

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2692**

54th Legislature  
1996 Regular Session

Passed by the House February 6, 1996  
Yeas 97 Nays 0

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**Speaker of the  
House of Representatives**

Passed by the Senate February 27, 1996  
Yeas 46 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2692** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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HOUSE BILL 2692

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Passed Legislature - 1996 Regular Session

State of Washington                      54th Legislature                      1996 Regular Session

By Representatives Sheahan, Dellwo, Appelwick and Hickel; by request of Statute Law Committee

Read first time 01/16/96. Referred to Committee on Law & Justice.

1            AN ACT Relating to technical corrections of internal references to  
2 the Revised Code of Washington; amending RCW 9.94A.120, 9.94A.440, and  
3 82.04.010; and reenacting and amending RCW 46.63.020.

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

5            **Sec. 1.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read  
6 as follows:

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

9            (1) Except as authorized in subsections (2), (4), (5), (6), and (8)  
10 of this section, the court shall impose a sentence within the sentence  
11 range for the offense.

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

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

1 (4) A persistent offender shall be sentenced to a term of total  
2 confinement for life without the possibility of parole or, when  
3 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
4 first degree, sentenced to death, notwithstanding the maximum sentence  
5 under any other law. An offender convicted of the crime of murder in  
6 the first degree shall be sentenced to a term of total confinement not  
7 less than twenty years. An offender convicted of the crime of assault  
8 in the first degree or assault of a child in the first degree where the  
9 offender used force or means likely to result in death or intended to  
10 kill the victim shall be sentenced to a term of total confinement not  
11 less than five years. An offender convicted of the crime of rape in  
12 the first degree shall be sentenced to a term of total confinement not  
13 less than five years. The foregoing minimum terms of total confinement  
14 are mandatory and shall not be varied or modified as provided in  
15 subsection (2) of this section. In addition, all offenders subject to  
16 the provisions of this subsection shall not be eligible for community  
17 custody, earned early release time, furlough, home detention, partial  
18 confinement, work crew, work release, or any other form of early  
19 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
20 or any other form of authorized leave of absence from the correctional  
21 facility while not in the direct custody of a corrections officer or  
22 officers during such minimum terms of total confinement except in the  
23 case of an offender in need of emergency medical treatment or for the  
24 purpose of commitment to an inpatient treatment facility in the case of  
25 an offender convicted of the crime of rape in the first degree.

26 (5) In sentencing a first-time offender the court may waive the  
27 imposition of a sentence within the sentence range and impose a  
28 sentence which may include up to ninety days of confinement in a  
29 facility operated or utilized under contract by the county and a  
30 requirement that the offender refrain from committing new offenses.  
31 The sentence may also include up to two years of community supervision,  
32 which, in addition to crime-related prohibitions, may include  
33 requirements that the offender perform any one or more of the  
34 following:

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

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

1 (c) Pursue a prescribed, secular course of study or vocational  
2 training;

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

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

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

10 (6)(a) An offender is eligible for the special drug offender  
11 sentencing alternative if:

12 (i) The offender is convicted of the manufacture, delivery, or  
13 possession with intent to manufacture or deliver a controlled substance  
14 classified in Schedule I or II that is a narcotic drug or a felony that  
15 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
16 criminal solicitation, or criminal conspiracy to commit such crimes,  
17 and the violation does not involve a sentence enhancement under RCW  
18 9.94A.310 (3) or (4);

19 (ii) The offender has no prior convictions for a felony in this  
20 state, another state, or the United States; and

21 (iii) The offense involved only a small quantity of the particular  
22 controlled substance as determined by the judge upon consideration of  
23 such factors as the weight, purity, packaging, sale price, and street  
24 value of the controlled substance.

25 (b) If the midpoint of the standard range is greater than one year  
26 and the sentencing judge determines that the offender is eligible for  
27 this option and that the offender and the community will benefit from  
28 the use of the special drug offender sentencing alternative, the judge  
29 may waive imposition of a sentence within the standard range and impose  
30 a sentence that must include a period of total confinement in a state  
31 facility for one-half of the midpoint of the standard range. During  
32 incarceration in the state facility, offenders sentenced under this  
33 subsection shall undergo a comprehensive substance abuse assessment and  
34 receive, within available resources, treatment services appropriate for  
35 the offender. The treatment services shall be designed by the division  
36 of alcohol and substance abuse of the department of social and health  
37 services, in cooperation with the department of corrections. If the  
38 midpoint of the standard range is twenty-four months or less, no more  
39 than three months of the sentence may be served in a work release

1 status. The court shall also impose one year of concurrent community  
2 custody and community supervision that must include appropriate  
3 outpatient substance abuse treatment, crime-related prohibitions  
4 including a condition not to use illegal controlled substances, and a  
5 requirement to submit to urinalysis or other testing to monitor that  
6 status. The court may require that the monitoring for controlled  
7 substances be conducted by the department or by a treatment  
8 (~~alternative[s]~~) alternatives to street crime program or a comparable  
9 court or agency-referred program. The offender may be required to pay  
10 thirty dollars per month while on community custody to offset the cost  
11 of monitoring. In addition, the court shall impose three or more of  
12 the following conditions:

13 (i) Devote time to a specific employment or training;  
14 (ii) Remain within prescribed geographical boundaries and notify  
15 the court or the community corrections officer before any change in the  
16 offender's address or employment;

17 (iii) Report as directed to a community corrections officer;

18 (iv) Pay all court-ordered legal financial obligations;

19 (v) Perform community service work;

20 (vi) Stay out of areas designated by the sentencing judge.

21 (c) If the offender violates any of the sentence conditions in (b)  
22 of this subsection, the department shall impose sanctions  
23 administratively, with notice to the prosecuting attorney and the  
24 sentencing court. Upon motion of the court or the prosecuting  
25 attorney, a violation hearing shall be held by the court. If the court  
26 finds that conditions have been willfully violated, the court may  
27 impose confinement consisting of up to the remaining one-half of the  
28 midpoint of the standard range. All total confinement served during  
29 the period of community custody shall be credited to the offender,  
30 regardless of whether the total confinement is served as a result of  
31 the original sentence, as a result of a sanction imposed by the  
32 department, or as a result of a violation found by the court. The term  
33 of community supervision shall be tolled by any period of time served  
34 in total confinement as a result of a violation found by the court.

35 (d) The department shall determine the rules for calculating the  
36 value of a day fine based on the offender's income and reasonable  
37 obligations which the offender has for the support of the offender and  
38 any dependents. These rules shall be developed in consultation with

1 the administrator for the courts, the office of financial management,  
2 and the commission.

3 (7) 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 (8)(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;

31 (C) Monitoring plans, including any requirements regarding living  
32 conditions, lifestyle requirements, and monitoring by family members  
33 and others;

34 (D) Anticipated length of treatment; and

35 (E) Recommended crime-related prohibitions.

36 The court on its own motion may order, or on a motion by the state  
37 shall order, a second examination regarding the offender's amenability  
38 to treatment. The evaluator shall be selected by the party making the  
39 motion. The defendant shall pay the cost of any second examination

1 ordered unless the court finds the defendant to be indigent in which  
2 case the state shall pay the cost.

3 (ii) After receipt of the reports, the court shall consider whether  
4 the offender and the community will benefit from use of this special  
5 sexual offender sentencing alternative and consider the victim's  
6 opinion whether the offender should receive a treatment disposition  
7 under this subsection. If the court determines that this special sex  
8 offender sentencing alternative is appropriate, the court shall then  
9 impose a sentence within the sentence range. If this sentence is less  
10 than eight years of confinement, the court may suspend the execution of  
11 the sentence and impose the following conditions of suspension:

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

15 (B) The court shall order treatment for any period up to three  
16 years in duration. The court in its discretion shall order outpatient  
17 sex offender treatment or inpatient sex offender treatment, if  
18 available. A community mental health center may not be used for such  
19 treatment unless it has an appropriate program designed for sex  
20 offender treatment. The offender shall not change sex offender  
21 treatment providers or treatment conditions without first notifying the  
22 prosecutor, the community corrections officer, and the court, and shall  
23 not change providers without court approval after a hearing if the  
24 prosecutor or community corrections officer object to the change. In  
25 addition, as conditions of the suspended sentence, the court may impose  
26 other sentence conditions including up to six months of confinement,  
27 not to exceed the sentence range of confinement for that offense,  
28 crime-related prohibitions, and requirements that the offender perform  
29 any one or more of the following:

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

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

34 (III) Report as directed to the court and a community corrections  
35 officer;

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

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

3 (iii) The sex offender therapist shall submit quarterly reports on  
4 the defendant's progress in treatment to the court and the parties.  
5 The report shall reference the treatment plan and include at a minimum  
6 the following: Dates of attendance, defendant's compliance with  
7 requirements, treatment activities, the defendant's relative progress  
8 in treatment, and any other material as specified by the court at  
9 sentencing.

10 (iv) At the time of sentencing, the court shall set a treatment  
11 termination hearing for three months prior to the anticipated date for  
12 completion of treatment. Prior to the treatment termination hearing,  
13 the treatment professional and community corrections officer shall  
14 submit written reports to the court and parties regarding the  
15 defendant's compliance with treatment and monitoring requirements, and  
16 recommendations regarding termination from treatment, including  
17 proposed community supervision conditions. Either party may request  
18 and the court may order another evaluation regarding the advisability  
19 of termination from treatment. The defendant shall pay the cost of any  
20 additional evaluation ordered unless the court finds the defendant to  
21 be indigent in which case the state shall pay the cost. At the  
22 treatment termination hearing the court may: (A) Modify conditions of  
23 community supervision, and either (B) terminate treatment, or (C)  
24 extend treatment for up to the remaining period of community  
25 supervision.

26 (v) The court may revoke the suspended sentence at any time during  
27 the period of community supervision and order execution of the sentence  
28 if: (A) The defendant violates the conditions of the suspended  
29 sentence, or (B) the court finds that the defendant is failing to make  
30 satisfactory progress in treatment. All confinement time served during  
31 the period of community supervision shall be credited to the offender  
32 if the suspended sentence is revoked.

33 (vi) Except as provided in (a)(vii) of this subsection, after July  
34 1, 1991, examinations and treatment ordered pursuant to this subsection  
35 shall only be conducted by sex offender treatment providers certified  
36 by the department of health pursuant to chapter 18.155 RCW.

37 (vii) A sex offender therapist who examines or treats a sex  
38 offender pursuant to this subsection (8) does not have to be certified  
39 by the department of health pursuant to chapter 18.155 RCW if the court



1 finds that: (A) The offender has already moved to another state or  
2 plans to move to another state for reasons other than circumventing the  
3 certification requirements; (B) no certified providers are available  
4 for treatment within a reasonable geographical distance of the  
5 offender's home; and (C) the evaluation and treatment plan comply with  
6 this subsection (8) and the rules adopted by the department of health.

7 For purposes of this subsection, "victim" means any person who has  
8 sustained emotional, psychological, physical, or financial injury to  
9 person or property as a result of the crime charged. "Victim" also  
10 means a parent or guardian of a victim who is a minor child unless the  
11 parent or guardian is the perpetrator of the offense.

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

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

- 26 (i) Devote time to a specific employment or occupation;
- 27 (ii) Remain within prescribed geographical boundaries and notify  
28 the court or the community corrections officer prior to any change in  
29 the offender's address or employment;
- 30 (iii) Report as directed to the court and a community corrections  
31 officer;
- 32 (iv) Undergo available outpatient treatment.

33 If the offender violates any of the terms of his or her community  
34 supervision, the court may order the offender to serve out the balance  
35 of his or her community supervision term in confinement in the custody  
36 of the department of corrections.

37 Nothing in this subsection (8)(b) shall confer eligibility for such  
38 programs for offenders convicted and sentenced for a sex offense

1 committed prior to July 1, 1987. This subsection (8)(b) does not apply  
2 to any crime committed after July 1, 1990.

3 (c) Offenders convicted and sentenced for a sex offense committed  
4 prior to July 1, 1987, may, subject to available funds, request an  
5 evaluation by the department of corrections to determine whether they  
6 are amenable to treatment. If the offender is determined to be  
7 amenable to treatment, the offender may request placement in a  
8 treatment program within a correctional facility operated by the  
9 department. Placement in such treatment program is subject to  
10 available funds.

11 (9)(a) When a court sentences a person to a term of total  
12 confinement to the custody of the department of corrections for an  
13 offense categorized as a sex offense or a serious violent offense  
14 committed after July 1, 1988, but before July 1, 1990, assault in the  
15 second degree, assault of a child in the second degree, any crime  
16 against a person where it is determined in accordance with RCW  
17 9.94A.125 that the defendant or an accomplice was armed with a deadly  
18 weapon at the time of commission, or any felony offense under chapter  
19 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
20 committed on or after July 1, 1988, the court shall in addition to the  
21 other terms of the sentence, sentence the offender to a one-year term  
22 of community placement beginning either upon completion of the term of  
23 confinement or at such time as the offender is transferred to community  
24 custody in lieu of earned early release in accordance with RCW  
25 9.94A.150 (1) and (2). When the court sentences an offender under this  
26 subsection to the statutory maximum period of confinement then the  
27 community placement portion of the sentence shall consist entirely of  
28 such community custody to which the offender may become eligible, in  
29 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
30 custody actually served shall be credited against the community  
31 placement portion of the sentence.

32 (b) When a court sentences a person to a term of total confinement  
33 to the custody of the department of corrections for an offense  
34 categorized as a sex offense or serious violent offense committed on or  
35 after July 1, 1990, the court shall in addition to other terms of the  
36 sentence, sentence the offender to community placement for two years or  
37 up to the period of earned early release awarded pursuant to RCW  
38 9.94A.150 (1) and (2), whichever is longer. The community placement  
39 shall begin either upon completion of the term of confinement or at

1 such time as the offender is transferred to community custody in lieu  
2 of earned early release in accordance with RCW 9.94A.150 (1) and (2).  
3 When the court sentences an offender under this subsection to the  
4 statutory maximum period of confinement then the community placement  
5 portion of the sentence shall consist entirely of the community custody  
6 to which the offender may become eligible, in accordance with RCW  
7 9.94A.150 (1) and (2). Any period of community custody actually served  
8 shall be credited against the community placement portion of the  
9 sentence. Unless a condition is waived by the court, the terms of  
10 community placement for offenders sentenced pursuant to this section  
11 shall include the following conditions:

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

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

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

18 (iv) An offender in community custody shall not unlawfully possess  
19 controlled substances;

20 (v) The offender shall pay supervision fees as determined by the  
21 department of corrections; and

22 (vi) The residence location and living arrangements are subject to  
23 the prior approval of the department of corrections during the period  
24 of community placement.

25 (c) The court may also order any of the following special  
26 conditions:

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

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

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

33 (iv) The offender shall not consume alcohol; or

34 (v) The offender shall comply with any crime-related prohibitions.

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

1 (10) If the court imposes a sentence requiring confinement of  
2 thirty days or less, the court may, in its discretion, specify that the  
3 sentence be served on consecutive or intermittent days. A sentence  
4 requiring more than thirty days of confinement shall be served on  
5 consecutive days. Local jail administrators may schedule court-ordered  
6 intermittent sentences as space permits.

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

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

32 (13) All offenders sentenced to terms involving community  
33 supervision, community service, community placement, or legal financial  
34 obligation shall be under the supervision of the secretary of the  
35 department of corrections or such person as the secretary may designate  
36 and shall follow explicitly the instructions of the secretary including  
37 reporting as directed to a community corrections officer, remaining  
38 within prescribed geographical boundaries, notifying the community  
39 corrections officer of any change in the offender's address or

1 employment, and paying the supervision fee assessment. The department  
2 may require offenders to pay for special services rendered on or after  
3 July 25, 1993, including electronic monitoring, day reporting, and  
4 telephone reporting, dependent upon the offender's ability to pay. The  
5 department may pay for these services for offenders who are not able to  
6 pay.

7 (14) 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 (15) 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 (16) 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 (17) 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  
31 judgment. The court shall set forth the extraordinary circumstances in  
32 the record if it does not order restitution.

33 (18) As a part of any sentence, the court may impose and enforce an  
34 order that relates directly to the circumstances of the crime for which  
35 the offender has been convicted, prohibiting the offender from having  
36 any contact with other specified individuals or a specific class of  
37 individuals for a period not to exceed the maximum allowable sentence  
38 for the crime, regardless of the expiration of the offender's term of  
39 community supervision or community placement.

1 (19) In any sentence of partial confinement, the court may require  
2 the defendant to serve the partial confinement in work release, in a  
3 program of home detention, on work crew, or in a combined program of  
4 work crew and home detention.

5 (20) All court-ordered legal financial obligations collected by the  
6 department and remitted to the county clerk shall be credited and paid  
7 where restitution is ordered. Restitution shall be paid prior to any  
8 other payments of monetary obligations.

9 EXPLANATORY NOTE

10 Initiative 159 (Chapter 129, Laws of 1995) amended RCW  
11 9.94A.310 by dividing the substance of the former subsection  
12 (3) into two parts and placing them in subsections (3) and (4).  
13 However, it failed to correct a reference to this provision in  
14 RCW 9.94A.120(6)(a)(i). The purpose of section 1 of this bill  
15 is to correct that reference.

16 **Sec. 2.** RCW 9.94A.440 and 1995 c 288 s 3 are each amended to read  
17 as follows:

18 (1) Decision not to prosecute.

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

24 GUIDELINE/COMMENTARY:

25 Examples

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

28 (a) Contrary to Legislative Intent - It may be proper to decline to  
29 charge where the application of criminal sanctions would be clearly  
30 contrary to the intent of the legislature in enacting the particular  
31 statute.

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

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

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

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

39 (iv) The statute has not been recently reconsidered by the  
40 legislature.

1 This reason is not to be construed as the basis for declining cases  
2 because the law in question is unpopular or because it is difficult to  
3 enforce.

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

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

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

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

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

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

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

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

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

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

26 (f) High Disproportionate Cost of Prosecution - It may be proper to  
27 decline to charge where the cost of locating or transporting, or the  
28 burden on, prosecution witnesses is highly disproportionate to the  
29 importance of prosecuting the offense in question. This reason should  
30 be limited to minor cases and should not be relied upon in serious  
31 cases.

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

37 (h) Immunity - It may be proper to decline to charge where immunity  
38 is to be given to an accused in order to prosecute another where the  
39 accused's information or testimony will reasonably lead to the

1 conviction of others who are responsible for more serious criminal  
2 conduct or who represent a greater danger to the public interest.

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

6 (i) Assault cases where the victim has suffered little or no  
7 injury;

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

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

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

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

15 Notification

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

18 (2) Decision to prosecute.

19 STANDARD:

20 Crimes against persons will be filed if sufficient admissible  
21 evidence exists, which, when considered with the most plausible,  
22 reasonably foreseeable defense that could be raised under the evidence,  
23 would justify conviction by a reasonable and objective fact-finder.  
24 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
25 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
26 9A.64.020 the prosecutor should avoid prefiling agreements or  
27 diversions intended to place the accused in a program of treatment or  
28 counseling, so that treatment, if determined to be beneficial, can be  
29 provided pursuant to RCW 9.94A.120(~~(7)~~)(8).

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

35 See table below for the crimes within these categories.



1                   CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

2           CRIMES AGAINST PERSONS

- 3           Aggravated Murder
- 4           1st Degree Murder
- 5           2nd Degree Murder
- 6           1st Degree Kidnaping
- 7           1st Degree Assault
- 8           1st Degree Assault of a Child
- 9           1st Degree Rape
- 10          1st Degree Robbery
- 11          1st Degree Rape of a Child
- 12          1st Degree Arson
- 13          2nd Degree Kidnaping
- 14          2nd Degree Assault
- 15          2nd Degree Assault of a Child
- 16          2nd Degree Rape
- 17          2nd Degree Robbery
- 18          1st Degree Burglary
- 19          1st Degree Manslaughter
- 20          2nd Degree Manslaughter
- 21          1st Degree Extortion
- 22          Indecent Liberties
- 23          Incest
- 24          2nd Degree Rape of a Child
- 25          Vehicular Homicide
- 26          Vehicular Assault
- 27          3rd Degree Rape
- 28          3rd Degree Rape of a Child
- 29          1st Degree Child Molestation
- 30          2nd Degree Child Molestation
- 31          3rd Degree Child Molestation
- 32          2nd Degree Extortion
- 33          1st Degree Promoting Prostitution
- 34          Intimidating a Juror
- 35          Communication with a Minor
- 36          Intimidating a Witness
- 37          Intimidating a Public Servant
- 38          Bomb Threat (if against person)
- 39          3rd Degree Assault

1 3rd Degree Assault of a Child  
2 Unlawful Imprisonment  
3 Promoting a Suicide Attempt  
4 Riot (if against person)

5 CRIMES AGAINST PROPERTY/OTHER CRIMES

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

38 ALL OTHER UNCLASSIFIED FELONIES

1 Selection of Charges/Degree of Charge

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

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

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

8 (2) The prosecutor should not overcharge to obtain a guilty plea.  
9 Overcharging includes:

10 (a) Charging a higher degree;

11 (b) Charging additional counts.

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

18 GUIDELINES/COMMENTARY:

19 Police Investigation

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

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

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

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

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

34 Exceptions

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

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

38 (2) The suspect presents a danger to the community or is likely to  
39 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 Pre-Filing Discussions with Victim(s)

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

#### 25 EXPLANATORY NOTE

26 RCW 9.94A.120 was amended by 1995 c 108 s 3, and the provisions  
27 of former subsection (7) are now contained in subsection (8).  
28 The purpose of section 2 of this bill is to correct that  
29 reference.

30 **Sec. 3.** RCW 46.63.020 and 1995 1st sp.s. c 16 s 1, 1995 c 332 s  
31 16, and 1995 c 256 s 25 are each reenacted and amended to read as  
32 follows:

33 Failure to perform any act required or the performance of any act  
34 prohibited by this title or an equivalent administrative regulation or  
35 local law, ordinance, regulation, or resolution relating to traffic  
36 including parking, standing, stopping, and pedestrian offenses, is  
37 designated as a traffic infraction and may not be classified as a  
38 criminal offense, except for an offense contained in the following

1 provisions of this title or a violation of an equivalent administrative  
2 regulation or local law, ordinance, regulation, or resolution:

3 (1) RCW 46.09.120(2) relating to the operation of a nonhighway  
4 vehicle while under the influence of intoxicating liquor or a  
5 controlled substance;

6 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

7 (3) RCW 46.10.090(2) relating to the operation of a snowmobile  
8 while under the influence of intoxicating liquor or narcotics or  
9 habit-forming drugs or in a manner endangering the person of another;

10 (4) RCW 46.10.130 relating to the operation of snowmobiles;

11 (5) Chapter 46.12 RCW relating to certificates of ownership and  
12 registration and markings indicating that a vehicle has been destroyed  
13 or declared a total loss;

14 (6) RCW 46.16.010 relating to initial registration of motor  
15 vehicles;

16 (7) RCW 46.16.011 relating to permitting unauthorized persons to  
17 drive;

18 (8) RCW 46.16.160 relating to vehicle trip permits;

19 (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or  
20 acquisition of a special placard or license plate for disabled persons'  
21 parking;

22 (10) RCW 46.20.021 relating to driving without a valid driver's  
23 license;

24 (11) RCW 46.20.336 relating to the unlawful possession and use of  
25 a driver's license;

26 (12) RCW 46.20.342 relating to driving with a suspended or revoked  
27 license or status;

28 (13) RCW 46.20.410 relating to the violation of restrictions of an  
29 occupational driver's license;

30 (14) RCW 46.20.420 relating to the operation of a motor vehicle  
31 with a suspended or revoked license;

32 (15) RCW 46.20.750 relating to assisting another person to start a  
33 vehicle equipped with an ignition interlock device;

34 (16) RCW 46.25.170 relating to commercial driver's licenses;

35 (17) Chapter 46.29 RCW relating to financial responsibility;

36 (18) RCW 46.30.040 relating to providing false evidence of  
37 financial responsibility;

38 (19) RCW 46.37.435 relating to wrongful installation of  
39 sunscreening material;

1 (20) RCW 46.44.180 relating to operation of mobile home pilot  
2 vehicles;

3 (21) RCW 46.48.175 relating to the transportation of dangerous  
4 articles;

5 (22) RCW 46.52.010 relating to duty on striking an unattended car  
6 or other property;

7 (23) RCW 46.52.020 relating to duty in case of injury to or death  
8 of a person or damage to an attended vehicle;

9 (24) RCW 46.52.090 relating to reports by repairmen, storagemen,  
10 and appraisers;

11 (25) RCW 46.52.100 relating to driving under the influence of  
12 liquor or drugs;

13 (26) RCW 46.52.130 relating to confidentiality of the driving  
14 record to be furnished to an insurance company, an employer, and an  
15 alcohol/drug assessment or treatment agency;

16 (27) RCW 46.55.020 relating to engaging in the activities of a  
17 registered tow truck operator without a registration certificate;

18 (28) RCW 46.55.035 relating to prohibited practices by tow truck  
19 operators;

20 (29) RCW 46.61.015 relating to obedience to police officers,  
21 flagmen, or fire fighters;

22 (30) RCW 46.61.020 relating to refusal to give information to or  
23 cooperate with an officer;

24 (31) RCW 46.61.022 relating to failure to stop and give  
25 identification to an officer;

26 (32) RCW 46.61.024 relating to attempting to elude pursuing police  
27 vehicles;

28 (33) RCW 46.61.500 relating to reckless driving;

29 (34) RCW 46.61.502 and 46.61.504 relating to persons under the  
30 influence of intoxicating liquor or drugs;

31 (35) RCW (~~46.61.5055 (section 5, chapter 332 (Substitute Senate~~  
32 ~~Bill No. 5141), Laws of 1995~~)) 46.61.503 relating to a person under  
33 age twenty-one driving a motor vehicle after consuming alcohol;

34 (36) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

35 (37) RCW 46.61.522 relating to vehicular assault;

36 (38) RCW 46.61.525 relating to negligent driving;

37 (39) RCW 46.61.527(4) relating to reckless endangerment of roadway  
38 workers;

39 (40) RCW 46.61.530 relating to racing of vehicles on highways;

1 (41) RCW 46.61.685 relating to leaving children in an unattended  
2 vehicle with the motor running;

3 (42) RCW 46.64.010 relating to unlawful cancellation of or attempt  
4 to cancel a traffic citation;

5 (43) RCW 46.64.048 relating to attempting, aiding, abetting,  
6 coercing, and committing crimes;

7 (44) Chapter 46.65 RCW relating to habitual traffic offenders;

8 (45) Chapter 46.70 RCW relating to unfair motor vehicle business  
9 practices, except where that chapter provides for the assessment of  
10 monetary penalties of a civil nature;

11 (46) Chapter 46.72 RCW relating to the transportation of passengers  
12 in for hire vehicles;

13 (47) Chapter 46.80 RCW relating to motor vehicle wreckers;

14 (48) Chapter 46.82 RCW relating to driver's training schools;

15 (49) RCW 46.87.260 relating to alteration or forgery of a cab card,  
16 letter of authority, or other temporary authority issued under chapter  
17 46.87 RCW;

18 (50) RCW 46.87.290 relating to operation of an unregistered or  
19 unlicensed vehicle under chapter 46.87 RCW.

20 EXPLANATORY NOTE

21 RCW 46.61.5055, referred to in subsection (35) of this section,  
22 does not specifically relate to persons under twenty-one.  
23 Substitute Senate Bill No. 5141 was amended and reordered  
24 several times during its enactment as chapter 332, Laws of  
25 1995, and the substance of a previous section 5 was placed into  
26 section 2, codified as RCW 46.61.503. The purpose of section  
27 3 of this bill is to correct that reference.

28 **Sec. 4.** RCW 82.04.010 and 1961 c 15 s 82.04.010 are each amended  
29 to read as follows:

30 (~~For the purposes of this chapter, unless otherwise required by~~  
31 ~~the context, the terms used herein shall have the meaning given to them~~  
32 ~~in RCW 82.04.020 through 82.04.212.)) Unless the context clearly  
33 requires otherwise, the definitions set forth in the sections preceding  
34 RCW 82.04.220 apply throughout this chapter.~~

35 EXPLANATORY NOTE

36 The reference to "RCW 82.04.020 through 82.04.212" has become  
37 too restrictive with the 1993 and 1994 enactment of RCW  
38 82.04.213 and 82.04.214, and probable future additions to this  
39 series of definition sections would increase the problem. The

1 purpose of section 4 of this bill is to enact language that  
2 allows reference to current and future definition sections.

--- END ---