

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6104

52nd Legislature
1992 Regular Session

Passed by the Senate March 7, 1992
Yeas 47 Nays 0

President of the Senate

Passed by the House March 4, 1992
Yeas 95 Nays 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6104** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6104

AS AMENDED BY THE HOUSE

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Rasmussen, Thorsness, Hayner, Sellar, A. Smith and Erwin)

Read first time 1/30/92.

1 AN ACT Relating to creating the crimes of first, second, and third
2 degree assault against a child; amending RCW 9.94A.320, 9.41.010,
3 9.94A.150, 9.94A.310, 9.94A.360, 9.94A.440, 9A.46.060, 9A.82.010,
4 13.34.130, 13.34.190, and 71.09.020; reenacting and amending RCW
5 9.94A.030, 9.94A.120, and 43.43.830; adding new sections to chapter
6 9A.36 RCW; and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.36 RCW
9 to read as follows:

10 (1) A person eighteen years of age or older is guilty of the crime
11 of assault of a child in the first degree if the child is under the age
12 of thirteen and the person:

13 (a) Commits the crime of assault in the first degree, as defined in
14 RCW 9A.36.011, against the child; or

1 (b) Intentionally assaults the child and either:
2 (i) Recklessly inflicts great bodily harm; or
3 (ii) Causes substantial bodily harm, and the person has previously
4 engaged in a pattern or practice either of (A) assaulting the child
5 which has resulted in bodily harm that is greater than transient
6 physical pain or minor temporary marks, or (B) causing the child
7 physical pain or agony that is equivalent to that produced by torture.
8 (2) Assault of a child in the first degree is a class A felony.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.36 RCW
10 to read as follows:

11 (1) A person eighteen years of age or older is guilty of the crime
12 of assault of a child in the second degree if the child is under the
13 age of thirteen and the person:

14 (a) Commits the crime of assault in the second degree, as defined
15 in RCW 9A.36.021, against a child; or

16 (b) Intentionally assaults the child and causes bodily harm that is
17 greater than transient physical pain or minor temporary marks, and the
18 person has previously engaged in a pattern or practice either of (i)
19 assaulting the child which has resulted in bodily harm that is greater
20 than transient pain or minor temporary marks, or (ii) causing the child
21 physical pain or agony that is equivalent to that produced by torture.

22 (2) Assault of a child in the second degree is a class B felony.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.36 RCW
24 to read as follows:

25 (1) A person eighteen years of age or older is guilty of the crime
26 of assault of a child in the third degree if the child is under the age
27 of thirteen and the person commits the crime of assault in the third
28 degree as defined in RCW 9A.36.031(1)(d) or (f) against the child.

1 (2) Assault of a child in the third degree is a class C felony.

2 **Sec. 4.** RCW 9.94A.320 and 1991 c 32 s 3 are each amended to read
3 as follows:

4 TABLE 2

5 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- 6 XV Aggravated Murder 1 (RCW 10.95.020)
- 7 XIV Murder 1 (RCW 9A.32.030)
- 8 Homicide by abuse (RCW 9A.32.055)
- 9 XIII Murder 2 (RCW 9A.32.050)
- 10 XII Assault 1 (RCW 9A.36.011)
- 11 Assault of a Child 1 (RCW 9A.36.--- (section 1 of this
12 act))
- 13 XI Rape 1 (RCW 9A.44.040)
- 14 Rape of a Child 1 (RCW 9A.44.073)
- 15 X Kidnapping 1 (RCW 9A.40.020)
- 16 Rape 2 (RCW 9A.44.050)
- 17 Rape of a Child 2 (RCW 9A.44.076)
- 18 Child Molestation 1 (RCW 9A.44.083)
- 19 Damaging building, etc., by explosion with threat to
20 human being (RCW 70.74.280(1))
- 21 Over 18 and deliver heroin or narcotic from Schedule I
22 or II to someone under 18 (RCW 69.50.406)
- 23 Leading Organized Crime (RCW 9A.82.060(1)(a))
- 24 IX Assault of a Child 2 (RCW 9A.36.--- (section 2 of this
25 act))
- 26 Robbery 1 (RCW 9A.56.200)
- 27 Manslaughter 1 (RCW 9A.32.060)
- 28 Explosive devices prohibited (RCW 70.74.180)

1 Indecent Liberties (with forcible compulsion)
2 (RCW 9A.44.100(1)(a))
3 Endangering life and property by explosives with threat to
4 human being (RCW 70.74.270)
5 Over 18 and deliver narcotic from Schedule III, IV, or V
6 or a nonnarcotic from Schedule I-V to someone under
7 18 and 3 years junior (RCW 69.50.406)
8 Controlled Substance Homicide (RCW 69.50.415)
9 Sexual Exploitation (RCW 9.68A.040)
10 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
11 VIII Arson 1 (RCW 9A.48.020)
12 Promoting Prostitution 1 (RCW 9A.88.070)
13 Selling for profit (controlled or counterfeit)
14 any controlled substance (RCW 69.50.410)
15 Manufacture, deliver, or possess with intent to deliver
16 heroin or cocaine (RCW 69.50.401(a)(1)(i))
17 Manufacture, deliver, or possess with intent to deliver
18 methamphetamine (RCW 69.50.401(a)(1)(ii))
19 Vehicular Homicide, by being under the influence of
20 intoxicating liquor or any drug or by the operation of
21 any vehicle in a reckless manner (RCW 46.61.520)
22 VII Burglary 1 (RCW 9A.52.020)
23 Vehicular Homicide, by disregard for the safety of others
24 (RCW 46.61.520)
25 Introducing Contraband 1 (RCW 9A.76.140)
26 Indecent Liberties (without forcible compulsion)
27 (RCW 9A.44.100(1) (b) and (c))
28 Child Molestation 2 (RCW 9A.44.086)
29 Dealing in depictions of minor engaged in sexually explicit
30 conduct (RCW 9.68A.050)

1 Sending, bringing into state depictions of minor engaged
2 in sexually explicit conduct (RCW 9.68A.060)
3 Involving a minor in drug dealing (RCW 69.50.401(f))
4 VI Bribery (RCW 9A.68.010)
5 Manslaughter 2 (RCW 9A.32.070)
6 Rape of a Child 3 (RCW 9A.44.079)
7 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
8 Damaging building, etc., by explosion with no threat to
9 human being (RCW 70.74.280(2))
10 Endangering life and property by explosives with no threat
11 to human being (RCW 70.74.270)
12 Incest 1 (RCW 9A.64.020(1))
13 Manufacture, deliver, or possess with intent to deliver
14 narcotics from Schedule I or II (except heroin or
15 cocaine) (RCW 69.50.401(a)(1)(i))
16 Intimidating a Judge (RCW 9A.72.160)
17 Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
18 V Criminal Mistreatment 1 (RCW 9A.42.020)
19 Rape 3 (RCW 9A.44.060)
20 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
21 Child Molestation 3 (RCW 9A.44.089)
22 Kidnapping 2 (RCW 9A.40.030)
23 Extortion 1 (RCW 9A.56.120)
24 Incest 2 (RCW 9A.64.020(2))
25 Perjury 1 (RCW 9A.72.020)
26 Extortionate Extension of Credit (RCW 9A.82.020)
27 Advancing money or property for extortionate extension of
28 credit (RCW 9A.82.030)
29 Extortionate Means to Collect Extensions of Credit
30 (RCW 9A.82.040)

1 Rendering Criminal Assistance 1 (RCW 9A.76.070)
2 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
3 Delivery of imitation controlled substance by person
4 eighteen or over to person under eighteen
5 (RCW 69.52.030(2))
6 IV Residential Burglary (RCW 9A.52.025)
7 Theft of Livestock 1 (RCW 9A.56.080)
8 Robbery 2 (RCW 9A.56.210)
9 Assault 2 (RCW 9A.36.021)
10 Escape 1 (RCW 9A.76.110)
11 Arson 2 (RCW 9A.48.030)
12 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090,
13 9A.72.100)
14 Malicious Harassment (RCW 9A.36.080)
15 Threats to Bomb (RCW 9.61.160)
16 Willful Failure to Return from Furlough (RCW 72.66.060)
17 Hit and Run -- Injury Accident (RCW 46.52.020(4))
18 Vehicular Assault (RCW 46.61.522)
19 Manufacture, deliver, or possess with intent to deliver
20 narcotics from Schedule III, IV, or V or nonnarcotics
21 from Schedule I-V (except marijuana or
22 methamphetamines) (RCW 69.50.401(a)(1)(ii)
23 through (iv))
24 Influencing Outcome of Sporting Event (RCW 9A.82.070)
25 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080
26 (1) and (2))
27 Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
28 III Criminal mistreatment 2 (RCW 9A.42.030)
29 Extortion 2 (RCW 9A.56.130)
30 Unlawful Imprisonment (RCW 9A.40.040)

1 Assault 3 (RCW 9A.36.031)
2 Assault of a Child 3 (RCW 9A.36.--- (section 3 of this
3 act))
4 Custodial Assault (RCW 9A.36.100)
5 Unlawful possession of firearm or pistol by felon
6 (RCW 9.41.040)
7 Harassment (RCW 9A.46.020)
8 Promoting Prostitution 2 (RCW 9A.88.080)
9 Willful Failure to Return from Work Release (RCW 72.65.070)
10 Burglary 2 (RCW 9A.52.030)
11 Introducing Contraband 2 (RCW 9A.76.150)
12 Communication with a Minor for Immoral Purposes
13 (RCW 9.68A.090)
14 Patronizing a Juvenile Prostitute (RCW 9.68A.100)
15 Escape 2 (RCW 9A.76.120)
16 Perjury 2 (RCW 9A.72.030)
17 Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
18 Intimidating a Public Servant (RCW 9A.76.180)
19 Tampering with a Witness (RCW 9A.72.120)
20 Manufacture, deliver, or possess with intent to deliver
21 marijuana (RCW 69.50.401(a)(1)(ii))
22 Delivery of a material in lieu of a controlled substance
23 (RCW 69.50.401(c))
24 Manufacture, distribute, or possess with intent to
25 distribute an imitation controlled substance
26 (RCW 69.52.030(1))
27 Recklessly Trafficking in Stolen Property
28 (RCW 9A.82.050(1))
29 Theft of livestock 2 (RCW 9A.56.080)
30 Securities Act violation (RCW 21.20.400)

1 II Malicious Mischief 1 (RCW 9A.48.070)
2 Possession of Stolen Property 1 (RCW 9A.56.150)
3 Theft 1 (RCW 9A.56.030)
4 Possession of controlled substance that is either heroin
5 or narcotics from Schedule I or II (RCW 69.50.401(d))
6 Possession of phencyclidine (PCP) (RCW 69.50.401(d))
7 Create, deliver, or possess a counterfeit controlled
8 substance (RCW 69.50.401(b))
9 Computer Trespass 1 (RCW 9A.52.110)
10 Reckless Endangerment 1 (RCW 9A.36.045)
11 I Theft 2 (RCW 9A.56.040)
12 Possession of Stolen Property 2 (RCW 9A.56.160)
13 Forgery (RCW 9A.60.020)
14 Taking Motor Vehicle Without Permission (RCW 9A.56.070)
15 Vehicle Prowl 1 (RCW 9A.52.095)
16 Attempting to Elude a Pursuing Police Vehicle
17 (RCW 46.61.024)
18 Malicious Mischief 2 (RCW 9A.48.080)
19 Reckless Burning 1 (RCW 9A.48.040)
20 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
21 Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
22 False Verification for Welfare (RCW 74.08.055)
23 Forged Prescription (RCW 69.41.020)
24 Forged Prescription for a Controlled Substance
25 (RCW 69.50.403)
26 Possess Controlled Substance that is a Narcotic from
27 Schedule III, IV, or V or Non-narcotic from Schedule
28 I-V (except phencyclidine) (RCW 69.50.401(d))

1 **Sec. 5.** RCW 9.41.010 and 1983 c 232 s 1 are each amended to read
2 as follows:

3 (1) "Short firearm" or "pistol" as used in this chapter means any
4 firearm with a barrel less than twelve inches in length.

5 (2) "Crime of violence" as used in this chapter means:

6 (a) Any of the following felonies, as now existing or hereafter
7 amended: Any felony defined under any law as a class A felony or an
8 attempt to commit a class A felony, criminal solicitation of or
9 criminal conspiracy to commit a class A felony, manslaughter in the
10 first degree, manslaughter in the second degree, indecent liberties if
11 committed by forcible compulsion, rape in the second degree, kidnapping
12 in the second degree, arson in the second degree, assault in the second
13 degree, assault of a child in the second degree, extortion in the first
14 degree, burglary in the second degree, and robbery in the second
15 degree;

16 (b) Any conviction for a felony offense in effect at any time prior
17 to July 1, 1976, which is comparable to a felony classified as a crime
18 of violence in subsection (2)(a) of this section; and

19 (c) Any federal or out-of-state conviction for an offense
20 comparable to a felony classified as a crime of violence under
21 subsection (2) (a) or (b) of this section.

22 (3) "Firearm" as used in this chapter means a weapon or device from
23 which a projectile may be fired by an explosive such as gunpowder.

24 (4) "Commercial seller" as used in this chapter means a person who
25 has a federal firearms license.

26 **Sec. 6.** RCW 9.94A.030 and 1991 c 348 s 4, 1991 c 290 s 3, and 1991
27 c 181 s 1 are each reenacted and amended to read as follows:

28 Unless the context clearly requires otherwise, the definitions in
29 this section apply throughout this chapter.

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

8 (2) "Commission" means the sentencing guidelines commission.

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

13 (4) "Community custody" means that portion of an inmate's sentence
14 of confinement in lieu of earned early release time served in the
15 community subject to controls placed on the inmate's movement and
16 activities by the department of corrections.

17 (5) "Community placement" means that period during which the
18 offender is subject to the conditions of community custody and/or
19 postrelease supervision, which begins either upon completion of the
20 term of confinement (postrelease supervision) or at such time as the
21 offender is transferred to community custody in lieu of earned early
22 release. Community placement may consist of entirely community
23 custody, entirely postrelease supervision, or a combination of the two.

24 (6) "Community service" means compulsory service, without
25 compensation, performed for the benefit of the community by the
26 offender.

27 (7) "Community supervision" means a period of time during which a
28 convicted offender is subject to crime-related prohibitions and other
29 sentence conditions imposed by a court pursuant to this chapter or RCW
30 46.61.524. For first-time offenders, the supervision may include

1 crime-related prohibitions and other conditions imposed pursuant to RCW
2 9.94A.120(5). For purposes of the interstate compact for out-of-state
3 supervision of parolees and probationers, RCW 9.95.270, community
4 supervision is the functional equivalent of probation and should be
5 considered the same as probation by other states.

6 (8) "Confinement" means total or partial confinement as defined in
7 this section.

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

11 (10) "Court-ordered legal financial obligation" means a sum of
12 money that is ordered by a superior court of the state of Washington
13 for legal financial obligations which may include restitution to the
14 victim, statutorily imposed crime victims' compensation fees as
15 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
16 drug funds, court-appointed attorneys' fees, and costs of defense,
17 fines, and any other financial obligation that is assessed to the
18 offender as a result of a felony conviction.

19 (11) "Crime-related prohibition" means an order of a court
20 prohibiting conduct that directly relates to the circumstances of the
21 crime for which the offender has been convicted, and shall not be
22 construed to mean orders directing an offender affirmatively to
23 participate in rehabilitative programs or to otherwise perform
24 affirmative conduct.

25 (12)(a) "Criminal history" means the list of a defendant's prior
26 convictions, whether in this state, in federal court, or elsewhere.
27 The history shall include, where known, for each conviction (i) whether
28 the defendant has been placed on probation and the length and terms
29 thereof; and (ii) whether the defendant has been incarcerated and the
30 length of incarceration.

1 (b) "Criminal history" shall always include juvenile convictions
2 for sex offenses and shall also include a defendant's other prior
3 convictions in juvenile court if: (i) The conviction was for an
4 offense which is a felony or a serious traffic offense and is criminal
5 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
6 fifteen years of age or older at the time the offense was committed;
7 and (iii) with respect to prior juvenile class B and C felonies or
8 serious traffic offenses, the defendant was less than twenty-three
9 years of age at the time the offense for which he or she is being
10 sentenced was committed.

11 (13) "Department" means the department of corrections.

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

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

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
2 or Title 74 RCW.

3 (16) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of
5 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
6 controlled substance (RCW 69.50.403);

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

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

13 (17) "Escape" means:

14 (a) Escape in the first degree (RCW 9A.76.110), escape in the
15 second degree (RCW 9A.76.120), willful failure to return from furlough
16 (RCW 72.66.060), willful failure to return from work release (RCW
17 72.65.070), or willful failure to comply with any limitations on the
18 inmate's movements while in community custody (RCW 72.09.310); or

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

22 (18) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
24 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
25 and-run injury-accident (RCW 46.52.020(4)); or

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

29 (19) "Fines" means the requirement that the offender pay a specific
30 sum of money over a specific period of time to the court.

1 (20)(a) "First-time offender" means any person who is convicted of
2 a felony (i) not classified as a violent offense or a sex offense under
3 this chapter, or (ii) that is not the manufacture, delivery, or
4 possession with intent to manufacture or deliver a controlled substance
5 classified in schedule I or II that is a narcotic drug or the selling
6 for profit [of] any controlled substance or counterfeit substance
7 classified in schedule I, RCW 69.50.204, except leaves and flowering
8 tops of marihuana, and except as provided in (b) of this subsection,
9 who previously has never been convicted of a felony in this state,
10 federal court, or another state, and who has never participated in a
11 program of deferred prosecution for a felony offense.

12 (b) For purposes of (a) of this subsection, a juvenile adjudication
13 for an offense committed before the age of fifteen years is not a
14 previous felony conviction except for adjudications of sex offenses.

15 (21) "Nonviolent offense" means an offense which is not a violent
16 offense.

17 (22) "Offender" means a person who has committed a felony
18 established by state law and is eighteen years of age or older or is
19 less than eighteen years of age but whose case has been transferred by
20 the appropriate juvenile court to a criminal court pursuant to RCW
21 13.40.110. Throughout this chapter, the terms "offender" and
22 "defendant" are used interchangeably.

23 (23) "Partial confinement" means confinement for no more than one
24 year in a facility or institution operated or utilized under contract
25 by the state or any other unit of government, or, if home detention or
26 work crew has been ordered by the court, in an approved residence, for
27 a substantial portion of each day with the balance of the day spent in
28 the community. Partial confinement includes work release, home
29 detention, work crew, and a combination of work crew and home detention
30 as defined in this section.

1 (24) "Postrelease supervision" is that portion of an offender's
2 community placement that is not community custody.

3 (25) "Restitution" means the requirement that the offender pay a
4 specific sum of money over a specific period of time to the court as
5 payment of damages. The sum may include both public and private costs.
6 The imposition of a restitution order does not preclude civil redress.

7 (26) "Serious traffic offense" means:

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

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

16 (27) "Serious violent offense" is a subcategory of violent offense
17 and means:

18 (a) Murder in the first degree, homicide by abuse, murder in the
19 second degree, assault in the first degree, kidnapping in the first
20 degree, or rape in the first degree, assault of a child in the first
21 degree, or an attempt, criminal solicitation, or criminal conspiracy to
22 commit one of these felonies; or

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

26 (28) "Sentence range" means the sentencing court's discretionary
27 range in imposing a nonappealable sentence.

28 (29) "Sex offense" means:

29 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
30 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal

1 attempt, criminal solicitation, or criminal conspiracy to commit such
2 crimes;

3 (b) A felony with a finding of sexual motivation under RCW
4 9.94A.127; or

5 (c) Any federal or out-of-state conviction for an offense that
6 under the laws of this state would be a felony classified as a sex
7 offense under (a) of this subsection.

8 (30) "Sexual motivation" means that one of the purposes for which
9 the defendant committed the crime was for the purpose of his or her
10 sexual gratification.

11 (31) "Total confinement" means confinement inside the physical
12 boundaries of a facility or institution operated or utilized under
13 contract by the state or any other unit of government for twenty-four
14 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 (32) "Victim" means any person who has sustained emotional,
16 psychological, physical, or financial injury to person or property as
17 a direct result of the crime charged.

18 (33) "Violent offense" means:

19 (a) Any of the following felonies, as now existing or hereafter
20 amended: Any felony defined under any law as a class A felony or an
21 attempt to commit a class A felony, criminal solicitation of or
22 criminal conspiracy to commit a class A felony, manslaughter in the
23 first degree, manslaughter in the second degree, indecent liberties if
24 committed by forcible compulsion, kidnapping in the second degree,
25 arson in the second degree, assault in the second degree, assault of a
26 child in the second degree, extortion in the first degree, robbery in
27 the second degree, vehicular assault, and vehicular homicide, when
28 proximately caused by the driving of any vehicle by any person while
29 under the influence of intoxicating liquor or any drug as defined by
30 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

7 (34) "Work crew" means a program of partial confinement consisting
8 of civic improvement tasks for the benefit of the community of not less
9 than thirty-five hours per week that complies with RCW 9.94A.135. The
10 civic improvement tasks shall be performed on public property or on
11 private property owned or operated by nonprofit entities, except that,
12 for emergency purposes only, work crews may perform snow removal on any
13 private property. The civic improvement tasks shall have minimal
14 negative impact on existing private industries or the labor force in
15 the county where the service or labor is performed. The civic
16 improvement tasks shall not affect employment opportunities for people
17 with developmental disabilities contracted through sheltered workshops
18 as defined in RCW 82.04.385. Only those offenders sentenced to a
19 facility operated or utilized under contract by a county are eligible
20 to participate on a work crew. Offenders sentenced for a sex offense
21 as defined in subsection (29) of this section are not eligible for the
22 work crew program.

23 (35) "Work release" means a program of partial confinement
24 available to offenders who are employed or engaged as a student in a
25 regular course of study at school. Participation in work release shall
26 be conditioned upon the offender attending work or school at regularly
27 defined hours and abiding by the rules of the work release facility.

28 (36) "Home detention" means a program of partial confinement
29 available to offenders wherein the offender is confined in a private
30 residence subject to electronic surveillance. Home detention may not

1 be imposed for offenders convicted of a violent offense, any sex
2 offense, any drug offense, reckless burning in the first or second
3 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
4 degree as defined in RCW 9A.36.031, assault of a child in the third
5 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
6 harassment as defined in RCW 9A.46.020. Home detention may be imposed
7 for offenders convicted of possession of a controlled substance (RCW
8 69.50.401(d)) or forged prescription for a controlled substance (RCW
9 69.50.403) if the offender fulfills the participation conditions set
10 forth in this subsection and is monitored for drug use by treatment
11 alternatives to street crime (TASC) or a comparable court or agency-
12 referred program.

13 (a) Home detention may be imposed for offenders convicted of
14 burglary in the second degree as defined in RCW 9A.52.030 or
15 residential burglary conditioned upon the offender: (i) Successfully
16 completing twenty-one days in a work release program, (ii) having no
17 convictions for burglary in the second degree or residential burglary
18 during the preceding two years and not more than two prior convictions
19 for burglary or residential burglary, (iii) having no convictions for
20 a violent felony offense during the preceding two years and not more
21 than two prior convictions for a violent felony offense, (iv) having no
22 prior charges of escape, and (v) fulfilling the other conditions of the
23 home detention program.

24 (b) Participation in a home detention program shall be conditioned
25 upon: (i) The offender obtaining or maintaining current employment or
26 attending a regular course of school study at regularly defined hours,
27 or the offender performing parental duties to offspring or minors
28 normally in the custody of the offender, (ii) abiding by the rules of
29 the home detention program, and (iii) compliance with court-ordered
30 legal financial obligations. The home detention program may also be

1 made available to offenders whose charges and convictions do not
2 otherwise disqualify them if medical or health-related conditions,
3 concerns or treatment would be better addressed under the home
4 detention program, or where the health and welfare of the offender,
5 other inmates, or staff would be jeopardized by the offender's
6 incarceration. Participation in the home detention program for medical
7 or health-related reasons is conditioned on the offender abiding by the
8 rules of the home detention program and complying with court-ordered
9 restitution.

10 **Sec. 7.** RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and 1991
11 c 104 s 3 are each reenacted and amended to read as follows:

12 When a person is convicted of a felony, the court shall impose
13 punishment as provided in this section.

14 (1) Except as authorized in subsections (2), (5), and (7) of this
15 section, the court shall impose a sentence within the sentence range
16 for the offense.

17 (2) The court may impose a sentence outside the standard sentence
18 range for that offense if it finds, considering the purpose of this
19 chapter, that there are substantial and compelling reasons justifying
20 an exceptional sentence.

21 (3) Whenever a sentence outside the standard range is imposed, the
22 court shall set forth the reasons for its decision in written findings
23 of fact and conclusions of law. A sentence outside the standard range
24 shall be a determinate sentence.

25 (4) An offender convicted of the crime of murder in the first
26 degree shall be sentenced to a term of total confinement not less than
27 twenty years. An offender convicted of the crime of assault in the
28 first degree or assault of a child in the first degree where the
29 offender used force or means likely to result in death or intended to

1 kill the victim shall be sentenced to a term of total confinement not
2 less than five years. An offender convicted of the crime of rape in
3 the first degree shall be sentenced to a term of total confinement not
4 less than five years, and shall not be eligible for furlough, work
5 release or other authorized leave of absence from the correctional
6 facility during such minimum five-year term except for the purpose of
7 commitment to an inpatient treatment facility. The foregoing minimum
8 terms of total confinement are mandatory and shall not be varied or
9 modified as provided in subsection (2) of this section.

10 (5) In sentencing a first-time offender the court may waive the
11 imposition of a sentence within the sentence range and impose a
12 sentence which may include up to ninety days of confinement in a
13 facility operated or utilized under contract by the county and a
14 requirement that the offender refrain from committing new offenses.
15 The sentence may also include up to two years of community supervision,
16 which, in addition to crime-related prohibitions, may include
17 requirements that the offender perform any one or more of the
18 following:

19 (a) Devote time to a specific employment or occupation;

20 (b) Undergo available outpatient treatment for up to two years, or
21 inpatient treatment not to exceed the standard range of confinement for
22 that offense;

23 (c) Pursue a prescribed, secular course of study or vocational
24 training;

25 (d) Remain within prescribed geographical boundaries and notify the
26 court or the community corrections officer prior to any change in the
27 offender's address or employment;

28 (e) Report as directed to the court and a community corrections
29 officer; or

1 (f) Pay all court-ordered legal financial obligations as provided
2 in RCW 9.94A.030 and/or perform community service work.

3 (6) If a sentence range has not been established for the
4 defendant's crime, the court shall impose a determinate sentence which
5 may include not more than one year of confinement, community service
6 work, a term of community supervision not to exceed one year, and/or
7 other legal financial obligations. The court may impose a sentence
8 which provides more than one year of confinement if the court finds,
9 considering the purpose of this chapter, that there are substantial and
10 compelling reasons justifying an exceptional sentence.

11 (7)(a)(i) When an offender is convicted of a sex offense other than
12 a violation of RCW 9A.44.050 or a sex offense that is also a serious
13 violent offense and has no prior convictions for a sex offense or any
14 other felony sex offenses in this or any other state, the sentencing
15 court, on its own motion or the motion of the state or the defendant,
16 may order an examination to determine whether the defendant is amenable
17 to treatment.

18 The report of the examination shall include at a minimum the
19 following: The defendant's version of the facts and the official
20 version of the facts, the defendant's offense history, an assessment of
21 problems in addition to alleged deviant behaviors, the offender's
22 social and employment situation, and other evaluation measures used.
23 The report shall set forth the sources of the evaluator's information.

24 The examiner shall assess and report regarding the defendant's
25 amenability to treatment and relative risk to the community. A
26 proposed treatment plan shall be provided and shall include, at a
27 minimum:

28 (A) Frequency and type of contact between offender and therapist;

29 (B) Specific issues to be addressed in the treatment and
30 description of planned treatment modalities;

1 (C) Monitoring plans, including any requirements regarding living
2 conditions, lifestyle requirements, and monitoring by family members
3 and others;

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

6 The court on its own motion may order, or on a motion by the state
7 shall order, a second examination regarding the offender's amenability
8 to treatment. The evaluator shall be selected by the party making the
9 motion. The defendant shall pay the cost of any second examination
10 ordered unless the court finds the defendant to be indigent in which
11 case the state shall pay the cost.

12 (ii) After receipt of the reports, the court shall consider whether
13 the offender and the community will benefit from use of this special
14 sexual offender sentencing alternative and consider the victim's
15 opinion whether the offender should receive a treatment disposition
16 under this subsection. If the court determines that this special sex
17 offender sentencing alternative is appropriate, the court shall then
18 impose a sentence within the sentence range. If this sentence is less
19 than eight years of confinement, the court may suspend the execution of
20 the sentence and impose the following conditions of suspension:

21 (A) The court shall place the defendant on community supervision
22 for the length of the suspended sentence or three years, whichever is
23 greater; and

24 (B) The court shall order treatment for any period up to three
25 years in duration. The court in its discretion shall order outpatient
26 sex offender treatment or inpatient sex offender treatment, if
27 available. A community mental health center may not be used for such
28 treatment unless it has an appropriate program designed for sex
29 offender treatment. The offender shall not change sex offender
30 treatment providers or treatment conditions without first notifying the

1 prosecutor, the community corrections officer, and the court, and shall
2 not change providers without court approval after a hearing if the
3 prosecutor or community corrections officer object to the change. In
4 addition, as conditions of the suspended sentence, the court may impose
5 other sentence conditions including up to six months of confinement,
6 not to exceed the sentence range of confinement for that offense,
7 crime-related prohibitions, and requirements that the offender perform
8 any one or more of the following:

9 (I) Devote time to a specific employment or occupation;

10 (II) Remain within prescribed geographical boundaries and notify
11 the court or the community corrections officer prior to any change in
12 the offender's address or employment;

13 (III) Report as directed to the court and a community corrections
14 officer;

15 (IV) Pay all court-ordered legal financial obligations as provided
16 in RCW 9.94A.030, perform community service work, or any combination
17 thereof; or

18 (V) Make recoupment to the victim for the cost of any counseling
19 required as a result of the offender's crime.

20 (iii) The sex offender therapist shall submit quarterly reports on
21 the defendant's progress in treatment to the court and the parties.
22 The report shall reference the treatment plan and include at a minimum
23 the following: Dates of attendance, defendant's compliance with
24 requirements, treatment activities, the defendant's relative progress
25 in treatment, and any other material as specified by the court at
26 sentencing.

27 (iv) At the time of sentencing, the court shall set a treatment
28 termination hearing for three months prior to the anticipated date for
29 completion of treatment. Prior to the treatment termination hearing,
30 the treatment professional and community corrections officer shall

1 submit written reports to the court and parties regarding the
2 defendant's compliance with treatment and monitoring requirements, and
3 recommendations regarding termination from treatment, including
4 proposed community supervision conditions. Either party may request
5 and the court may order another evaluation regarding the advisability
6 of termination from treatment. The defendant shall pay the cost of any
7 additional evaluation ordered unless the court finds the defendant to
8 be indigent in which case the state shall pay the cost. At the
9 treatment termination hearing the court may: (A) Modify conditions of
10 community supervision, and either (B) terminate treatment, or (C)
11 extend treatment for up to the remaining period of community
12 supervision.

13 (v) The court may revoke the suspended sentence at any time during
14 the period of community supervision and order execution of the sentence
15 if: (A) The defendant violates the conditions of the suspended
16 sentence, or (B) the court finds that the defendant is failing to make
17 satisfactory progress in treatment. All confinement time served during
18 the period of community supervision shall be credited to the offender
19 if the suspended sentence is revoked.

20 (vi) After July 1, 1991, examinations and treatment ordered
21 pursuant to this subsection shall only be conducted by sex offender
22 treatment providers certified by the department of health pursuant to
23 chapter 18.155 RCW.

24 For purposes of this subsection, "victim" means any person who has
25 sustained emotional, psychological, physical, or financial injury to
26 person or property as a result of the crime charged. "Victim" also
27 means a parent or guardian of a victim who is a minor child unless the
28 parent or guardian is the perpetrator of the offense.

29 (b) When an offender is convicted of any felony sex offense
30 committed before July 1, 1987, and is sentenced to a term of

1 confinement of more than one year but less than six years, the
2 sentencing court may, on its own motion or on the motion of the
3 offender or the state, order the offender committed for up to thirty
4 days to the custody of the secretary of social and health services for
5 evaluation and report to the court on the offender's amenability to
6 treatment at these facilities. If the secretary of social and health
7 services cannot begin the evaluation within thirty days of the court's
8 order of commitment, the offender shall be transferred to the state for
9 confinement pending an opportunity to be evaluated at the appropriate
10 facility. The court shall review the reports and may order that the
11 term of confinement imposed be served in the sexual offender treatment
12 program at the location determined by the secretary of social and
13 health services or the secretary's designee, only if the report
14 indicates that the offender is amenable to the treatment program
15 provided at these facilities. The offender shall be transferred to the
16 state pending placement in the treatment program. Any offender who has
17 escaped from the treatment program shall be referred back to the
18 sentencing court.

19 If the offender does not comply with the conditions of the
20 treatment program, the secretary of social and health services may
21 refer the matter to the sentencing court. The sentencing court shall
22 commit the offender to the department of corrections to serve the
23 balance of the term of confinement.

24 If the offender successfully completes the treatment program before
25 the expiration of the term of confinement, the court may convert the
26 balance of confinement to community supervision and may place
27 conditions on the offender including crime-related prohibitions and
28 requirements that the offender perform any one or more of the
29 following:

30 (i) Devote time to a specific employment or occupation;

1 (ii) Remain within prescribed geographical boundaries and notify
2 the court or the community corrections officer prior to any change in
3 the offender's address or employment;

4 (iii) Report as directed to the court and a community corrections
5 officer;

6 (iv) Undergo available outpatient treatment.

7 If the offender violates any of the terms of community supervision,
8 the court may order the offender to serve out the balance of the
9 community supervision term in confinement in the custody of the
10 department of corrections.

11 After June 30, 1993, this subsection (b) shall cease to have
12 effect.

13 (c) When an offender commits any felony sex offense on or after
14 July 1, 1987, and is sentenced to a term of confinement of more than
15 one year but less than six years, the sentencing court may, on its own
16 motion or on the motion of the offender or the state, request the
17 department of corrections to evaluate whether the offender is amenable
18 to treatment and the department may place the offender in a treatment
19 program within a correctional facility operated by the department.

20 Except for an offender who has been convicted of a violation of RCW
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program
22 before the expiration of his term of confinement, the department of
23 corrections may request the court to convert the balance of confinement
24 to community supervision and to place conditions on the offender
25 including crime-related prohibitions and requirements that the offender
26 perform any one or more of the following:

27 (i) Devote time to a specific employment or occupation;

28 (ii) Remain within prescribed geographical boundaries and notify
29 the court or the community corrections officer prior to any change in
30 the offender's address or employment;

1 (iii) Report as directed to the court and a community corrections
2 officer;

3 (iv) Undergo available outpatient treatment.

4 If the offender violates any of the terms of his community
5 supervision, the court may order the offender to serve out the balance
6 of his community supervision term in confinement in the custody of the
7 department of corrections.

8 Nothing in (c) of this subsection shall confer eligibility for such
9 programs for offenders convicted and sentenced for a sex offense
10 committed prior to July 1, 1987. This subsection (c) does not apply to
11 any crime committed after July 1, 1990.

12 (d) Offenders convicted and sentenced for a sex offense committed
13 prior to July 1, 1987, may, subject to available funds, request an
14 evaluation by the department of corrections to determine whether they
15 are amenable to treatment. If the offender is determined to be
16 amenable to treatment, the offender may request placement in a
17 treatment program within a correctional facility operated by the
18 department. Placement in such treatment program is subject to
19 available funds.

20 (8)(a) When a court sentences a person to a term of total
21 confinement to the custody of the department of corrections for an
22 offense categorized as a sex offense or a serious violent offense
23 committed after July 1, 1988, but before July 1, 1990, assault in the
24 second degree, assault of a child in the second degree, any crime
25 against a person where it is determined in accordance with RCW
26 9.94A.125 that the defendant or an accomplice was armed with a deadly
27 weapon at the time of commission, or any felony offense under chapter
28 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
29 in addition to the other terms of the sentence, sentence the offender
30 to a one-year term of community placement beginning either upon

1 completion of the term of confinement or at such time as the offender
2 is transferred to community custody in lieu of earned early release in
3 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
4 offender under this subsection to the statutory maximum period of
5 confinement then the community placement portion of the sentence shall
6 consist entirely of such community custody to which the offender may
7 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
8 period of community custody actually served shall be credited against
9 the community placement portion of the sentence.

10 (b) When a court sentences a person to a term of total confinement
11 to the custody of the department of corrections for an offense
12 categorized as a sex offense or serious violent offense committed on or
13 after July 1, 1990, the court shall in addition to other terms of the
14 sentence, sentence the offender to community placement for two years or
15 up to the period of earned early release awarded pursuant to RCW
16 9.94A.150 (1) and (2), whichever is longer. The community placement
17 shall begin either upon completion of the term of confinement or at
18 such time as the offender is transferred to community custody in lieu
19 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
20 When the court sentences an offender under this subsection to the
21 statutory maximum period of confinement then the community placement
22 portion of the sentence shall consist entirely of the community custody
23 to which the offender may become eligible, in accordance with RCW
24 9.94A.150 (1) and (2). Any period of community custody actually served
25 shall be credited against the community placement portion of the
26 sentence. Unless a condition is waived by the court, the terms of
27 community placement for offenders sentenced pursuant to this section
28 shall include the following conditions:

29 (i) The offender shall report to and be available for contact with
30 the assigned community corrections officer as directed;

1 (ii) The offender shall work at department of corrections-approved
2 education, employment, and/or community service;

3 (iii) The offender shall not consume controlled substances except
4 pursuant to lawfully issued prescriptions;

5 (iv) An offender in community custody shall not unlawfully possess
6 controlled substances; and

7 (v) The offender shall pay supervision fees as determined by the
8 department of corrections.

9 (c) The court may also order any of the following special
10 conditions:

11 (i) The offender shall remain within, or outside of, a specified
12 geographical boundary;

13 (ii) The offender shall not have direct or indirect contact with
14 the victim of the crime or a specified class of individuals;

15 (iii) The offender shall participate in crime-related treatment or
16 counseling services;

17 (iv) The offender shall not consume alcohol;

18 (v) The residence location and living arrangements of a sex
19 offender shall be subject to the prior approval of the department of
20 corrections; or

21 (vi) The offender shall comply with any crime-related prohibitions.

22 (d) Prior to transfer to, or during, community placement, any
23 conditions of community placement may be removed or modified so as not
24 to be more restrictive by the sentencing court, upon recommendation of
25 the department of corrections.

26 (9) If the court imposes a sentence requiring confinement of thirty
27 days or less, the court may, in its discretion, specify that the
28 sentence be served on consecutive or intermittent days. A sentence
29 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered
2 intermittent sentences as space permits.

3 (10) If a sentence imposed includes payment of a legal financial
4 obligation, the sentence shall specify the total amount of the legal
5 financial obligation owed, and shall require the offender to pay a
6 specified monthly sum toward that legal financial obligation.
7 Restitution to victims shall be paid prior to any other payments of
8 monetary obligations. Any legal financial obligation that is imposed
9 by the court may be collected by the department, which shall deliver
10 the amount paid to the county clerk for credit. The offender's
11 compliance with payment of legal financial obligations shall be
12 supervised by the department. All monetary payments ordered shall be
13 paid no later than ten years after the last date of release from
14 confinement pursuant to a felony conviction or the date the sentence
15 was entered. Independent of the department, the party or entity to
16 whom the legal financial obligation is owed shall have the authority to
17 utilize any other remedies available to the party or entity to collect
18 the legal financial obligation. Nothing in this section makes the
19 department, the state, or any of its employees, agents, or other
20 persons acting on their behalf liable under any circumstances for the
21 payment of these legal financial obligations. If an order includes
22 restitution as one of the monetary assessments, the county clerk shall
23 make disbursements to victims named in the order.

24 (11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a
25 court may not impose a sentence providing for a term of confinement or
26 community supervision or community placement which exceeds the
27 statutory maximum for the crime as provided in chapter 9A.20 RCW.

28 (12) All offenders sentenced to terms involving community
29 supervision, community service, community placement, or legal financial
30 obligation shall be under the supervision of the secretary of the

1 department of corrections or such person as the secretary may designate
2 and shall follow explicitly the instructions of the secretary including
3 reporting as directed to a community corrections officer, remaining
4 within prescribed geographical boundaries, notifying the community
5 corrections officer of any change in the offender's address or
6 employment, and paying the supervision fee assessment.

7 (13) All offenders sentenced to terms involving community
8 supervision, community service, or community placement under the
9 supervision of the department of corrections shall not own, use, or
10 possess firearms or ammunition. Offenders who own, use, or are found
11 to be in actual or constructive possession of firearms or ammunition
12 shall be subject to the appropriate violation process and sanctions.
13 "Constructive possession" as used in this subsection means the power
14 and intent to control the firearm or ammunition. "Firearm" as used in
15 this subsection means a weapon or device from which a projectile may be
16 fired by an explosive such as gunpowder.

17 (14) The sentencing court shall give the offender credit for all
18 confinement time served before the sentencing if that confinement was
19 solely in regard to the offense for which the offender is being
20 sentenced.

21 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)
22 governing whether sentences are to be served consecutively or
23 concurrently is an exceptional sentence subject to the limitations in
24 subsections (2) and (3) of this section, and may be appealed by the
25 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

26 (16) The court shall order restitution whenever the offender is
27 convicted of a felony that results in injury to any person or damage to
28 or loss of property, whether the offender is sentenced to confinement
29 or placed under community supervision, unless extraordinary
30 circumstances exist that make restitution inappropriate in the court's

1 judgment. The court shall set forth the extraordinary circumstances in
2 the record if it does not order restitution.

3 (17) As a part of any sentence, the court may impose and enforce an
4 order that relates directly to the circumstances of the crime for which
5 the offender has been convicted, prohibiting the offender from having
6 any contact with other specified individuals or a specific class of
7 individuals for a period not to exceed the maximum allowable sentence
8 for the crime, regardless of the expiration of the offender's term of
9 community supervision or community placement.

10 (18) In any sentence of partial confinement, the court may require
11 the defendant to serve the partial confinement in work release, in a
12 program of home detention, on work crew, or in a combined program of
13 work crew and home detention.

14 (19) All court-ordered legal financial obligations collected by the
15 department and remitted to the county clerk shall be credited and paid
16 where restitution is ordered. Restitution shall be paid prior to any
17 other payments of monetary obligations.

18 **Sec. 8.** RCW 9.94A.150 and 1990 c 3 s 202 are each amended to read
19 as follows:

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

24 (1) Except as otherwise provided for in subsection (2) of this
25 section, the term of the sentence of an offender committed to a
26 correctional facility operated by the department, may be reduced by
27 earned early release time in accordance with procedures that shall be
28 developed and promulgated by the correctional agency having
29 jurisdiction in which the offender is confined. The earned early

1 release time shall be for good behavior and good performance, as
2 determined by the correctional agency having jurisdiction. The
3 correctional agency shall not credit the offender with earned early
4 release credits in advance of the offender actually earning the
5 credits. Any program established pursuant to this section shall allow
6 an offender to earn early release credits for presentence
7 incarceration. If an offender is transferred from a county jail to the
8 department of corrections, the county jail facility shall certify to
9 the department the amount of time spent in custody at the facility and
10 the amount of earned early release time. In the case of an offender
11 convicted of a serious violent offense or a sex offense that is a class
12 A felony committed on or after July 1, 1990, the aggregate earned early
13 release time may not exceed fifteen percent of the sentence. In no
14 other case shall the aggregate earned early release time exceed one-
15 third of the total sentence;

16 (2) A person convicted of a sex offense or an offense categorized
17 as a serious violent offense, assault in the second degree, assault of
18 a child in the second degree, any crime against a person where it is
19 determined in accordance with RCW 9.94A.125 that the defendant or an
20 accomplice was armed with a deadly weapon at the time of commission, or
21 any felony offense under chapter 69.50 or 69.52 RCW may become
22 eligible, in accordance with a program developed by the department, for
23 transfer to community custody status in lieu of earned early release
24 time pursuant to subsection (1) of this section;

25 (3) An offender may leave a correctional facility pursuant to an
26 authorized furlough or leave of absence. In addition, offenders may
27 leave a correctional facility when in the custody of a corrections
28 officer or officers;

29 (4) The governor, upon recommendation from the clemency and pardons
30 board, may grant an extraordinary release for reasons of serious health

1 problems, senility, advanced age, extraordinary meritorious acts, or
2 other extraordinary circumstances;

3 (5) No more than the final six months of the sentence may be served
4 in partial confinement designed to aid the offender in finding work and
5 reestablishing him or herself in the community;

6 (6) The governor may pardon any offender;

7 (7) The department of corrections may release an offender from
8 confinement any time within ten days before a release date calculated
9 under this section; and

10 (8) An offender may leave a correctional facility prior to
11 completion of his sentence if the sentence has been reduced as provided
12 in RCW 9.94A.160.

13 **Sec. 9.** RCW 9.94A.310 and 1991 c 32 s 2 are each amended to read
14 as follows:

15 (1) TABLE 1
16 Sentencing Grid
17 SERIOUSNESS
18 SCORE OFFENDER SCORE 9
19 0 1 2 3 4 5 6 7 8 or more
20 _____
21 XV Life Sentence without Parole/Death Penalty
22 _____
23 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y
24 240- 250- 261- 271- 281 - 291- 312- 338- 370- 411-
25 320 333 347 361 374 388 416 450 493 548
26 _____
27 XIII 12y 13y 14y 15y 16y 17y 19y 21y 25y 29y
28 123- 134- 144- 154- 165- 175- 195- 216- 257- 298-

1		164	178	192	205	219	233	260	288	342	397
2											
3	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
4		93-	102-	111-	120-	129-	138-	162	- 178-	209-	240-
5		123	136	147	160	171	184	216	236	277	318
6											
7	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
8		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
9		102	114	125	136	147	158	194	211	245	280
10											
11	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
12		51-	57-	62-	67-	72-	77-	98-	108-	129	- 149-
13		68	75	82	89	96	102	130	144	171	198
14											
15	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
16		31-	36-	41-	46-	51-	57-	77-	87-	108	- 129-
17		41	48	54	61	68	75	102	116	144	171
18											
19	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
20		21-	26-	31-	36-	41-	46-	67-	77-	87	- 108-
21		27	34	41	48	54	61	89	102	116	144
22											
23	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
24		15-	21-	26-	31-	36-	41-	57-	67-	77	- 87-
25		20	27	34	41	48	54	75	89	102	116
26											
27	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
28		12+-	15-	21-	26-	31-	36-	46-	57-	67	- 77-
29		14	20	27	34	41	48	61	75	89	102
30											

1	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
2		6-	12+-	13-	15-	22-	33-	41-	51-	62 -	72-
3		12	14	17	20	29	43	54	68	82	96
4	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
5		3-	6-	12+-	13-	15-	22-	33-	43-	53 -	63-
6		9	12	14	17	20	29	43	57	70	84
7	<hr/>										
8	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
9		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
10		3	8	12	12	16	22	29	43	57	68
11	<hr/>										
12	II	4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m	
13		0-90	2-	3-	4-	12+-	14-	17-	22-	33 -	43-
14		Days	6	9	12	14	18	22	29	43	57
15	<hr/>										
16	I	3m	4m	5m	8m	13m	16m	20m	2y2m		
17		0-60	0-90	2-	2-	3-	4-	12+-	14-	17 -	22-
18		Days	Days	5	6	8	12	14	18	22	29

19 NOTE: Numbers in the first horizontal row of each seriousness category
20 represent sentencing midpoints in years(y) and months(m). Numbers in
21 the second and third rows represent presumptive sentencing ranges in
22 months, or in days if so designated. 12+ equals one year and one day.

23 (2) For persons convicted of the anticipatory offenses of criminal
24 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
25 presumptive sentence is determined by locating the sentencing grid
26 sentence range defined by the appropriate offender score and the
27 seriousness level of the completed crime, and multiplying the range by
28 75 percent.

1 (3) The following additional times shall be added to the
2 presumptive sentence if the offender or an accomplice was armed with a
3 deadly weapon as defined in this chapter and the offender is being
4 sentenced for one of the crimes listed in this subsection. If the
5 offender or an accomplice was armed with a deadly weapon and the
6 offender is being sentenced for an anticipatory offense under chapter
7 9A.28 RCW to commit one of the crimes listed in this subsection, the
8 following times shall be added to the presumptive range determined
9 under subsection (2) of this section:

10 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW
11 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

12 (b) 18 months for Burglary 1 (RCW 9A.52.020)

13 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault
14 of a Child 2 (RCW 9A.36.--- (section 2 of this act)), Escape
15 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2
16 of a building other than a dwelling (RCW 9A.52.030), Theft
17 of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

18 (4) The following additional times shall be added to the
19 presumptive sentence if the offender or an accomplice committed the
20 offense while in a county jail or state correctional facility as that
21 term is defined in this chapter and the offender is being sentenced for
22 one of the crimes listed in this subsection. If the offender or an
23 accomplice committed one of the crimes listed in this subsection while
24 in a county jail or state correctional facility as that term is defined
25 in this chapter, and the offender is being sentenced for an
26 anticipatory offense under chapter 9A.28 RCW to commit one of the
27 crimes listed in this subsection, the following times shall be added to
28 the presumptive sentence range determined under subsection (2) of this
29 section:

1 (a) Eighteen months for offenses committed under RCW
2 69.50.401(a)(1)(i) or 69.50.410;

3 (b) Fifteen months for offenses committed under RCW
4 69.50.401(a)(1)(ii), (iii), and (iv);

5 (c) Twelve months for offenses committed under RCW 69.50.401(d).

6 For the purposes of this subsection, all of the real property of a
7 state correctional facility or county jail shall be deemed to be part
8 of that facility or county jail.

9 (5) An additional twenty-four months shall be added to the
10 presumptive sentence for any ranked offense involving a violation of
11 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

12 **Sec. 10.** RCW 9.94A.360 and 1990 c 3 s 706 are each amended to read
13 as follows:

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

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

18 (1) A prior conviction is a conviction which exists before the date
19 of sentencing for the offense for which the offender score is being
20 computed. Convictions entered or sentenced on the same date as the
21 conviction for which the offender score is being computed shall be
22 deemed "other current offenses" within the meaning of RCW 9.94A.400.

23 (2) Except as provided in subsection (4) of this section, class A
24 and sex prior felony convictions shall always be included in the
25 offender score. Class B prior felony convictions other than sex
26 offenses shall not be included in the offender score, if since the last
27 date of release from confinement (including full-time residential
28 treatment) pursuant to a felony conviction, if any, or entry of
29 judgment and sentence, the offender had spent ten consecutive years in

1 the community without being convicted of any felonies. Class C prior
2 felony convictions other than sex offenses shall not be included in the
3 offender score if, since the last date of release from confinement
4 (including full-time residential treatment) pursuant to a felony
5 conviction, if any, or entry of judgment and sentence, the offender had
6 spent five consecutive years in the community without being convicted
7 of any felonies. Serious traffic convictions shall not be included in
8 the offender score if, since the last date of release from confinement
9 (including full-time residential treatment) pursuant to a felony
10 conviction, if any, or entry of judgment and sentence, the offender
11 spent five years in the community without being convicted of any
12 serious traffic or felony traffic offenses. This subsection applies to
13 both adult and juvenile prior convictions.

14 (3) Out-of-state convictions for offenses shall be classified
15 according to the comparable offense definitions and sentences provided
16 by Washington law.

17 (4) Always include juvenile convictions for sex offenses. Include
18 other class A juvenile felonies only if the offender was 15 or older at
19 the time the juvenile offense was committed. Include other class B and
20 C juvenile felony convictions only if the offender was 15 or older at
21 the time the juvenile offense was committed and the offender was less
22 than 23 at the time the offense for which he or she is being sentenced
23 was committed.

24 (5) Score prior convictions for felony anticipatory offenses
25 (attempts, criminal solicitations, and criminal conspiracies) the same
26 as if they were convictions for completed offenses.

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

29 (a) Prior adult offenses which were found, under RCW
30 9.94A.400(1)(a), to encompass the same criminal conduct, shall be

1 counted as one offense, the offense that yields the highest offender
2 score. The current sentencing court shall determine with respect to
3 other prior adult offenses for which sentences were served concurrently
4 whether those offenses shall be counted as one offense or as separate
5 offenses, and if the court finds that they shall be counted as one
6 offense, then the offense that yields the highest offender score shall
7 be used;

8 (b) Juvenile prior convictions entered or sentenced on the same
9 date shall count as one offense, the offense that yields the highest
10 offender score, except for juvenile prior convictions for violent
11 offenses with separate victims, which shall count as separate offenses;
12 and

13 (c) In the case of multiple prior convictions for offenses
14 committed before July 1, 1986, for the purpose of computing the
15 offender score, count all adult convictions served concurrently as one
16 offense, and count all juvenile convictions entered on the same date as
17 one offense. Use the conviction for the offense that yields the
18 highest offender score.

19 (7) If the present conviction is one of the anticipatory offenses
20 of criminal attempt, solicitation, or conspiracy, count each prior
21 conviction as if the present conviction were for a completed offense.

22 (8) If the present conviction is for a nonviolent offense and not
23 covered by subsection (12) or (13) of this section, count one point for
24 each adult prior felony conviction and one point for each juvenile
25 prior violent felony conviction and 1/2 point for each juvenile prior
26 nonviolent felony conviction.

27 (9) If the present conviction is for a violent offense and not
28 covered in subsection (10), (11), (12), or (13) of this section, count
29 two points for each prior adult and juvenile violent felony conviction,

1 one point for each prior adult nonviolent felony conviction, and 1/2
2 point for each prior juvenile nonviolent felony conviction.

3 (10) If the present conviction is for Murder 1 or 2, Assault 1,
4 Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count
5 three points for prior adult and juvenile convictions for crimes in
6 these categories, two points for each prior adult and juvenile violent
7 conviction (not already counted), one point for each prior adult
8 nonviolent felony conviction, and 1/2 point for each prior juvenile
9 nonviolent felony conviction.

10 (11) If the present conviction is for Burglary 1, count prior
11 convictions as in subsection (9) of this section; however count two
12 points for each prior adult Burglary 2 or residential burglary
13 conviction, and one point for each prior juvenile Burglary 2 or
14 residential burglary conviction.

15 (12) If the present conviction is for a felony traffic offense
16 count two points for each adult or juvenile prior conviction for
17 Vehicular Homicide or Vehicular Assault; for each felony offense or
18 serious traffic offense, count one point for each adult and 1/2 point
19 for each juvenile prior conviction.

20 (13) If the present conviction is for a drug offense count three
21 points for each adult prior felony drug offense conviction and two
22 points for each juvenile drug offense. All other adult and juvenile
23 felonies are scored as in subsection (9) of this section if the current
24 drug offense is violent, or as in subsection (8) of this section if the
25 current drug offense is nonviolent.

26 (14) If the present conviction is for Willful Failure to Return
27 from Furlough, RCW 72.66.060, or Willful Failure to Return from Work
28 Release, RCW 72.65.070, count only prior escape convictions in the
29 offender score. Count adult prior escape convictions as one point and
30 juvenile prior escape convictions as 1/2 point.

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

4 (16) If the present conviction is for Burglary 2 or residential
5 burglary, count priors as in subsection (8) of this section; however,
6 count two points for each adult and juvenile prior Burglary 1
7 conviction, two points for each adult prior Burglary 2 or residential
8 burglary conviction, and one point for each juvenile prior Burglary 2
9 or residential burglary conviction.

10 (17) If the present conviction is for a sex offense, count priors
11 as in subsections (8) through (16) of this section; however count three
12 points for each adult and juvenile prior sex offense conviction.

13 (18) If the present conviction is for an offense committed while
14 the offender was under community placement, add one point.

15 **Sec. 11.** RCW 9.94A.440 and 1989 c 332 s 2 are each amended to read
16 as follows:

17 (1) Decision not to prosecute.

18 STANDARD: A prosecuting attorney may decline to prosecute, even
19 though technically sufficient evidence to prosecute exists, in
20 situations where prosecution would serve no public purpose, would
21 defeat the underlying purpose of the law in question or would result in
22 decreased respect for the law.

23 GUIDELINE/COMMENTARY:

24 Examples

25 The following are examples of reasons not to prosecute which could
26 satisfy the standard.

27 (a) Contrary to Legislative Intent - It may be proper to decline to
28 charge where the application of criminal sanctions would be clearly

1 contrary to the intent of the legislature in enacting the particular
2 statute.

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

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

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

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

10 (iv) The statute has not been recently reconsidered by the
11 legislature.

12 This reason is not to be construed as the basis for declining cases
13 because the law in question is unpopular or because it is difficult to
14 enforce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) Assault cases where the victim has suffered little or no
28 injury;

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

1 (iii) Where doing so would not jeopardize the safety of society.
2 Care should be taken to insure that the victim's request is freely
3 made and is not the product of threats or pressure by the accused.

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

6 Notification

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

9 (2) Decision to prosecute.

10 STANDARD:

11 Crimes against persons will be filed if sufficient admissible
12 evidence exists, which, when considered with the most plausible,
13 reasonably foreseeable defense that could be raised under the evidence,
14 would justify conviction by a reasonable and objective fact-finder.
15 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
16 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
17 9A.64.020 the prosecutor should avoid prefiling agreements or
18 diversions intended to place the accused in a program of treatment or
19 counseling, so that treatment, if determined to be beneficial, can be
20 provided pursuant to RCW 9.94A.120(7).

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

26 See table below for the crimes within these categories.

27 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

28 CRIMES AGAINST PERSONS

1 Aggravated Murder
2 1st Degree Murder
3 2nd Degree Murder
4 1st Degree Kidnaping
5 1st Degree Assault
6 1st Degree Assault of a Child
7 1st Degree Rape
8 1st Degree Robbery
9 1st Degree Rape of a Child
10 1st Degree Arson
11 2nd Degree Kidnaping
12 2nd Degree Assault
13 2nd Degree Assault of a Child
14 2nd Degree Rape
15 2nd Degree Robbery
16 1st Degree Burglary
17 1st Degree Manslaughter
18 2nd Degree Manslaughter
19 1st Degree Extortion
20 Indecent Liberties
21 Incest
22 2nd Degree Rape of a Child
23 Vehicular Homicide
24 Vehicular Assault
25 3rd Degree Rape
26 3rd Degree Rape of a Child
27 1st Degree Child Molestation
28 2nd Degree Child Molestation
29 3rd Degree Child Molestation
30 2nd Degree Extortion

1 1st Degree Promoting Prostitution
2 Intimidating a Juror
3 Communication with a Minor
4 Intimidating a Witness
5 Intimidating a Public Servant
6 Bomb Threat (if against person)
7 3rd Degree Assault
8 3rd Degree Assault of a Child
9 Unlawful Imprisonment
10 Promoting a Suicide Attempt
11 Riot (if against person)

12 CRIMES AGAINST PROPERTY/OTHER CRIMES

13 2nd Degree Arson
14 1st Degree Escape
15 2nd Degree Burglary
16 1st Degree Theft
17 1st Degree Perjury
18 1st Degree Introducing Contraband
19 1st Degree Possession of Stolen Property
20 Bribery
21 Bribing a Witness
22 Bribe received by a Witness
23 Bomb Threat (if against property)
24 1st Degree Malicious Mischief
25 2nd Degree Theft
26 2nd Degree Escape
27 2nd Degree Introducing Contraband
28 2nd Degree Possession of Stolen Property

1 2nd Degree Malicious Mischief
2 1st Degree Reckless Burning
3 Taking a Motor Vehicle without Authorization
4 Forgery
5 2nd Degree Perjury
6 2nd Degree Promoting Prostitution
7 Tampering with a Witness
8 Trading in Public Office
9 Trading in Special Influence
10 Receiving/Granting Unlawful Compensation
11 Bigamy
12 Eluding a Pursuing Police Vehicle
13 Willful Failure to Return from Furlough
14 Riot (if against property)
15 Thefts of Livestock

16 ALL OTHER UNCLASSIFIED FELONIES

17 Selection of Charges/Degree of Charge

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

21 (a) Will significantly enhance the strength of the state's case at
22 trial; or

23 (b) Will result in restitution to all victims.

24 (2) The prosecutor should not overcharge to obtain a guilty plea.

25 Overcharging includes:

26 (a) Charging a higher degree;

27 (b) Charging additional counts.

1 This standard is intended to direct prosecutors to charge those
2 crimes which demonstrate the nature and seriousness of a defendant's
3 criminal conduct, but to decline to charge crimes which are not
4 necessary to such an indication. Crimes which do not merge as a matter
5 of law, but which arise from the same course of conduct, do not all
6 have to be charged.

7 GUIDELINES/COMMENTARY:

8 Police Investigation

9 A prosecuting attorney is dependent upon law enforcement agencies
10 to conduct the necessary factual investigation which must precede the
11 decision to prosecute. The prosecuting attorney shall ensure that a
12 thorough factual investigation has been conducted before a decision to
13 prosecute is made. In ordinary circumstances the investigation should
14 include the following:

15 (1) The interviewing of all material witnesses, together with the
16 obtaining of written statements whenever possible;

17 (2) The completion of necessary laboratory tests; and

18 (3) The obtaining, in accordance with constitutional requirements,
19 of the suspect's version of the events.

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

23 Exceptions

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

26 (1) Probable cause exists to believe the suspect is guilty; and

27 (2) The suspect presents a danger to the community or is likely to
28 flee if not apprehended; or

1 (3) The arrest of the suspect is necessary to complete the
2 investigation of the crime.

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

8 Investigation Techniques

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

- 11 (1) Polygraph testing;
- 12 (2) Hypnosis;
- 13 (3) Electronic surveillance;
- 14 (4) Use of informants.

15 Pre-Filing Discussions with Defendant

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

19 **Sec. 12.** RCW 9A.46.060 and 1988 c 145 s 15 are each amended to
20 read as follows:

21 As used in this chapter, "harassment" may include but is not
22 limited to any of the following crimes:

- 23 (1) Harassment (RCW 9A.46.020);
- 24 (2) Malicious harassment (RCW 9A.36.080);
- 25 (3) Telephone harassment (RCW 9.61.230);
- 26 (4) Assault in the first degree (RCW 9A.36.011);
- 27 (5) Assault of a child in the first degree (RCW 9A.36.--- (section
28 1 of this act));
- 29 (6) Assault in the second degree (RCW 9A.36.021);

1 (~~(6)~~ ~~Simple assault [Assault in the fourth degree]~~) (7) Assault
2 of a child in the second degree (RCW 9A.36.--- (section 2 of this
3 act)));
4 (8) Assault in the fourth degree (RCW 9A.36.041);
5 (~~(7)~~) (9) Reckless endangerment (~~(in the second degree)~~) in the
6 second degree (RCW 9A.36.050);
7 (~~(8)~~) (10) Extortion in the first degree (RCW 9A.56.120);
8 (~~(9)~~) (11) Extortion in the second degree (RCW 9A.56.130);
9 (~~(10)~~) (12) Coercion (RCW 9A.36.070);
10 (~~(11)~~) (13) Burglary in the first degree (RCW 9A.52.020);
11 (~~(12)~~) (14) Burglary in the second degree (RCW 9A.52.030);
12 (~~(13)~~) (15) Criminal trespass in the first degree (RCW
13 9A.52.070);
14 (~~(14)~~) (16) Criminal trespass in the second degree (RCW
15 9A.52.080);
16 (~~(15)~~) (17) Malicious mischief in the first degree (RCW
17 9A.48.070);
18 (~~(16)~~) (18) Malicious mischief in the second degree (RCW
19 9A.48.080);
20 (~~(17)~~) (19) Malicious mischief in the third degree (RCW
21 9A.48.090);
22 (~~(18)~~) (20) Kidnapping in the first degree (RCW 9A.40.020);
23 (~~(19)~~) (21) Kidnapping in the second degree (RCW 9A.40.030);
24 (~~(20)~~) (22) Unlawful imprisonment (RCW 9A.40.040);
25 (~~(21)~~) (23) Rape in the first degree (RCW 9A.44.040);
26 (~~(22)~~) (24) Rape in the second degree (RCW 9A.44.050);
27 (~~(23)~~) (25) Rape in the third degree (RCW 9A.44.060);
28 (~~(24)~~) (26) Indecent liberties (RCW 9A.44.100);
29 (~~(25)~~) (27) Rape of a child in the first degree (RCW 9A.44.073);
30 (~~(26)~~) (28) Rape of a child in the second degree (RCW 9A.44.076);

1 (~~(27)~~) (29) Rape of a child in the third degree (RCW 9A.44.079);
2 (~~(28)~~) (30) Child molestation in the first degree (RCW
3 9A.44.083);
4 (~~(29)~~) (31) Child molestation in the second degree (RCW
5 9A.44.086); and
6 (~~(30)~~) (32) Child molestation in the third degree (RCW
7 9A.44.089).

8 **Sec. 13.** RCW 9A.82.010 and 1989 c 20 s 17 are each amended to read
9 as follows:

10 Unless the context requires the contrary, the definitions in this
11 section apply throughout this chapter.

12 (1) "Creditor" means a person making an extension of credit or a
13 person claiming by, under, or through a person making an extension of
14 credit.

15 (2) "Debtor" means a person to whom an extension of credit is made
16 or a person who guarantees the repayment of an extension of credit or
17 in any manner undertakes to indemnify the creditor against loss
18 resulting from the failure of a person to whom an extension is made to
19 repay the same.

20 (3) "Extortionate extension of credit" means an extension of credit
21 with respect to which it is the understanding of the creditor and the
22 debtor at the time the extension is made that delay in making repayment
23 or failure to make repayment could result in the use of violence or
24 other criminal means to cause harm to the person, reputation, or
25 property of any person.

26 (4) "Extortionate means" means the use, or an express or implicit
27 threat of use, of violence or other criminal means to cause harm to the
28 person, reputation, or property of any person.

1 (5) "To collect an extension of credit" means to induce in any way
2 a person to make repayment thereof.

3 (6) "To extend credit" means to make or renew a loan or to enter
4 into an agreement, tacit or express, whereby the repayment or
5 satisfaction of a debt or claim, whether acknowledged or disputed,
6 valid or invalid, and however arising, may or shall be deferred.

7 (7) "Repayment of an extension of credit" means the repayment,
8 satisfaction, or discharge in whole or in part of a debt or claim,
9 acknowledged or disputed, valid or invalid, resulting from or in
10 connection with that extension of credit.

11 (8) "Dealer in property" means a person who buys and sells property
12 as a business.

13 (9) "Stolen property" means property that has been obtained by
14 theft, robbery, or extortion.

15 (10) "Traffic" means to sell, transfer, distribute, dispense, or
16 otherwise dispose of stolen property to another person, or to buy,
17 receive, possess, or obtain control of stolen property, with intent to
18 sell, transfer, distribute, dispense, or otherwise dispose of the
19 property to another person.

20 (11) "Control" means the possession of a sufficient interest to
21 permit substantial direction over the affairs of an enterprise.

22 (12) "Enterprise" includes any individual, sole proprietorship,
23 partnership, corporation, business trust, or other profit or nonprofit
24 legal entity, and includes any union, association, or group of
25 individuals associated in fact although not a legal entity, and both
26 illicit and licit enterprises and governmental and nongovernmental
27 entities.

28 (13) "Financial institution" means any bank, trust company, savings
29 and loan association, savings bank, mutual savings bank, credit union,

1 or loan company under the jurisdiction of the state or an agency of the
2 United States.

3 (14) "Criminal profiteering" means any act, including any
4 anticipatory or completed offense, committed for financial gain, that
5 is chargeable or indictable under the laws of the state in which the
6 act occurred and, if the act occurred in a state other than this state,
7 would be chargeable or indictable under the laws of this state had the
8 act occurred in this state and punishable as a felony and by
9 imprisonment for more than one year, regardless of whether the act is
10 charged or indicted, as any of the following:

11 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

12 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

13 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

14 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

15 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
16 9A.56.080;

17 (f) Child selling or child buying, as defined in RCW 9A.64.030;

18 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
19 9A.68.050;

20 (h) Gambling, as defined in RCW 9.46.220 and 9.46.230;

21 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

22 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;

23 (k) Advancing money for use in an extortionate extension of credit,
24 as defined in RCW 9A.82.030;

25 (l) Collection of an extortionate extension of credit, as defined
26 in RCW 9A.82.040;

27 (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;

28 (n) Delivery or manufacture of controlled substances or possession
29 with intent to deliver or manufacture controlled substances under
30 chapter 69.50 RCW;

1 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;
2 (p) Leading organized crime, as defined in RCW 9A.82.060;
3 (q) Obstructing criminal investigations or prosecutions in
4 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
5 9A.76.070, or 9A.76.180;
6 (r) Fraud in the purchase or sale of securities, as defined in RCW
7 21.20.010;
8 (s) Promoting pornography, as defined in RCW 9.68.140;
9 (t) Sexual exploitation of children, as defined in RCW 9.68A.040,
10 9.68A.050, and 9.68A.060;
11 (u) Promoting prostitution, as defined in RCW 9A.88.070 and
12 9A.88.080;
13 (v) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
14 (w) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
15 (x) Assault of a child, as defined in RCW 9A.36.--- and 9A.36.---
16 (sections 1 and 2 of this act);
17 (y) A pattern of equity skimming, as defined in RCW 61.34.020; or
18 ~~((y))~~ (z) Commercial telephone solicitation in violation of RCW
19 19.158.040(1).
20 (15) "Pattern of criminal profiteering activity" means engaging in
21 at least three acts of criminal profiteering, one of which occurred
22 after July 1, 1985, and the last of which occurred within five years,
23 excluding any period of imprisonment, after the commission of the
24 earliest act of criminal profiteering. In order to constitute a
25 pattern, the three acts must have the same or similar intent, results,
26 accomplices, principals, victims, or methods of commission, or be
27 otherwise interrelated by distinguishing characteristics including a
28 nexus to the same enterprise, and must not be isolated events.
29 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
30 any person other than the attorney general or county prosecuting

1 attorney in which one or more acts of fraud in the purchase or sale of
2 securities are asserted as acts of criminal profiteering activity, it
3 is a condition to civil liability under RCW 9A.82.100 that the
4 defendant has been convicted in a criminal proceeding of fraud in the
5 purchase or sale of securities under RCW 21.20.400 or under the laws of
6 another state or of the United States requiring the same elements of
7 proof, but such conviction need not relate to any act or acts asserted
8 as acts of criminal profiteering activity in such civil action under
9 RCW 9A.82.100.

10 (16) "Records" means any book, paper, writing, record, computer
11 program, or other material.

12 (17) "Documentary material" means any book, paper, document,
13 writing, drawing, graph, chart, photograph, phonograph record, magnetic
14 tape, computer printout, other data compilation from which information
15 can be obtained or from which information can be translated into usable
16 form, or other tangible item.

17 (18) "Unlawful debt" means any money or other thing of value
18 constituting principal or interest of a debt that is legally
19 unenforceable in the state in full or in part because the debt was
20 incurred or contracted:

21 (a) In violation of any one of the following:

22 (i) Chapter 67.16 RCW relating to horse racing;

23 (ii) Chapter 9.46 RCW relating to gambling;

24 (b) In a gambling activity in violation of federal law; or

25 (c) In connection with the business of lending money or a thing of
26 value at a rate that is at least twice the permitted rate under the
27 applicable state or federal law relating to usury.

28 (19) (a) "Beneficial interest" means:

1 (i) The interest of a person as a beneficiary under a trust
2 established under Title 11 RCW in which the trustee for the trust holds
3 legal or record title to real property;

4 (ii) The interest of a person as a beneficiary under any other
5 trust arrangement under which a trustee holds legal or record title to
6 real property for the benefit of the beneficiary; or

7 (iii) The interest of a person under any other form of express
8 fiduciary arrangement under which one person holds legal or record
9 title to real property for the benefit of the other person.

10 (b) "Beneficial interest" does not include the interest of a
11 stockholder in a corporation or the interest of a partner in a general
12 partnership or limited partnership.

13 (c) A beneficial interest shall be considered to be located where
14 the real property owned by the trustee is located.

15 (20) "Real property" means any real property or interest in real
16 property, including but not limited to a land sale contract, lease, or
17 mortgage of real property.

18 (21) (a) "Trustee" means:

19 (i) A person acting as a trustee under a trust established under
20 Title 11 RCW in which the trustee holds legal or record title to real
21 property;

22 (ii) A person who holds legal or record title to real property in
23 which another person has a beneficial interest; or

24 (iii) A successor trustee to a person who is a trustee under
25 subsection (21)(a) (i) or (ii) of this section.

26 (b) "Trustee" does not mean a person appointed or acting as:

27 (i) A personal representative under Title 11 RCW;

28 (ii) A trustee of any testamentary trust;

29 (iii) A trustee of any indenture of trust under which a bond is
30 issued; or

1 (iv) A trustee under a deed of trust.

2 **Sec. 14.** RCW 13.34.130 and 1991 c 127 s 4 are each amended to read
3 as follows:

4 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now
5 or hereafter amended, it has been proven by a preponderance of the
6 evidence that the child is dependent within the meaning of RCW
7 13.34.030(2); after consideration of the predisposition report prepared
8 pursuant to RCW 13.34.110 and after a disposition hearing has been held
9 pursuant to RCW 13.34.110, the court shall enter an order of
10 disposition pursuant to this section.

11 (1) The court shall order one of the following dispositions of the
12 case:

13 (a) Order a disposition other than removal of the child from his or
14 her home, which shall provide a program designed to alleviate the
15 immediate danger to the child, to mitigate or cure any damage the child
16 has already suffered, and to aid the parents so that the child will not
17 be endangered in the future. In selecting a program, the court should
18 choose those services that least interfere with family autonomy,
19 provided that the services are adequate to protect the child.

20 (b) Order that the child be removed from his or her home and
21 ordered into the custody, control, and care of a relative or the
22 department of social and health services or a licensed child placing
23 agency for placement in a foster family home or group care facility
24 licensed pursuant to chapter 74.15 RCW or in a home not required to be
25 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
26 cause to believe that the safety or welfare of the child would be
27 jeopardized or that efforts to reunite the parent and child will be
28 hindered, such child shall be placed with a grandparent, brother,
29 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom

1 the child has a relationship and is comfortable, and who is willing and
2 available to care for the child. An order for out-of-home placement
3 may be made only if the court finds that reasonable efforts have been
4 made to prevent or eliminate the need for removal of the child from the
5 child's home and to make it possible for the child to return home,
6 specifying the services that have been provided to the child and the
7 child's parent, guardian, or legal custodian, and that:

8 (i) There is no parent or guardian available to care for such
9 child;

10 (ii) The parent, guardian, or legal custodian is not willing to
11 take custody of the child;

12 (iii) A manifest danger exists that the child will suffer serious
13 abuse or neglect if the child is not removed from the home and an order
14 under RCW 26.44.063 would not protect the child from danger; or

15 (iv) The extent of the child's disability is such that the parent,
16 guardian, or legal custodian is unable to provide the necessary care
17 for the child and the parent, guardian, or legal custodian has
18 determined that the child would benefit from placement outside of the
19 home.

20 (2) If the court has ordered a child removed from his or her home
21 pursuant to (~~RCW 13.34.130~~) subsection (1)(b) of this section, the
22 court may order that a petition seeking termination of the parent and
23 child relationship be filed if the court finds it is recommended by the
24 supervising agency, that it is in the best interests of the child and
25 that it is not reasonable to provide further services to reunify the
26 family because the existence of aggravated circumstances make it
27 unlikely that services will effectuate the return of the child to the
28 child's parents in the near future. In determining whether aggravated
29 circumstances exist, the court shall consider one or more of the
30 following:

1 (a) Conviction of the parent of rape of the child in the first,
2 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
3 9A.44.079;

4 (b) Conviction of the parent of criminal mistreatment of the child
5 in the first or second degree as defined in RCW 9A.42.020 and
6 9A.42.030;

7 (c) Conviction of the parent of one of the following assault
8 crimes, when the child is the victim: Assault ((of the child)) in the
9 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or
10 assault of a child in the first or second degree as defined in RCW
11 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

12 (d) Conviction of the parent of murder, manslaughter, or homicide
13 by abuse of the child's other parent, sibling, or another child;

14 (e) A finding by a court that a parent is a sexually violent
15 predator as defined in RCW 71.09.020;

16 (f) Failure of the parent to complete available treatment ordered
17 under this chapter or the equivalent laws of another state, where such
18 failure has resulted in a prior termination of parental rights to
19 another child and the parent has failed to effect significant change in
20 the interim.

21 (3) Whenever a child is ordered removed from the child's home, the
22 agency charged with his or her care shall provide the court with:

23 (a) A permanent plan of care that may include one of the following:
24 Return of the child to the home of the child's parent, adoption,
25 guardianship, or long-term placement with a relative or in foster care
26 with a written agreement.

27 (b) Unless the court has ordered, pursuant to ((RCW 13.34.130))
28 subsection (2) of this section, that a termination petition be filed,
29 a specific plan as to where the child will be placed, what steps will
30 be taken to return the child home, and what actions the agency will

1 take to maintain parent-child ties. All aspects of the plan shall
2 include the goal of achieving permanence for the child.

3 (i) The agency plan shall specify what services the parents will be
4 offered in order to enable them to resume custody, what requirements
5 the parents must meet in order to resume custody, and a time limit for
6 each service plan and parental requirement.

7 (ii) The agency shall be required to encourage the maximum parent-
8 child contact possible, including regular visitation and participation
9 by the parents in the care of the child while the child is in
10 placement. Visitation may be limited or denied only if the court
11 determines that such limitation or denial is necessary to protect the
12 child's health, safety, or welfare.

13 (iii) A child shall be placed as close to the child's home as
14 possible, preferably in the child's own neighborhood, unless the court
15 finds that placement at a greater distance is necessary to promote the
16 child's or parents' well-being.

17 (iv) The agency charged with supervising a child in placement shall
18 provide all reasonable services that are available within the agency,
19 or within the community, or those services which the department of
20 social and health services has existing contracts to purchase. It
21 shall report to the court if it is unable to provide such services.

22 (c) If the court has ordered, pursuant to (~~RCW 13.34.130~~)
23 subsection (2) of this section, that a termination petition be filed,
24 a specific plan as to where the child will be placed, what steps will
25 be taken to achieve permanency for the child, services to be offered or
26 provided to the child, and, if visitation would be in the best
27 interests of the child, a recommendation to the court regarding
28 visitation between parent and child pending a fact-finding hearing on
29 the termination petition. The agency shall not be required to develop
30 a plan of services for the parents or provide services to the parents.

1 (4) If there is insufficient information at the time of the
2 disposition hearing upon which to base a determination regarding the
3 suitability of a proposed placement with a relative, the child shall
4 remain in foster care and the court shall direct the supervising agency
5 to conduct necessary background investigations as provided in chapter
6 74.15 RCW and report the results of such investigation to the court
7 within thirty days. However, if such relative appears otherwise
8 suitable and competent to provide care and treatment, the criminal
9 history background check need not be completed before placement, but as
10 soon as possible after placement. Any placements with relatives,
11 pursuant to this section, shall be contingent upon cooperation by the
12 relative with the agency case plan and compliance with court orders
13 related to the care and supervision of the child including, but not
14 limited to, court orders regarding parent-child contacts and any other
15 conditions imposed by the court. Noncompliance with the case plan or
16 court order shall be grounds for removal of the child from the
17 relative's home, subject to review by the court.

18 (5) Except for children whose cases are reviewed by a citizen
19 review board under chapter 13.70 RCW, the status of all children found
20 to be dependent shall be reviewed by the court at least every six
21 months from the beginning date of the placement episode or the date
22 dependency is established, whichever is first, at a hearing in which it
23 shall be determined whether court supervision should continue. The
24 review shall include findings regarding the agency and parental
25 completion of disposition plan requirements, and if necessary, revised
26 permanency time limits.

27 (a) A child shall not be returned home at the review hearing unless
28 the court finds that a reason for removal as set forth in this section
29 no longer exists. The parents, guardian, or legal custodian shall
30 report to the court the efforts they have made to correct the

1 conditions which led to removal. If a child is returned, casework
2 supervision shall continue for a period of six months, at which time
3 there shall be a hearing on the need for continued intervention.

4 (b) If the child is not returned home, the court shall establish in
5 writing:

6 (i) Whether reasonable services have been provided to or offered to
7 the parties to facilitate reunion, specifying the services provided or
8 offered;

9 (ii) Whether the child has been placed in the least-restrictive
10 setting appropriate to the child's needs, including whether
11 consideration has been given to placement with the child's relatives;

12 (iii) Whether there is a continuing need for placement and whether
13 the placement is appropriate;

14 (iv) Whether there has been compliance with the case plan by the
15 child, the child's parents, and the agency supervising the placement;

16 (v) Whether progress has been made toward correcting the problems
17 that necessitated the child's placement in out-of-home care;

18 (vi) Whether the parents have visited the child and any reasons why
19 visitation has not occurred or has been infrequent;

20 (vii) Whether additional services are needed to facilitate the
21 return of the child to the child's parents; if so, the court shall
22 order that reasonable services be offered specifying such services; and

23 (viii) The projected date by which the child will be returned home
24 or other permanent plan of care will be implemented.

25 (c) The court at the review hearing may order that a petition
26 seeking termination of the parent and child relationship be filed.

27 **Sec. 15.** RCW 13.34.190 and 1990 c 284 s 33 are each amended to
28 read as follows:

1 After hearings pursuant to RCW 13.34.110, the court may enter an
2 order terminating all parental rights to a child if the court finds
3 that:

4 (1) The allegations contained in the petition as provided in RCW
5 13.34.180 (1) through (6) are established by clear, cogent, and
6 convincing evidence; or

7 (2) RCW 13.34.180 (3) and (4) may be waived because the allegations
8 under RCW 13.34.180 (1), (2), (5), and (6) are established beyond a
9 reasonable doubt; or

10 (~~((e)---{(3)}))~~) (3) The allegation under RCW 13.34.180(7) is
11 established beyond a reasonable doubt. In determining whether RCW
12 13.34.180 (5) and (6) are established beyond a reasonable doubt, the
13 court shall consider one or more of the following:

14 (a) Conviction of the parent of rape of the child in the first,
15 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
16 9A.44.079;

17 (b) Conviction of the parent of criminal mistreatment of the child
18 in the first or second degree as defined in RCW 9A.42.020 or 9A.42.030;

19 (c) Conviction of the parent of one of the following assault
20 crimes, when the child is the victim: Assault ((of the child)) in the
21 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or
22 assault of a child in the first or second degree as defined in RCW
23 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

24 (d) Conviction of the parent of murder, manslaughter, or homicide
25 by abuse of the child's other parent, sibling, or another child;

26 (e) A finding by a court that a parent is a sexually violent
27 predator as defined in RCW ((~~9A.88.010~~)) 71.09.020;

28 (f) Failure of the parent to complete available treatment ordered
29 under this chapter or the equivalent laws of another state, where such
30 failure has resulted in a prior termination of parental rights to

1 another child and the parent has failed to effect significant change in
2 the interim; and

3 ~~((3) [(4)])~~ (4) Such an order is in the best interests of the
4 child.

5 **Sec. 16.** RCW 43.43.830 and 1990 c 146 s 8 and 1990 c 3 s 1101 are
6 each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout RCW 43.43.830 through 43.43.840.

9 (1) "Applicant" means:

10 (a) Any prospective employee who will or may have unsupervised
11 access to children under sixteen years of age or developmentally
12 disabled persons or vulnerable adults during the course of his or her
13 employment or involvement with the business or organization;

14 (b) Any prospective volunteer who will have regularly scheduled
15 unsupervised access to children under sixteen years of age,
16 developmentally disabled persons, or vulnerable adults during the
17 course of his or her employment or involvement with the business or
18 organization under circumstances where such access will or may involve
19 groups of (i) five or fewer children under twelve years of age, (ii)
20 three or fewer children between twelve and sixteen years of age, (iii)
21 developmentally disabled persons, or (iv) vulnerable adults; or

22 (c) Any prospective adoptive parent, as defined in RCW 26.33.020.

23 (2) "Business or organization" means a business or organization
24 licensed in this state, any agency of the state, or other governmental
25 entity, that educates, trains, treats, supervises, or provides
26 recreation to developmentally disabled persons, vulnerable adults, or
27 children under sixteen years of age, including school districts and
28 educational service districts.

1 (3) "Civil adjudication" means a specific court finding of sexual
2 abuse or exploitation or physical abuse in a dependency action under
3 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In
4 the case of vulnerable adults, civil adjudication means a specific
5 court finding of abuse or financial exploitation in a protection
6 proceeding under chapter 74.34 RCW. It does not include administrative
7 proceedings. The term "civil adjudication" is further limited to court
8 findings that identify as the perpetrator of the abuse a named
9 individual, over the age of eighteen years, who was a party to the
10 dependency or dissolution proceeding or was a respondent in a
11 protection proceeding in which the finding was made and who contested
12 the allegation of abuse or exploitation.

13 (4) "Conviction record" means "conviction record" information as
14 defined in RCW 10.97.030(3) relating to a crime against children or
15 other persons committed by either an adult or a juvenile. It does not
16 include a conviction for an offense that has been the subject of an
17 expungement, pardon, annulment, certificate of rehabilitation, or other
18 equivalent procedure based on a finding of the rehabilitation of the
19 person convicted, or a conviction that has been the subject of a
20 pardon, annulment, or other equivalent procedure based on a finding of
21 innocence. It does include convictions for offenses for which the
22 defendant received a deferred or suspended sentence, unless the record
23 has been expunged according to law.

24 (5) "Crime against children or other persons" means a conviction of
25 any of the following offenses: Aggravated murder; first or second
26 degree murder; first or second degree kidnaping; first, second, or
27 third degree assault; first, second, or third degree assault of a
28 child; first, second, or third degree rape; first, second, or third
29 degree rape of a child; first or second degree robbery; first degree
30 arson; first degree burglary; first or second degree manslaughter;

1 first or second degree extortion; indecent liberties; incest; vehicular
2 homicide; first degree promoting prostitution; communication with a
3 minor; unlawful imprisonment; simple assault; sexual exploitation of
4 minors; first or second degree criminal mistreatment; child abuse or
5 neglect as defined in RCW 26.44.020; first or second degree custodial
6 interference; malicious harassment; first, second, or third degree
7 child molestation; first or second degree sexual misconduct with a
8 minor; first or second degree rape of a child; patronizing a juvenile
9 prostitute; child abandonment; promoting pornography; selling or
10 distributing erotic material to a minor; custodial assault; violation
11 of child abuse restraining order; child buying or selling;
12 prostitution; felony indecent exposure; or any of these crimes as they
13 may be renamed in the future.

14 (6) "Crimes relating to financial exploitation" means a conviction
15 for first, second, or third degree extortion; first, second, or third
16 degree theft; first or second degree robbery; forgery; or any of these
17 crimes as they may be renamed in the future.

18 (7) "Disciplinary board final decision" means any final decision
19 issued by the disciplinary board or the director of the department of
20 licensing for the following businesses or professions:

- 21 (a) Chiropractic;
- 22 (b) Dentistry;
- 23 (c) Dental hygiene;
- 24 (d) Massage;
- 25 (e) Midwifery;
- 26 (f) Naturopathy;
- 27 (g) Osteopathy;
- 28 (h) Physical therapy;
- 29 (i) Physicians;
- 30 (j) Practical nursing;

1 (k) Registered nursing;

2 (l) Psychology; and

3 (m) Real estate brokers and salesmen.

4 (8) "Unsupervised" means not in the presence of:

5 (a) Another employee or volunteer from the same business or
6 organization as the applicant; or

7 (b) Any relative or guardian of any of the children or
8 developmentally disabled persons to which the applicant has access
9 during the course of his or her employment or involvement with the
10 business or organization.

11 (9) "Vulnerable adult" means a person sixty years of age or older
12 who has the functional, mental, or physical inability to care for
13 himself or herself or a patient in a state hospital as defined in
14 chapter 72.23 RCW.

15 (10) "Financial exploitation" means the illegal or improper use of
16 a vulnerable adult or that adult's resources for another person's
17 profit or advantage.

18 (11) "Agency" means any person, firm, partnership, association,
19 corporation, or facility which receives, provides services to, houses
20 or otherwise cares for vulnerable adults.

21 **Sec. 17.** RCW 71.09.020 and 1990 1st ex.s. c 12 s 2 are each
22 amended to read as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this chapter.

25 (1) "Sexually violent predator" means any person who has been
26 convicted of or charged with a crime of sexual violence and who suffers
27 from a mental abnormality or personality disorder which makes the
28 person likely to engage in predatory acts of sexual violence.

1 (2) "Mental abnormality" means a congenital or acquired condition
2 affecting the emotional or volitional capacity which predisposes the
3 person to the commission of criminal sexual acts in a degree
4 constituting such person a menace to the health and safety of others.

5 (3) "Predatory" means acts directed towards strangers or
6 individuals with whom a relationship has been established or promoted
7 for the primary purpose of victimization.

8 (4) "Sexually violent offense" means an act committed on, before,
9 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
10 rape in the first degree, rape in the second degree by forcible
11 compulsion, rape of a child in the first or second degree, statutory
12 rape in the first or second degree, indecent liberties by forcible
13 compulsion, indecent liberties against a child under age fourteen,
14 incest against a child under age fourteen, or child molestation in the
15 first or second degree; (b) a felony offense in effect at any time
16 prior to July 1, 1990, that is comparable to a sexually violent offense
17 as defined in (a) of this subsection, or any federal or out-of-state
18 conviction for a felony offense that under the laws of this state would
19 be a sexually violent offense as defined in this subsection; (c) an act
20 of murder in the first or second degree, assault in the first or second
21 degree, assault of a child in the first or second degree, kidnapping in
22 the first or second degree, burglary in the first degree, residential
23 burglary, or unlawful imprisonment, which act, either at the time of
24 sentencing for the offense or subsequently during civil commitment
25 proceedings pursuant to chapter 71.09 RCW, has been determined beyond
26 a reasonable doubt to have been sexually motivated, as that term is
27 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
29 to commit one of the felonies designated in (a), (b), or (c) of this
30 subsection.