

SHB 1188 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/08/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9A.36.021 and 2007 c 79 s 2 are each amended to read
4 as follows:

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

7 (a) Intentionally assaults another and thereby recklessly inflicts
8 substantial bodily harm; or

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

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

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

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

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

19 (g) Assaults another by strangulation or suffocation.

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

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

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

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

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

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

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

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

7 (b) "Substantial bodily harm" means bodily injury which involves a
8 temporary but substantial disfigurement, or which causes a temporary
9 but substantial loss or impairment of the function of any bodily part
10 or organ, or which causes a fracture of any bodily part;

11 (c) "Great bodily harm" means bodily injury which creates a
12 probability of death, or which causes significant serious permanent
13 disfigurement, or which causes a significant permanent loss or
14 impairment of the function of any bodily part or organ;

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

21 (6) "Deadly weapon" means any explosive or loaded or unloaded
22 firearm, and shall include any other weapon, device, instrument,
23 article, or substance, including a "vehicle" as defined in this
24 section, which, under the circumstances in which it is used, attempted
25 to be used, or threatened to be used, is readily capable of causing
26 death or substantial bodily harm;

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

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

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

36 (10) "Indicted" and "indictment" include "informed against" and
37 "information", and "informed against" and "information" include
38 "indicted" and "indictment";

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

3 (12) "Malice" and "maliciously" shall import an evil intent, wish,
4 or design to vex, annoy, or injure another person. Malice may be
5 inferred from an act done in (~~wilful~~) willful disregard of the rights
6 of another, or an act wrongfully done without just cause or excuse, or
7 an act or omission of duty betraying a (~~wilful~~) willful disregard of
8 social duty;

9 (13) "Officer" and "public officer" means a person holding office
10 under a city, county, or state government, or the federal government
11 who performs a public function and in so doing is vested with the
12 exercise of some sovereign power of government, and includes all
13 assistants, deputies, clerks, and employees of any public officer and
14 all persons lawfully exercising or assuming to exercise any of the
15 powers or functions of a public officer;

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

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

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

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

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

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

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

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

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

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

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

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

14 (26) "Strangulation" means to compress a person's neck, thereby
15 obstructing the person's blood flow or ability to breathe, or doing so
16 with the intent to obstruct the person's blood flow or ability to
17 breathe;

18 (27) "Suffocation" means to block or impair a person's intake of
19 air at the nose and mouth, whether by smothering or other means, with
20 the intent to obstruct the person's ability to breathe;

21 (28) "Threat" means to communicate, directly or indirectly the
22 intent:

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

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

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

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

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

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

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

1 (h) To take wrongful action as an official against anyone or
2 anything, or wrongfully withhold official action, or cause such action
3 or withholding; or

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

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

10 ~~((+28))~~ (29) "Vehicle" means a "motor vehicle" as defined in the
11 vehicle and traffic laws, any aircraft, or any vessel equipped for
12 propulsion by mechanical means or by sail;

13 ~~((+29))~~ (30) Words in the present tense shall include the future
14 tense; and in the masculine shall include the feminine and neuter
15 genders; and in the singular shall include the plural; and in the
16 plural shall include the singular.

17 **Sec. 3.** RCW 9.94A.525 and 2010 c 274 s 403 are each amended to
18 read as follows:

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

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

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

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

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

36 (c) Except as provided in (e) of this subsection, class C prior
37 felony convictions other than sex offenses shall not be included in the

1 offender score if, since the last date of release from confinement
2 (including full-time residential treatment) pursuant to a felony
3 conviction, if any, or entry of judgment and sentence, the offender had
4 spent five consecutive years in the community without committing any
5 crime that subsequently results in a conviction.

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

12 (e) If the present conviction is felony driving while under the
13 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
14 felony physical control of a vehicle while under the influence of
15 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
16 of felony driving while under the influence of intoxicating liquor or
17 any drug, felony physical control of a vehicle while under the
18 influence of intoxicating liquor or any drug, and serious traffic
19 offenses shall be included in the offender score if: (i) The prior
20 convictions were committed within five years since the last date of
21 release from confinement (including full-time residential treatment) or
22 entry of judgment and sentence; or (ii) the prior convictions would be
23 considered "prior offenses within ten years" as defined in RCW
24 46.61.5055.

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

31 (g) This subsection applies to both adult and juvenile prior
32 convictions.

33 (3) Out-of-state convictions for offenses shall be classified
34 according to the comparable offense definitions and sentences provided
35 by Washington law. Federal convictions for offenses shall be
36 classified according to the comparable offense definitions and
37 sentences provided by Washington law. If there is no clearly
38 comparable offense under Washington law or the offense is one that is

1 usually considered subject to exclusive federal jurisdiction, the
2 offense shall be scored as a class C felony equivalent if it was a
3 felony under the relevant federal statute.

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

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

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

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

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

36 (6) If the present conviction is one of the anticipatory offenses
37 of criminal attempt, solicitation, or conspiracy, count each prior

1 conviction as if the present conviction were for a completed offense.
2 When these convictions are used as criminal history, score them the
3 same as a completed crime.

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

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

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

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

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

36 (12) If the present conviction is for homicide by watercraft or
37 assault by watercraft count two points for each adult or juvenile prior
38 conviction for homicide by watercraft or assault by watercraft; for

1 each felony offense count one point for each adult and 1/2 point for
2 each juvenile prior conviction; count one point for each adult and 1/2
3 point for each juvenile prior conviction for driving under the
4 influence of intoxicating liquor or any drug, actual physical control
5 of a motor vehicle while under the influence of intoxicating liquor or
6 any drug, or operation of a vessel while under the influence of
7 intoxicating liquor or any drug.

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

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

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

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

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

36 (18) If the present conviction is for failure to register as a sex
37 offender under RCW 9A.44.130(~~((+11))~~) or 9A.44.132, count priors as in
38 subsections (7) through (11) and (13) through (16) of this section;

1 however count three points for each adult and juvenile prior sex
2 offense conviction, excluding prior convictions for failure to register
3 as a sex offender under RCW 9A.44.130(~~((11))~~) or 9A.44.132, which shall
4 count as one point.

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

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

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

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

37 (b) Count one point for each second and subsequent juvenile

1 conviction where domestic violence as defined in RCW 9.94A.030 was
2 plead and proven after August 1, 2011, for the offenses listed in (a)
3 of this subsection; and

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

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

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19 On page 1, line 1 of the title, after "Relating to" strike the
20 remainder of the title and insert "crimes against persons involving
21 suffocation or domestic violence; amending RCW 9A.36.021, 9A.04.110,
22 and 9.94A.525; and prescribing penalties."

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