
HOUSE BILL 1388

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Orcutt, Hawkins, Hayes, Pike, Vick, O'Ban, and Buys

Read first time 01/24/13. Referred to Committee on Public Safety.

1 AN ACT Relating to vehicular homicide and vehicular assault
2 sentences; amending RCW 9.94A.589; reenacting and amending RCW
3 9.94A.515; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to read
6 as follows:

7 (1)(a) Except as provided in (b) (~~(c)~~), (c), or (d) of this
8 subsection, whenever a person is to be sentenced for two or more
9 current offenses, the sentence range for each current offense shall be
10 determined by using all other current and prior convictions as if they
11 were prior convictions for the purpose of the offender score:
12 PROVIDED, That if the court enters a finding that some or all of the
13 current offenses encompass the same criminal conduct then those current
14 offenses shall be counted as one crime. Sentences imposed under this
15 subsection shall be served concurrently. Consecutive sentences may
16 only be imposed under the exceptional sentence provisions of RCW
17 9.94A.535. "Same criminal conduct," as used in this subsection, means
18 two or more crimes that require the same criminal intent, are committed

1 at the same time and place, and involve the same victim. This
2 definition applies in cases involving vehicular assault or vehicular
3 homicide even if the victims occupied the same vehicle.

4 (b) Whenever a person is convicted of two or more serious violent
5 offenses arising from separate and distinct criminal conduct, the
6 standard sentence range for the offense with the highest seriousness
7 level under RCW 9.94A.515 shall be determined using the offender's
8 prior convictions and other current convictions that are not serious
9 violent offenses in the offender score and the standard sentence range
10 for other serious violent offenses shall be determined by using an
11 offender score of zero. The standard sentence range for any offenses
12 that are not serious violent offenses shall be determined according to
13 (a) of this subsection. All sentences imposed under ~~((b) of)~~ this
14 subsection (1)(b) shall be served consecutively to each other and
15 concurrently with sentences imposed under (a) of this subsection.

16 (c) If an offender is convicted under RCW 9.41.040 for unlawful
17 possession of a firearm in the first or second degree and for the
18 felony crimes of theft of a firearm or possession of a stolen firearm,
19 or both, the standard sentence range for each of these current offenses
20 shall be determined by using all other current and prior convictions,
21 except other current convictions for the felony crimes listed in this
22 subsection (1)(c), as if they were prior convictions. The offender
23 shall serve consecutive sentences for each conviction of the felony
24 crimes listed in this subsection (1)(c), and for each firearm
25 unlawfully possessed.

26 (d) Whenever a person is convicted of two or more counts of
27 vehicular homicide, the standard sentence range for the first count
28 shall be determined using the offender's prior convictions and other
29 current convictions that are not vehicular homicide in the offender
30 score and the standard sentence range for other counts of vehicular
31 homicide shall be determined by using an offender score of zero. The
32 standard sentence range for any offenses that are not vehicular
33 homicide shall be determined according to (a) of this subsection. All
34 sentences imposed under this subsection (1)(d) shall be served
35 consecutively to each other and concurrently with sentences imposed
36 under (a) of this subsection.

37 (2)(a) Except as provided in (b) of this subsection, whenever a

1 person while under sentence for conviction of a felony commits another
2 felony and is sentenced to another term of confinement, the latter term
3 shall not begin until expiration of all prior terms.

4 (b) Whenever a second or later felony conviction results in
5 community supervision with conditions not currently in effect, under
6 the prior sentence or sentences of community supervision the court may
7 require that the conditions of community supervision contained in the
8 second or later sentence begin during the immediate term of community
9 supervision and continue throughout the duration of the consecutive
10 term of community supervision.

11 (3) Subject to subsections (1) and (2) of this section, whenever a
12 person is sentenced for a felony that was committed while the person
13 was not under sentence for conviction of a felony, the sentence shall
14 run concurrently with any felony sentence which has been imposed by any
15 court in this or another state or by a federal court subsequent to the
16 commission of the crime being sentenced unless the court pronouncing
17 the current sentence expressly orders that they be served
18 consecutively.

19 (4) Whenever any person granted probation under RCW 9.95.210 or
20 9.92.060, or both, has the probationary sentence revoked and a prison
21 sentence imposed, that sentence shall run consecutively to any sentence
22 imposed pursuant to this chapter, unless the court pronouncing the
23 subsequent sentence expressly orders that they be served concurrently.

24 (5) In the case of consecutive sentences, all periods of total
25 confinement shall be served before any partial confinement, community
26 restitution, community supervision, or any other requirement or
27 conditions of any of the sentences. Except for exceptional sentences
28 as authorized under RCW 9.94A.535, if two or more sentences that run
29 consecutively include periods of community supervision, the aggregate
30 of the community supervision period shall not exceed twenty-four
31 months.

32 **Sec. 2.** RCW 9.94A.515 and 2012 c 162 s 1 and 2012 c 176 s 3 are
33 each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN
EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520) <u>Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)</u>
X	Child Molestation 1 (RCW 9A.44.083) Criminal Mistreatment 1 (RCW 9A.42.020)

1 Indecent Liberties (with forcible
2 compulsion) (RCW
3 9A.44.100(1)(a))
4 Kidnapping 1 (RCW 9A.40.020)
5 Leading Organized Crime (RCW
6 9A.82.060(1)(a))
7 Malicious explosion 3 (RCW
8 70.74.280(3))
9 Sexually Violent Predator Escape
10 (RCW 9A.76.115)
11 IX Abandonment of Dependent Person 1
12 (RCW 9A.42.060)
13 Assault of a Child 2 (RCW 9A.36.130)
14 Explosive devices prohibited (RCW
15 70.74.180)
16 Hit and Run--Death (RCW
17 46.52.020(4)(a))
18 Homicide by Watercraft, by being
19 under the influence of intoxicating
20 liquor or any drug (RCW
21 79A.60.050)
22 Inciting Criminal Profiteering (RCW
23 9A.82.060(1)(b))
24 Malicious placement of an explosive 2
25 (RCW 70.74.270(2))
26 Robbery 1 (RCW 9A.56.200)
27 Sexual Exploitation (RCW 9.68A.040)
28 VIII Arson 1 (RCW 9A.48.020)
29 Commercial Sexual Abuse of a Minor
30 (RCW 9.68A.100)
31 Homicide by Watercraft, by the
32 operation of any vessel in a
33 reckless manner (RCW
34 79A.60.050)
35 Manslaughter 2 (RCW 9A.32.070)
36 Promoting Prostitution 1 (RCW
37 9A.88.070)

1 Theft of Ammonia (RCW 69.55.010)
2 ~~((Vehicular Homicide, by the operation
3 of any vehicle in a reckless manner
4 (RCW 46.61.520)))~~
5 Vehicular Homicide, by disregard for
6 the safety of others (RCW
7 46.61.520)
8 VII Burglary 1 (RCW 9A.52.020)
9 Child Molestation 2 (RCW 9A.44.086)
10 Civil Disorder Training (RCW
11 9A.48.120)
12 Dealing in depictions of minor engaged
13 in sexually explicit conduct 1
14 (RCW 9.68A.050(1))
15 Drive-by Shooting (RCW 9A.36.045)
16 Homicide by Watercraft, by disregard
17 for the safety of others (RCW
18 79A.60.050)
19 Indecent Liberties (without forcible
20 compulsion) (RCW 9A.44.100(1)
21 (b) and (c))
22 Introducing Contraband 1 (RCW
23 9A.76.140)
24 Malicious placement of an explosive 3
25 (RCW 70.74.270(3))
26 Negligently Causing Death By Use of a
27 Signal Preemption Device (RCW
28 46.37.675)
29 Sending, bringing into state depictions
30 of minor engaged in sexually
31 explicit conduct 1 (RCW
32 9.68A.060(1))
33 Unlawful Possession of a Firearm in
34 the first degree (RCW 9.41.040(1))
35 Use of a Machine Gun in Commission
36 of a Felony (RCW 9.41.225)

1 ((Vehicular Homicide, by disregard for
2 the safety of others (RCW
3 46.61.520)))
4 VI Bail Jumping with Murder 1 (RCW
5 9A.76.170(3)(a))
6 Bribery (RCW 9A.68.010)
7 Incest 1 (RCW 9A.64.020(1))
8 Intimidating a Judge (RCW 9A.72.160)
9 Intimidating a Juror/Witness (RCW
10 9A.72.110, 9A.72.130)
11 Malicious placement of an imitation
12 device 2 (RCW 70.74.272(1)(b))
13 Possession of Depictions of a Minor
14 Engaged in Sexually Explicit
15 Conduct 1 (RCW 9.68A.070(1))
16 Rape of a Child 3 (RCW 9A.44.079)
17 Theft of a Firearm (RCW 9A.56.300)
18 Unlawful Storage of Ammonia (RCW
19 69.55.020)
20 Vehicular Assault, by being under the
21 influence of intoxicating liquor or
22 any drug, or by the operation or
23 driving of a vehicle in a reckless
24 manner (RCW 46.61.522)
25 V Abandonment of Dependent Person 2
26 (RCW 9A.42.070)
27 Advancing money or property for
28 extortionate extension of credit
29 (RCW 9A.82.030)
30 Bail Jumping with class A Felony
31 (RCW 9A.76.170(3)(b))
32 Child Molestation 3 (RCW 9A.44.089)
33 Criminal Mistreatment 2 (RCW
34 9A.42.030)
35 Custodial Sexual Misconduct 1 (RCW
36 9A.44.160)

1 Dealing in Depictions of Minor
2 Engaged in Sexually Explicit
3 Conduct 2 (RCW 9.68A.050(2))
4 Domestic Violence Court Order
5 Violation (RCW 10.99.040,
6 10.99.050, 26.09.300, 26.10.220,
7 26.26.138, 26.50.110, 26.52.070,
8 or 74.34.145)
9 Driving While Under the Influence
10 (RCW 46.61.502(6))
11 Extortion 1 (RCW 9A.56.120)
12 Extortionate Extension of Credit (RCW
13 9A.82.020)
14 Extortionate Means to Collect
15 Extensions of Credit (RCW
16 9A.82.040)
17 Incest 2 (RCW 9A.64.020(2))
18 Kidnapping 2 (RCW 9A.40.030)
19 Perjury 1 (RCW 9A.72.020)
20 Persistent prison misbehavior (RCW
21 9.94.070)
22 Physical Control of a Vehicle While
23 Under the Influence (RCW
24 46.61.504(6))
25 Possession of a Stolen Firearm (RCW
26 9A.56.310)
27 Rape 3 (RCW 9A.44.060)
28 Rendering Criminal Assistance 1
29 (RCW 9A.76.070)
30 Sending, Bringing into State Depictions
31 of Minor Engaged in Sexually
32 Explicit Conduct 2 (RCW
33 9.68A.060(2))
34 Sexual Misconduct with a Minor 1
35 (RCW 9A.44.093)
36 Sexually Violating Human Remains
37 (RCW 9A.44.105)

1 Stalking (RCW 9A.46.110)
2 Taking Motor Vehicle Without
3 Permission 1 (RCW 9A.56.070)
4 IV Arson 2 (RCW 9A.48.030)
5 Assault 2 (RCW 9A.36.021)
6 Assault 3 (of a Peace Officer with a
7 Projectile Stun Gun) (RCW
8 9A.36.031(1)(h))
9 Assault by Watercraft (RCW
10 79A.60.060)
11 Bribing a Witness/Bribe Received by
12 Witness (RCW 9A.72.090,
13 9A.72.100)
14 Cheating 1 (RCW 9A.46.1961)
15 Commercial Bribery (RCW 9A.68.060)
16 Counterfeiting (RCW 9.16.035(4))
17 Endangerment with a Controlled
18 Substance (RCW 9A.42.100)
19 Escape 1 (RCW 9A.76.110)
20 Hit and Run--Injury (RCW
21 46.52.020(4)(b))
22 Hit and Run with Vessel--Injury
23 Accident (RCW 79A.60.200(3))
24 Identity Theft 1 (RCW 9.35.020(2))
25 Indecent Exposure to Person Under
26 Age Fourteen (subsequent sex
27 offense) (RCW 9A.88.010)
28 Influencing Outcome of Sporting Event
29 (RCW 9A.82.070)
30 Malicious Harassment (RCW
31 9A.36.080)
32 Possession of Depictions of a Minor
33 Engaged in Sexually Explicit
34 Conduct 2 (RCW 9.68A.070(2))
35 Residential Burglary (RCW
36 9A.52.025)
37 Robbery 2 (RCW 9A.56.210)

1 Theft of Livestock 1 (RCW 9A.56.080)
2 Threats to Bomb (RCW 9.61.160)
3 Trafficking in Stolen Property 1 (RCW
4 9A.82.050)
5 Unlawful factoring of a credit card or
6 payment card transaction (RCW
7 9A.56.290(4)(b))
8 Unlawful transaction of health
9 coverage as a health care service
10 contractor (RCW 48.44.016(3))
11 Unlawful transaction of health
12 coverage as a health maintenance
13 organization (RCW 48.46.033(3))
14 Unlawful transaction of insurance
15 business (RCW 48.15.023(3))
16 Unlicensed practice as an insurance
17 professional (RCW 48.17.063(2))
18 Use of Proceeds of Criminal
19 Profiteering (RCW 9A.82.080 (1)
20 and (2))
21 ~~((Vehicular Assault, by being under the
22 influence of intoxicating liquor or
23 any drug, or by the operation or
24 driving of a vehicle in a reckless
25 manner (RCW 46.61.522)))~~
26 Vehicular Assault, by the operation or
27 driving of a vehicle with disregard
28 for the safety of others (RCW
29 46.61.522)
30 Viewing of Depictions of a Minor
31 Engaged in Sexually Explicit
32 Conduct 1 (RCW 9.68A.075(1))
33 Willful Failure to Return from
34 Furlough (RCW 72.66.060)
35 III Animal Cruelty 1 (Sexual Conduct or
36 Contact) (RCW 16.52.205(3))

1 Assault 3 (Except Assault 3 of a Peace
2 Officer With a Projectile Stun
3 Gun) (RCW 9A.36.031 except
4 subsection (1)(h))
5 Assault of a Child 3 (RCW 9A.36.140)
6 Bail Jumping with class B or C Felony
7 (RCW 9A.76.170(3)(c))
8 Burglary 2 (RCW 9A.52.030)
9 Communication with a Minor for
10 Immoral Purposes (RCW
11 9.68A.090)
12 Criminal Gang Intimidation (RCW
13 9A.46.120)
14 Custodial Assault (RCW 9A.36.100)
15 Cyberstalking (subsequent conviction
16 or threat of death) (RCW
17 9.61.260(3))
18 Escape 2 (RCW 9A.76.120)
19 Extortion 2 (RCW 9A.56.130)
20 Harassment (RCW 9A.46.020)
21 Intimidating a Public Servant (RCW
22 9A.76.180)
23 Introducing Contraband 2 (RCW
24 9A.76.150)
25 Malicious Injury to Railroad Property
26 (RCW 81.60.070)
27 Mortgage Fraud (RCW 19.144.080)
28 Negligently Causing Substantial Bodily
29 Harm By Use of a Signal
30 Preemption Device (RCW
31 46.37.674)
32 Organized Retail Theft 1 (RCW
33 9A.56.350(2))
34 Perjury 2 (RCW 9A.72.030)
35 Possession of Incendiary Device (RCW
36 9.40.120)

1 Possession of Machine Gun or Short-
2 Barreled Shotgun or Rifle (RCW
3 9.41.190)
4 Promoting Prostitution 2 (RCW
5 9A.88.080)
6 Retail Theft with Extenuating
7 Circumstances 1 (RCW
8 9A.56.360(2))
9 Securities Act violation (RCW
10 21.20.400)
11 Tampering with a Witness (RCW
12 9A.72.120)
13 Telephone Harassment (subsequent
14 conviction or threat of death)
15 (RCW 9.61.230(2))
16 Theft of Livestock 2 (RCW 9A.56.083)
17 Theft with the Intent to Resell 1 (RCW
18 9A.56.340(2))
19 Trafficking in Stolen Property 2 (RCW
20 9A.82.055)
21 Unlawful Hunting of Big Game 1
22 (RCW 77.15.410(3)(b))
23 Unlawful Imprisonment (RCW
24 9A.40.040)
25 Unlawful possession of firearm in the
26 second degree (RCW 9.41.040(2))
27 (~~Vehicular Assault, by the operation or~~
28 ~~driving of a vehicle with disregard~~
29 ~~for the safety of others (RCW~~
30 ~~46.61.522)))
31 Unlawful Taking of Endangered Fish
32 or Wildlife 1 (RCW
33 77.15.120(3)(b))
34 Unlawful Trafficking in Fish, Shellfish,
35 or Wildlife 1 (RCW
36 77.15.260(3)(b))~~

1 Unlawful Use of a Nondesignated
2 Vessel (RCW 77.15.530(4))
3 Willful Failure to Return from Work
4 Release (RCW 72.65.070)
5 II Commercial Fishing Without a License
6 1 (RCW 77.15.500(3)(b))
7 Computer Trespass 1 (RCW
8 9A.52.110)
9 Counterfeiting (RCW 9.16.035(3))
10 Engaging in Fish Dealing Activity
11 Unlicensed 1 (RCW 77.15.620(3))
12 Escape from Community Custody
13 (RCW 72.09.310)
14 Failure to Register as a Sex Offender
15 (second or subsequent offense)
16 (RCW 9A.44.132)
17 Health Care False Claims (RCW
18 48.80.030)
19 Identity Theft 2 (RCW 9.35.020(3))
20 Improperly Obtaining Financial
21 Information (RCW 9.35.010)
22 Malicious Mischief 1 (RCW
23 9A.48.070)
24 Organized Retail Theft 2 (RCW
25 9A.56.350(3))
26 Possession of Stolen Property 1 (RCW
27 9A.56.150)
28 Possession of a Stolen Vehicle (RCW
29 9A.56.068)
30 Retail Theft with Extenuating
31 Circumstances 2 (RCW
32 9A.56.360(3))
33 Theft 1 (RCW 9A.56.030)
34 Theft of a Motor Vehicle (RCW
35 9A.56.065)

1 Theft of Rental, Leased, or Lease-
2 purchased Property (valued at one
3 thousand five hundred dollars or
4 more) (RCW 9A.56.096(5)(a))
5 Theft with the Intent to Resell 2 (RCW
6 9A.56.340(3))
7 Trafficking in Insurance Claims (RCW
8 48.30A.015)
9 Unlawful factoring of a credit card or
10 payment card transaction (RCW
11 9A.56.290(4)(a))
12 Unlawful Participation of Non-Indians
13 in Indian Fishery (RCW
14 77.15.570(2))
15 Unlawful Practice of Law (RCW
16 2.48.180)
17 Unlicensed Practice of a Profession or
18 Business (RCW 18.130.190(7))
19 Unlawful Purchase or Use of a License
20 (RCW 77.15.650(3)(b))
21 Unlawful Trafficking in Fish, Shellfish,
22 or Wildlife 2 (RCW
23 77.15.260(3)(a))
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 Spotlighting Big Game 1 (RCW
3 77.15.450(3)(b))
4 Suspension of Department Privileges 1
5 (RCW 77.15.670(3)(b))
6 Taking Motor Vehicle Without
7 Permission 2 (RCW 9A.56.075)
8 Theft 2 (RCW 9A.56.040)
9 Theft of Rental, Leased, or Lease-
10 purchased Property (valued at two
11 hundred fifty dollars or more but
12 less than one thousand five
13 hundred dollars) (RCW
14 9A.56.096(5)(b))
15 Transaction of insurance business
16 beyond the scope of licensure
17 (RCW 48.17.063)
18 Unlawful Fish and Shellfish Catch
19 Accounting (RCW
20 77.15.630(3)(b))
21 Unlawful Issuance of Checks or Drafts
22 (RCW 9A.56.060)
23 Unlawful Possession of Fictitious
24 Identification (RCW 9A.56.320)
25 Unlawful Possession of Instruments of
26 Financial Fraud (RCW 9A.56.320)
27 Unlawful Possession of Payment
28 Instruments (RCW 9A.56.320)
29 Unlawful Possession of a Personal
30 Identification Device (RCW
31 9A.56.320)
32 Unlawful Production of Payment
33 Instruments (RCW 9A.56.320)
34 Unlawful Release of Deleterious Exotic
35 Wildlife (RCW 77.15.250(2)(b))
36 Unlawful Trafficking in Food Stamps
37 (RCW 9.91.142)

1 Unlawful Use of Food Stamps (RCW
2 9.91.144)
3 Unlawful Use of Net to Take Fish 1
4 (RCW 77.15.580(3)(b))
5 Unlawful Use of Prohibited Aquatic
6 Animal Species (RCW
7 77.15.253(3))
8 Vehicle Prowl 1 (RCW 9A.52.095)
9 Violating Commercial Fishing Area or
10 Time 1 (RCW 77.15.550(3)(b))

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