

CERTIFICATION OF ENROLLMENT

INITIATIVE NO. 159

Chapter 129, Laws of 1995

54th Legislature
1995 Regular Session

Hard time for armed crime act

EFFECTIVE DATE: 7/23/95

Passed by the House January 27, 1995
Yeas 88 Nays 6

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate April 20, 1995
Yeas 39 Nays 5

R. LORRAINE WOJAHN

President of the Senate

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **INITIATIVE NO. 159** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE INITIATIVE 159** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 21, 1995 - 4:57 p.m.

**Secretary of State
State of Washington**

INITIATIVE 159

AN ACT Relating to increasing penalties for armed crimes; amending RCW 9.94A.310, 9.94A.150, 9A.36.045, 9A.52.020, 9A.56.300, 9A.56.030, 9A.56.040, 9A.56.150, 9A.56.160, 9.41.040, and 10.95.020; reenacting and amending RCW 9.94A.320; adding new sections to chapter 9.94A RCW; adding a new section to chapter 9A.56 RCW; creating new sections; repealing 1994 1st sp.s. c 7 s 510; repealing 1994 1st sp.s. c 7 s 511; repealing 1994 1st sp.s. c 7 s 512; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The people of the state of Washington find and declare that:

(a) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.

(b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping.

(c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.

(d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.

(2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:

(a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.

(b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.

(c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.

(d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes.

Sec. 2. RCW 9.94A.310 and 1992 c 145 s 9 are each amended to read as follows:

FIREARM AND OTHER DEADLY WEAPON ENHANCEMENTS INCREASED.

(1)

TABLE 1

Sentencing Grid

SCORE	SERIOUSNESS									9 or more
	0	1	2	3	4	5	6	7	8	
XV	Life Sentence without Parole/Death Penalty									
XIV	23y4m 240- 320	24y4m 250- 333	25y4m 261- 347	26y4m 271- 361	27y4m 281- 374	28y4m 291- 388	30y4m 312- 416	32y10m 338- 450	36y 370- 493	40y 411- 548
XIII	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397
XII	9y 93- 123	9y11m 102- 136	10y9m 111- 147	11y8m 120- 160	12y6m 129- 171	13y5m 138- 184	15y9m 162- 216	17y3m 178- 236	20y3m 209- 277	23y3m 240- 318
XI	7y6m 78- 102	8y4m 86- 114	9y2m 95- 125	9y11m 102- 136	10y9m 111- 147	11y7m 120- 158	14y2m 146- 194	15y5m 159- 211	17y11m 185- 245	20y5m 210- 280

X	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198
IX	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	5y 51- 68	5y6m 57- 75	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144	12y6m 129- 171
VIII	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144
VII	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116
VI	13m 12+- 14	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y6m 46- 61	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102
V	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y 41- 54	5y 51- 68	6y 62- 82	7y 72- 96
IV	6m 3- 9	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y2m 53- 70	6y2m 63- 84
III	2m 1- 3	5m 3- 8	8m 4- 12	11m 9- 12	14m 12+- 16	20m 17- 22	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y 51- 68
II		4m 0-90 Days	6m 2- 9	8m 3- 12	13m 4- 14	16m 12+- 18	20m 14- 22	2y2m 17- 29	3y2m 22- 43	4y2m 33- 57
I		0-60 Days	3m 0-90 Days	4m 2- 5	5m 2- 6	8m 3- 8	13m 4- 12	16m 12+- 14	20m 14- 18	2y2m 17- 22

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

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

(3) The following additional times shall be added to the presumptive sentence for felony crimes committed after the effective date of this section if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) Three years for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Eighteen months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after the effective date of this section under (a), (b), and/or (c) of this subsection or subsection (4) (a), (b), and/or (c) of this section, or both, any and all firearm enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall not run concurrently with any other sentencing provisions.

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030.

(4) The following additional times shall be added to the presumptive sentence for felony crimes committed after the effective date of this section if the offender or an accomplice was armed with a deadly weapon as defined in this chapter other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the presumptive ((range)) sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) ((24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020))) Two years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) ((18 months for Burglary 1 (RCW 9A.52.020))) One year for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) ((12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault of a Child 2 (RCW 9A.36.130), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or

~~any drug offense))~~ Six months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after the effective date of this section under (a), (b), and/or (c) of this subsection or subsection (3) (a), (b), and/or (c) of this section, or both, any and all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall not run concurrently with any other sentencing provisions.

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030.

~~((+4))~~ (5) The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the presumptive sentence ((range)) determined under subsection (2) of this section:

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

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

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

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

~~((+5+))~~ (6) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

Sec. 3. RCW 9.94A.320 and 1992 c 145 s 4 and 1992 c 75 s 3 are each reenacted and amended to read as follows:

PENALTIES INCREASED FOR OTHER CRIMES INVOLVING FIREARMS.

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XIII	Murder 2 (RCW 9A.32.050)
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120)
XI	Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
X	Kidnapping 1 (RCW 9A.40.020) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Child Molestation 1 (RCW 9A.44.083) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a))
IX	Assault of a Child 2 (RCW 9A.36.130) Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180)

Indecent Liberties (with forcible
compulsion) (RCW 9A.44.100(1)(a))
Endangering life and property by explosives
with threat to human being (RCW
70.74.270)
Over 18 and deliver narcotic from Schedule
III, IV, or V or a nonnarcotic from
Schedule I-V to someone under 18 and 3
years junior (RCW 69.50.406)
Controlled Substance Homicide (RCW
69.50.415)
Sexual Exploitation (RCW 9.68A.040)
Inciting Criminal Profiteering (RCW
9A.82.060(1)(b))

VIII Arson 1 (RCW 9A.48.020)
Promoting Prostitution 1 (RCW 9A.88.070)
Selling for profit (controlled or
counterfeit) any controlled substance
(RCW 69.50.410)
Manufacture, deliver, or possess with intent
to deliver heroin or cocaine (RCW
69.50.401(a)(1)(i))
Manufacture, deliver, or possess with intent
to deliver methamphetamine (RCW
69.50.401(a)(1)(ii))
Vehicular Homicide, by being under the
influence of intoxicating liquor or any
drug or by the operation of any vehicle
in a reckless manner (RCW 46.61.520)

VII Burglary 1 (RCW 9A.52.020)
Vehicular Homicide, by disregard for the
safety of others (RCW 46.61.520)
Introducing Contraband 1 (RCW 9A.76.140)
Indecent Liberties (without forcible
compulsion) (RCW 9A.44.100(1) (b) and
(c))
Child Molestation 2 (RCW 9A.44.086)
Dealing in depictions of minor engaged in
sexually explicit conduct (RCW
9.68A.050)

Sending, bringing into state depictions of
minor engaged in sexually explicit
conduct (RCW 9.68A.060)

Involving a minor in drug dealing (RCW
69.50.401(f))

Reckless Endangerment 1 (RCW 9A.36.045)

Unlawful Possession of a Firearm in the
first degree (RCW 9.41.040(1)(a))

- VI Bribery (RCW 9A.68.010)
Manslaughter 2 (RCW 9A.32.070)
Rape of a Child 3 (RCW 9A.44.079)
Intimidating a Juror/Witness (RCW 9A.72.110,
9A.72.130)
Damaging building, etc., by explosion with
no threat to human being (RCW
70.74.280(2))
Endangering life and property by explosives
with no threat to human being (RCW
70.74.270)
Incest 1 (RCW 9A.64.020(1))
Manufacture, deliver, or possess with intent
to deliver narcotics from Schedule I or
II (except heroin or cocaine) (RCW
69.50.401(a)(1)(i))
Intimidating a Judge (RCW 9A.72.160)
Bail Jumping with Murder 1 (RCW
9A.76.170(2)(a))
Theft of a Firearm (RCW 9A.56.--- (section
432, chapter 7, Laws of 1994 1st sp.
sess., as amended by section 10 of this
act))
- V Criminal Mistreatment 1 (RCW 9A.42.020)
Rape 3 (RCW 9A.44.060)
Sexual Misconduct with a Minor 1 (RCW
9A.44.093)
Child Molestation 3 (RCW 9A.44.089)
Kidnapping 2 (RCW 9A.40.030)
Extortion 1 (RCW 9A.56.120)
Incest 2 (RCW 9A.64.020(2))
Perjury 1 (RCW 9A.72.020)

Extortionate Extension of Credit (RCW
9A.82.020)
Advancing money or property for extortionate
extension of credit (RCW 9A.82.030)
Extortionate Means to Collect Extensions of
Credit (RCW 9A.82.040)
Rendering Criminal Assistance 1 (RCW
9A.76.070)
Bail Jumping with class A Felony (RCW
9A.76.170(2)(b))
Delivery of imitation controlled substance
by person eighteen or over to person
under eighteen (RCW 69.52.030(2))
Possession of a Stolen Firearm (RCW
9A.56.--- (section 13 of this act))

IV Residential Burglary (RCW 9A.52.025)
Theft of Livestock 1 (RCW 9A.56.080)
Robbery 2 (RCW 9A.56.210)
Assault 2 (RCW 9A.36.021)
Escape 1 (RCW 9A.76.110)
Arson 2 (RCW 9A.48.030)
Bribing a Witness/Bribe Received by Witness
(RCW 9A.72.090, 9A.72.100)
Malicious Harassment (RCW 9A.36.080)
Threats to Bomb (RCW 9.61.160)
Willful Failure to Return from Furlough (RCW
72.66.060)
Hit and Run « Injury Accident (RCW
46.52.020(4))
Vehicular Assault (RCW 46.61.522)
Manufacture, deliver, or possess with intent
to deliver narcotics from Schedule III,
IV, or V or nonnarcotics from Schedule
I-V (except marijuana or
methamphetamines) (RCW
69.50.401(a)(1)(ii) through (iv))
Influencing Outcome of Sporting Event (RCW
9A.82.070)

Use of Proceeds of Criminal Profiteering
(RCW 9A.82.080 (1) and (2))
Knowingly Trafficking in Stolen Property
(RCW 9A.82.050(2))

III Criminal mistreatment 2 (RCW 9A.42.030)
Extortion 2 (RCW 9A.56.130)
Unlawful Imprisonment (RCW 9A.40.040)
Assault 3 (RCW 9A.36.031)
Assault of a Child 3 (RCW 9A.36.140)
Custodial Assault (RCW 9A.36.100)
Unlawful possession of firearm (~~(or pistol by felon (RCW 9.41.040))~~) in the second degree (RCW 9.41.040(1)(b))
Harassment (RCW 9A.46.020)
Promoting Prostitution 2 (RCW 9A.88.080)
Willful Failure to Return from Work Release
(RCW 72.65.070)
Burglary 2 (RCW 9A.52.030)
Introducing Contraband 2 (RCW 9A.76.150)
Communication with a Minor for Immoral
Purposes (RCW 9.68A.090)
Patronizing a Juvenile Prostitute (RCW
9.68A.100)
Escape 2 (RCW 9A.76.120)
Perjury 2 (RCW 9A.72.030)
Bail Jumping with class B or C Felony (RCW
9A.76.170(2)(c))
Intimidating a Public Servant (RCW
9A.76.180)
Tampering with a Witness (RCW 9A.72.120)
Manufacture, deliver, or possess with intent
to deliver marijuana (RCW
69.50.401(a)(1)(ii))
Delivery of a material in lieu of a
controlled substance (RCW 69.50.401(c))
Manufacture, distribute, or possess with
intent to distribute an imitation
controlled substance (RCW 69.52.030(1))

Recklessly Trafficking in Stolen Property
(RCW 9A.82.050(1))
Theft of livestock 2 (RCW 9A.56.080)
Securities Act violation (RCW 21.20.400)

II Malicious Mischief 1 (RCW 9A.48.070)
Possession of Stolen Property 1 (RCW
9A.56.150)
Theft 1 (RCW 9A.56.030)
Possession of controlled substance that is
either heroin or narcotics from
Schedule I or II (RCW 69.50.401(d))
Possession of phencyclidine (PCP) (RCW
69.50.401(d))
Create, deliver, or possess a counterfeit
controlled substance (RCW 69.50.401(b))
Computer Trespass 1 (RCW 9A.52.110)
(~~Reckless Endangerment 1 (RCW 9A.36.045)~~)
Escape from Community Custody (RCW
72.09.310)

I Theft 2 (RCW 9A.56.040)
Possession of Stolen Property 2 (RCW
9A.56.160)
Forgery (RCW 9A.60.020)
Taking Motor Vehicle Without Permission (RCW
9A.56.070)
Vehicle Prowl 1 (RCW 9A.52.095)
Attempting to Elude a Pursuing Police
Vehicle (RCW 46.61.024)
Malicious Mischief 2 (RCW 9A.48.080)
Reckless Burning 1 (RCW 9A.48.040)
Unlawful Issuance of Checks or Drafts (RCW
9A.56.060)
Unlawful Use of Food Stamps (RCW 9.91.140
(2) and (3))
False Verification for Welfare (RCW
74.08.055)
Forged Prescription (RCW 69.41.020)
Forged Prescription for a Controlled
Substance (RCW 69.50.403)

Possess Controlled Substance that is a
Narcotic from Schedule III, IV, or V or
Non-narcotic from Schedule I-V (except
phencyclidine) (RCW 69.50.401(d))

NEW SECTION. **Sec. 4.** PROSECUTING STANDARDS TIGHTENED FOR ARMED OFFENDERS. Notwithstanding the current placement or listing of crimes in categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.440(2), any and all felony crimes involving any deadly weapon special verdict under RCW 9.94A.125, any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, and any and all felony crimes as defined in RCW 9.94A.310 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancements shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.440(2) as crimes against persons.

NEW SECTION. **Sec. 5.** ALL PLEA AGREEMENTS AND SENTENCES FOR VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS MADE A PUBLIC RECORD. Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:

- (1) Any violent offense as defined in this chapter;
- (2) Any most serious offense as defined in this chapter;
- (3) Any felony with a deadly weapon special verdict under RCW 9.94A.125;
- (4) Any felony with any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both; and/or
- (5) The felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony.

NEW SECTION. **Sec. 6.** JUDICIAL RECORDS KEPT FOR SENTENCES OF VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS. (1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under section 5 of this act shall contain the clearly printed name and legal signature of the sentencing judge. The judgment

and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under section 5 of this act. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The sentencing guidelines commission shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section and shall compile a yearly and cumulative judicial record of each sentencing judge in regards to his or her sentencing practices for any and all felony crimes involving:

(a) Any violent offense as defined in this chapter;

(b) Any most serious offense as defined in this chapter;

(c) Any felony with any deadly weapon special verdict under RCW 9.94A.125;

(d) Any felony with any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both; and/or

(e) The felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony.

(3) The sentencing guidelines commission shall compare each individual judge's sentencing practices to the standard or presumptive sentence range for any and all felony crimes listed in subsection (2) of this section for the appropriate offense level as defined in RCW 9.94A.320, offender score as defined in RCW 9.94A.360, and any applicable deadly weapon enhancements as defined in RCW 9.94A.310 (3) or (4), or both. These comparative records shall be retained and made available to the public for review in a current, newly created or reworked official published document by the sentencing guidelines commission.

(4) Any and all felony sentences which are either above or below the standard or presumptive sentence range in subsection (3) of this section shall also mark whether the prosecuting attorney in the case also recommended a similar sentence, if any, which was either above or below the presumptive sentence range and shall also indicate if the sentence was in conjunction with an approved alternative sentencing option including a first-time offender waiver, sex offender sentencing alternative, or other prescribed sentencing option.

(5) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the sentencing guidelines commission as required in subsection (2) of this section, the sentencing guidelines commission shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the sentencing guidelines commission.

Sec. 7. RCW 9.94A.150 and 1992 c 145 s 8 are each amended to read as follows:

GOOD TIME REMOVED FOR DEADLY WEAPON ENHANCEMENTS. No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department, may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned early release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department of corrections, the county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned early release time. In the case of an offender who has been convicted of a felony committed after the effective date of this section that involves any applicable deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, shall not receive any good time credits or earned early release time for that portion of his or her sentence that results from any deadly weapon enhancements. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case shall the aggregate earned early release time exceed one-third of the total sentence;

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

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

(4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

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

(6) The governor may pardon any offender;

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

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

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.120(4).

Sec. 8. RCW 9A.36.045 and 1989 c 271 s 109 are each amended to read as follows:

RECKLESS ENDANGERMENT IN THE FIRST DEGREE. (1) A person is guilty of reckless endangerment in the first degree when he or she recklessly discharges a firearm as defined in RCW 9.41.010 in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from

the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Reckless endangerment in the first degree is a class ((C)) B felony.

Sec. 9. RCW 9A.52.020 and 1975 1st ex.s. c 260 s 9A.52.020 are each amended to read as follows:

BURGLARY IN THE FIRST DEGREE. (1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a ((dwelling)) building and if, in entering or while in the ((dwelling)) building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person therein.

(2) Burglary in the first degree is a class A felony.

Sec. 10. RCW 9A.56.300 and 1994 1st sp.s. c 7 s 432 are each amended to read as follows:

THEFT OF A FIREARM. (1) A person is guilty of theft of a firearm if ((the person:

(a)) he or she commits a theft of ((a)) any firearm((; or (b) Possesses, sells, or delivers a stolen firearm)).

(2) This section applies regardless of the ((stolen firearm's)) value of the firearm taken in the theft.

(3) (("Possession, sale, or delivery of a stolen firearm" as used in this section has the same meaning as "possessing stolen property" in RCW 9A.56.140)) Each firearm taken in the theft under this section is a separate offense.

(4) The definition of "theft" and the defense allowed against the prosecution for theft under RCW 9A.56.020 shall apply to the crime of theft of a firearm.

(5) As used in this section, "firearm" means any firearm as defined in RCW 9.41.010.

(6) Theft of a firearm is a class ((C)) B felony.

Sec. 11. RCW 9A.56.030 and 1975 1st ex.s. c 260 s 9A.56.030 are each amended to read as follows:

THEFT IN THE FIRST DEGREE OTHER THAN A FIREARM. (1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) one thousand five hundred dollars in value other than a firearm as defined in RCW 9.41.010; or

(b) Property of any value other than a firearm as defined in RCW 9.41.010 taken from the person of another.

(2) Theft in the first degree is a class B felony.

Sec. 12. RCW 9A.56.040 and 1994 1st sp.s. c 7 s 433 are each amended to read as follows:

THEFT IN THE SECOND DEGREE OTHER THAN A FIREARM. (1) A person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) two hundred and fifty dollars in value other than a firearm as defined in RCW 9.41.010, but does not exceed one thousand five hundred dollars in value; or

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or

(c) An access device; or

(d) A motor vehicle, of a value less than one thousand five hundred dollars.

(2) Theft in the second degree is a class C felony.

NEW SECTION. **Sec. 13.** A new section is added to chapter 9A.56 RCW to read as follows:

POSSESSING A STOLEN FIREARM. (1) A person is guilty of possessing a stolen firearm if he or she possesses, carries, delivers, sells, or is in control of a stolen firearm.

(2) This section applies regardless of the stolen firearm's value.

(3) Each stolen firearm possessed under this section is a separate offense.

(4) The definition of "possessing stolen property" and the defense allowed against the prosecution for possessing stolen property under RCW 9A.56.140 shall apply to the crime of possessing a stolen firearm.

(5) As used in this section, "firearm" means any firearm as defined in RCW 9.41.010.

(6) Possessing a stolen firearm is a class B felony.

Sec. 14. RCW 9A.56.150 and 1975 1st ex.s. c 260 s 9A.56.150 are each amended to read as follows:

POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE OTHER THAN A FIREARM. (1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property other than a firearm as defined in RCW 9.41.010 which exceeds one thousand five hundred dollars in value.

(2) Possessing stolen property in the first degree is a class B felony.

Sec. 15. RCW 9A.56.160 and 1994 1st sp.s. c 7 s 434 are each amended to read as follows:

POSSESSING STOLEN PROPERTY IN THE SECOND DEGREE OTHER THAN A FIREARM. (1) A person is guilty of possessing stolen property in the second degree if:

(a) He or she possesses stolen property other than a firearm as defined in RCW 9.41.010 which exceeds two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value; or

(b) He or she possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(c) He or she possesses a stolen access device; or

(d) He or she possesses a stolen motor vehicle of a value less than one thousand five hundred dollars.

(2) Possessing stolen property in the second degree is a class C felony.

Sec. 16. RCW 9.41.040 and 1994 1st sp.s. c 7 s 402 are each amended to read as follows:

UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST AND SECOND DEGREE-- OWNERSHIP, POSSESSION OF FIREARMS PROHIBITED FROM CERTAIN PERSONS. (1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm(

(a)) after having previously been convicted in this state or elsewhere of ((a)) any serious offense((, a domestic violence offense enumerated in RCW 10.99.020(2), a harassment offense enumerated in RCW 9A.46.060, or of a felony in which a firearm was used or displayed)) as defined in this chapter, residential burglary, reckless endangerment in the first degree, any felony violation of the uniform controlled substances act, chapter 69.50 RCW, classified as a class A or class B felony, or with a maximum sentence of at least ten years, or both, or

equivalent statutes of another jurisdiction, except as otherwise provided in subsection (3) or (4) of this section;

(b) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under (a) of this subsection for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted of any remaining felony violation of the uniform controlled substances act, chapter 69.50 RCW, or equivalent statutes of another jurisdiction not specifically listed as prohibiting firearm possession under (a) of this subsection, any remaining felony in which a firearm was used or displayed and the felony is not specifically listed as prohibiting firearm possession under (a) of this subsection, any domestic violence offense enumerated in RCW 10.99.020(2), or any harassment offense enumerated in RCW 9A.46.060, except as otherwise provided in subsection (3) or (4) of this section;

~~((e))~~ (ii) After having previously been convicted on three occasions within five years of driving a motor vehicle or operating a vessel while under the influence of intoxicating liquor or any drug, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.--- (section 404, chapter 7, Laws of 1994 1st sp. sess.);

~~((e))~~ (iii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.--- (section 404, chapter 7, Laws of 1994 1st sp. sess.); and/or

(iv) If the person is under eighteen years of age, except as provided in RCW 9.41.--- (section 403, chapter 7, Laws of 1994 1st sp. sess.).

(2)(a) Unlawful possession of a firearm in the first degree is a class ((E)) B felony, punishable under chapter 9A.20 RCW.

(b) Unlawful possession of a firearm in the second degree is a class C felony, punishable under chapter 9A.20 RCW.

(3) As used in this section, a person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. A person shall not be precluded from possession of a firearm if the conviction has been the subject of

a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(4) Notwithstanding subsection (1) of this section, a person convicted of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401(a) and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) of this section and has not previously been convicted of a sex offense prohibiting firearm ownership under subsection (1) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.--- (section 404, chapter 7, Laws of 1994 1st sp. sess.); and/or

(b) After five or more consecutive years in the community without being convicted or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.360.

~~((6)(a) A person who has been committed by court order for treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW, or equivalent statutes of another jurisdiction, may not possess, in any manner, a firearm as defined in RCW 9.41.010.~~

~~(b) At the time of commitment, the court shall specifically state to the person under (a) of this subsection and give the person notice in writing that the person is barred from possession of firearms.~~

~~(c) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the immediate restoration of the right to possess a firearm upon a showing in a court of competent jurisdiction that a person no longer is required to participate in an inpatient or outpatient treatment program, and is no longer required to take~~

~~medication to treat any condition related to the commitment. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW.)~~

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter . . . , Laws of 1995 (this act) shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

Sec. 17. RCW 10.95.020 and 1981 c 138 s 2 are each amended to read as follows:

DEATH PENALTY AUTHORIZED FOR DRIVE-BY SHOOTERS, MURDERS FOR GROUP MEMBERSHIP, AND RESIDENTIAL BURGLARS WHO KILL. A person is guilty of aggravated first degree murder if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or

unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board (~~(of prison terms and paroles)~~); or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

~~((+7))~~ (9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

~~((+8))~~ (10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

~~((+9))~~ (11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree or residential burglary;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

~~((+10))~~ (12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim.

NEW SECTION. **Sec. 18.** OFFENDER NOTIFICATION AND WARNING. Any and all law enforcement agencies and personnel, criminal justice attorneys, sentencing judges, and state and local correctional facilities and personnel may, but are not required to, give any and all offenders either written or oral notice, or both, of the sanctions imposed and criminal justice changes regarding armed offenders, including but not limited to the subjects of:

(1) Felony crimes involving any deadly weapon special verdict under RCW 9.94A.125;

(2) Any and all deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, as well as any federal firearm, ammunition, or other deadly weapon enhancements;

(3) Any and all felony crimes requiring the possession, display, or use of any deadly weapon as well as the many increased penalties for these crimes including the creation of theft of a firearm and possessing a stolen firearm;

(4) New prosecuting standards established for filing charges for all crimes involving any deadly weapons;

(5) Removal of good time for any and all deadly weapon enhancements; and

(6) Providing the death penalty for those who commit first degree murder: (a) To join, maintain, or advance membership in an identifiable group; (b) as part of a drive-by shooting; or (c) to avoid prosecution as a persistent offender as defined in RCW 9.94A.030.

NEW SECTION. **Sec. 19.** REPEALER. The following acts or parts of acts are each repealed:

(1) 1994 1st sp.s. c 7 s 510;

(2) 1994 1st sp.s. c 7 s 511; and

(3) 1994 1st sp.s. c 7 s 512.

NEW SECTION. **Sec. 20.** CODIFICATION. Sections 4 through 6 of this act are each added to chapter 9.94A RCW.

NEW SECTION. **Sec. 21.** SHORT TITLE. This act shall be known and cited as the hard time for armed crime act.

NEW SECTION. **Sec. 22.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 23.** CAPTIONS. Captions as used in this act do not constitute any part of the law.

Passed the House January 27, 1995.

Passed the Senate April 20, 1995.

Originally filed in Office of Secretary of State April 15, 1994.

Filed in Office of Secretary of State April 21, 1995.

--- END ---