no-contact order  
25 that is a felony offense, a violation of a protection order that is a  
26 felony offense, a felony domestic violence harassment offense, a felony  
27 domestic violence stalking offense, a domestic violence Burglary 1  
28 offense, a domestic violence Kidnapping 1 offense, a domestic violence  
29 Kidnapping 2 offense, a domestic violence unlawful imprisonment  
30 offense, a domestic violence Robbery 1 offense, a domestic violence  
31 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic  
32 violence Assault 2 offense, a domestic violence Assault 3 offense, a  
33 domestic violence Arson 1 offense, or a domestic violence Arson 2  
34 offense; (~~and~~)

35 (b) Count one point for each second and subsequent juvenile  
36 conviction where domestic violence as defined in RCW 9.94A.030 was  
37 plead and proven after August 1, 2011, for the offenses listed in (a)  
38 of this subsection; and



1           (c) Count one point for each adult prior conviction for a  
2 repetitive domestic violence offense as defined in RCW 9.94A.030, where  
3 domestic violence as defined in RCW 9.94A.030, was plead and proven  
4 after August 1, 2011.

5           (22) The fact that a prior conviction was not included in an  
6 offender's offender score or criminal history at a previous sentencing  
7 shall have no bearing on whether it is included in the criminal history  
8 or offender score for the current offense. Prior convictions that were  
9 not counted in the offender score or included in criminal history under  
10 repealed or previous versions of the sentencing reform act shall be  
11 included in criminal history and shall count in the offender score if  
12 the current version of the sentencing reform act requires including or  
13 counting those convictions. Prior convictions that were not included  
14 in criminal history or in the offender score shall be included upon any  
15 resentencing to ensure imposition of an accurate sentence.

--- END ---