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HOUSE BILL 1163

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State of Washington

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By Representatives Goodman, Hayes, Orwall, Appleton, Klippert, Pellicciotti, Pettigrew, Chapman, Kilduff, Bergquist, Stanford, and Kloba

Read first time 01/12/17. Referred to Committee on Public Safety.

1 AN ACT Relating to domestic violence; amending RCW 9A.36.041,  
2 9.94A.525, 43.43.754, and 43.43.830; reenacting and amending RCW  
3 9.94A.411; adding a new section to chapter 7.36 RCW; creating new  
4 sections; prescribing penalties; and providing expiration dates.

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

6 **Sec. 1.** RCW 9A.36.041 and 1987 c 188 s 2 are each amended to  
7 read as follows:

8 (1) A person is guilty of assault in the fourth degree if, under  
9 circumstances not amounting to assault in the first, second, or third  
10 degree, or custodial assault, he or she assaults another.

11 (2) Assault in the fourth degree is a gross misdemeanor, except  
12 as provided in subsection (3) of this section.

13 (3) Assault in the fourth degree, where domestic violence was  
14 pleaded and proven after the effective date of this section, is a  
15 class C felony if the person has two or more prior adult convictions  
16 within ten years for any of the following offenses where domestic  
17 violence as defined in RCW 9.94A.030 was pleaded and proven after the  
18 effective date of this section:

19 (a) Repetitive domestic violence offense as defined in RCW  
20 9.94A.030;

21 (b) Crime of harassment as defined by RCW 9A.46.060;

- 1 (c) Assault in the third degree;
- 2 (d) Assault in the second degree;
- 3 (e) Assault in the first degree; or
- 4 (f) An out-of-state comparable offense.

5 (4) For purposes of subsection (3) of this section, family or  
6 household members means spouses, domestic partners, former spouses,  
7 former domestic partners, persons who have a child in common  
8 regardless of whether they have been married or have lived together  
9 at any time, persons sixteen years of age or older who are presently  
10 residing together or who have resided together in the past and who  
11 have or have had a dating relationship, and persons sixteen years of  
12 age or older with whom a person sixteen years of age or older has or  
13 has had a dating relationship.

14 **Sec. 2.** RCW 9.94A.411 and 2006 c 271 s 1 and 2006 c 73 s 13 are  
15 each reenacted and amended to read as follows:

16 (1) Decision not to prosecute.

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

22 GUIDELINE/COMMENTARY:

23 Examples

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

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

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

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

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

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

37 (iv) The statute has not been recently reconsidered by the  
38 legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Notification

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

21 (2) Decision to prosecute.

22 (a) STANDARD:

23 Crimes against persons will be filed if sufficient admissible  
24 evidence exists, which, when considered with the most plausible,  
25 reasonably foreseeable defense that could be raised under the  
26 evidence, would justify conviction by a reasonable and objective fact  
27 finder. With regard to offenses prohibited by RCW 9A.44.040,  
28 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,  
29 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing  
30 agreements or diversions intended to place the accused in a program  
31 of treatment or counseling, so that treatment, if determined to be  
32 beneficial, can be provided pursuant to RCW 9.94A.670.

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

38 See table below for the crimes within these categories.

39 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

1 CRIMES AGAINST PERSONS  
2 Aggravated Murder  
3 1st Degree Murder  
4 2nd Degree Murder  
5 1st Degree Manslaughter  
6 2nd Degree Manslaughter  
7 1st Degree Kidnapping  
8 2nd Degree Kidnapping  
9 1st Degree Assault  
10 2nd Degree Assault  
11 3rd Degree Assault  
12 4th Degree Assault (if a violation of RCW 9A.36.041(3))  
13 1st Degree Assault of a Child  
14 2nd Degree Assault of a Child  
15 3rd Degree Assault of a Child  
16 1st Degree Rape  
17 2nd Degree Rape  
18 3rd Degree Rape  
19 1st Degree Rape of a Child  
20 2nd Degree Rape of a Child  
21 3rd Degree Rape of a Child  
22 1st Degree Robbery  
23 2nd Degree Robbery  
24 1st Degree Arson  
25 1st Degree Burglary  
26 1st Degree Identity Theft  
27 2nd Degree Identity Theft  
28 1st Degree Extortion  
29 2nd Degree Extortion  
30 Indecent Liberties  
31 Incest  
32 Vehicular Homicide  
33 Vehicular Assault  
34 1st Degree Child Molestation  
35 2nd Degree Child Molestation  
36 3rd Degree Child Molestation  
37 1st Degree Promoting Prostitution  
38 Intimidating a Juror  
39 Communication with a Minor

1 Intimidating a Witness  
2 Intimidating a Public Servant  
3 Bomb Threat (if against person)  
4 Unlawful Imprisonment  
5 Promoting a Suicide Attempt  
6 Riot (if against person)  
7 Stalking  
8 Custodial Assault  
9 Domestic Violence Court Order Violation (RCW 10.99.040,  
10 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or  
11 74.34.145)  
12 Counterfeiting (if a violation of RCW 9.16.035(4))  
13 Felony Driving a Motor Vehicle While Under the Influence of  
14 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))  
15 Felony Physical Control of a Motor Vehicle While Under the  
16 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))  
17 CRIMES AGAINST PROPERTY/OTHER CRIMES  
18 2nd Degree Arson  
19 1st Degree Escape  
20 2nd Degree Escape  
21 2nd Degree Burglary  
22 1st Degree Theft  
23 2nd Degree Theft  
24 1st Degree Perjury  
25 2nd Degree Perjury  
26 1st Degree Introducing Contraband  
27 2nd Degree Introducing Contraband  
28 1st Degree Possession of Stolen Property  
29 2nd Degree Possession of Stolen Property  
30 Bribery  
31 Bribing a Witness  
32 Bribe received by a Witness  
33 Bomb Threat (if against property)  
34 1st Degree Malicious Mischief  
35 2nd Degree Malicious Mischief  
36 1st Degree Reckless Burning  
37 Taking a Motor Vehicle without Authorization  
38 Forgery  
39 2nd Degree Promoting Prostitution

1 Tampering with a Witness  
2 Trading in Public Office  
3 Trading in Special Influence  
4 Receiving/Granting Unlawful Compensation  
5 Bigamy  
6 Eluding a Pursuing Police Vehicle  
7 Willful Failure to Return from Furlough  
8 Escape from Community Custody  
9 Riot (if against property)  
10 1st Degree Theft of Livestock  
11 2nd Degree Theft of Livestock

12 ALL OTHER UNCLASSIFIED FELONIES

13 Selection of Charges/Degree of Charge

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

17 (A) Will significantly enhance the strength of the state's case  
18 at trial; or

19 (B) Will result in restitution to all victims.

20 (ii) The prosecutor should not overcharge to obtain a guilty  
21 plea. Overcharging includes:

22 (A) Charging a higher degree;

23 (B) Charging additional counts.

24 This standard is intended to direct prosecutors to charge those  
25 crimes which demonstrate the nature and seriousness of a defendant's  
26 criminal conduct, but to decline to charge crimes which are not  
27 necessary to such an indication. Crimes which do not merge as a  
28 matter of law, but which arise from the same course of conduct, do  
29 not all have to be charged.

30 (b) GUIDELINES/COMMENTARY:

31 (i) Police Investigation

32 A prosecuting attorney is dependent upon law enforcement agencies  
33 to conduct the necessary factual investigation which must precede the  
34 decision to prosecute. The prosecuting attorney shall ensure that a  
35 thorough factual investigation has been conducted before a decision  
36 to prosecute is made. In ordinary circumstances the investigation  
37 should include the following:

38 (A) The interviewing of all material witnesses, together with the  
39 obtaining of written statements whenever possible;

1 (B) The completion of necessary laboratory tests; and

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

4 If the initial investigation is incomplete, a prosecuting  
5 attorney should insist upon further investigation before a decision  
6 to prosecute is made, and specify what the investigation needs to  
7 include.

8 (ii) Exceptions

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

12 (A) Probable cause exists to believe the suspect is guilty; and

13 (B) The suspect presents a danger to the community or is likely  
14 to flee if not apprehended; or

15 (C) The arrest of the suspect is necessary to complete the  
16 investigation of the crime.

17 In the event that the exception to the standard is applied, the  
18 prosecuting attorney shall obtain a commitment from the law  
19 enforcement agency involved to complete the investigation in a timely  
20 manner. If the subsequent investigation does not produce sufficient  
21 evidence to meet the normal charging standard, the complaint should  
22 be dismissed.

23 (iii) Investigation Techniques

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

26 (A) Polygraph testing;

27 (B) Hypnosis;

28 (C) Electronic surveillance;

29 (D) Use of informants.

30 (iv) Pre-Filing Discussions with Defendant

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

34 (v) Pre-Filing Discussions with Victim(s)

35 Discussions with the victim(s) or victims' representatives  
36 regarding the selection or disposition of charges may occur before  
37 the filing of charges. The discussions may be considered by the  
38 prosecutor in charging and disposition decisions, and should be  
39 considered before reaching any agreement with the defendant regarding  
40 these decisions.

1       **Sec. 3.**    RCW 9.94A.525 and 2013 2nd sp.s. c 35 s 8 are each  
2 amended to read as follows:

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

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

7       (1) A prior conviction is a conviction which exists before the  
8 date of sentencing for the offense for which the offender score is  
9 being computed. Convictions entered or sentenced on the same date as  
10 the conviction for which the offender score is being computed shall  
11 be deemed "other current offenses" within the meaning of RCW  
12 9.94A.589.

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

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

22       (c) Except as provided in (e) of this subsection, class C prior  
23 felony convictions other than sex offenses shall not be included in  
24 the offender score if, since the last date of release from  
25 confinement (including full-time residential treatment) pursuant to a  
26 felony conviction, if any, or entry of judgment and sentence, the  
27 offender had spent five consecutive years in the community without  
28 committing any crime that subsequently results in a conviction.

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

36       (e) If the present conviction is felony driving while under the  
37 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
38 felony physical control of a vehicle while under the influence of  
39 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate  
40 crimes for the offense as defined by RCW 46.61.5055(14) shall be

1 included in the offender score, and prior convictions for felony  
2 driving while under the influence of intoxicating liquor or any drug  
3 (RCW 46.61.502(6)) or felony physical control of a vehicle while  
4 under the influence of intoxicating liquor or any drug (RCW  
5 46.61.504(6)) shall always be included in the offender score. All  
6 other convictions of the defendant shall be scored according to this  
7 section.

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

14 (g) This subsection applies to both adult and juvenile prior  
15 convictions.

16 (3) Out-of-state convictions for offenses shall be classified  
17 according to the comparable offense definitions and sentences  
18 provided by Washington law. Federal convictions for offenses shall be  
19 classified according to the comparable offense definitions and  
20 sentences provided by Washington law. If there is no clearly  
21 comparable offense under Washington law or the offense is one that is  
22 usually considered subject to exclusive federal jurisdiction, the  
23 offense shall be scored as a class C felony equivalent if it was a  
24 felony under the relevant federal statute.

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

28 (5)(a) In the case of multiple prior convictions, for the purpose  
29 of computing the offender score, count all convictions separately,  
30 except:

31 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a),  
32 to encompass the same criminal conduct, shall be counted as one  
33 offense, the offense that yields the highest offender score. The  
34 current sentencing court shall determine with respect to other prior  
35 adult offenses for which sentences were served concurrently or prior  
36 juvenile offenses for which sentences were served consecutively,  
37 whether those offenses shall be counted as one offense or as separate  
38 offenses using the "same criminal conduct" analysis found in RCW  
39 9.94A.589(1)(a), and if the court finds that they shall be counted as  
40 one offense, then the offense that yields the highest offender score

1 shall be used. The current sentencing court may presume that such  
2 other prior offenses were not the same criminal conduct from  
3 sentences imposed on separate dates, or in separate counties or  
4 jurisdictions, or in separate complaints, indictments, or  
5 informations;

6 (ii) In the case of multiple prior convictions for offenses  
7 committed before July 1, 1986, for the purpose of computing the  
8 offender score, count all adult convictions served concurrently as  
9 one offense, and count all juvenile convictions entered on the same  
10 date as one offense. Use the conviction for the offense that yields  
11 the highest offender score.

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

18 (6) If the present conviction is one of the anticipatory offenses  
19 of criminal attempt, solicitation, or conspiracy, count each prior  
20 conviction as if the present conviction were for a completed offense.  
21 When these convictions are used as criminal history, score them the  
22 same as a completed crime.

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

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

34 (9) If the present conviction is for a serious violent offense,  
35 count three points for prior adult and juvenile convictions for  
36 crimes in this category, two points for each prior adult and juvenile  
37 violent conviction (not already counted), one point for each prior  
38 adult nonviolent felony conviction, and 1/2 point for each prior  
39 juvenile nonviolent felony conviction.

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

6 (11) If the present conviction is for a felony traffic offense  
7 count two points for each adult or juvenile prior conviction for  
8 Vehicular Homicide or Vehicular Assault; for each felony offense  
9 count one point for each adult and 1/2 point for each juvenile prior  
10 conviction; for each serious traffic offense, other than those used  
11 for an enhancement pursuant to RCW 46.61.520(2), count one point for  
12 each adult and 1/2 point for each juvenile prior conviction; count  
13 one point for each adult and 1/2 point for each juvenile prior  
14 conviction for operation of a vessel while under the influence of  
15 intoxicating liquor or any drug.

16 (12) If the present conviction is for homicide by watercraft or  
17 assault by watercraft count two points for each adult or juvenile  
18 prior conviction for homicide by watercraft or assault by watercraft;  
19 for each felony offense count one point for each adult and 1/2 point  
20 for each juvenile prior conviction; count one point for each adult  
21 and 1/2 point for each juvenile prior conviction for driving under  
22 the influence of intoxicating liquor or any drug, actual physical  
23 control of a motor vehicle while under the influence of intoxicating  
24 liquor or any drug, or operation of a vessel while under the  
25 influence of intoxicating liquor or any drug.

26 (13) If the present conviction is for manufacture of  
27 methamphetamine count three points for each adult prior manufacture  
28 of methamphetamine conviction and two points for each juvenile  
29 manufacture of methamphetamine offense. If the present conviction is  
30 for a drug offense and the offender has a criminal history that  
31 includes a sex offense or serious violent offense, count three points  
32 for each adult prior felony drug offense conviction and two points  
33 for each juvenile drug offense. All other adult and juvenile felonies  
34 are scored as in subsection (8) of this section if the current drug  
35 offense is violent, or as in subsection (7) of this section if the  
36 current drug offense is nonviolent.

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

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

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

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

14 (18) If the present conviction is for failure to register as a  
15 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in  
16 subsections (7) through (11) and (13) through (16) of this section;  
17 however count three points for each adult and juvenile prior sex  
18 offense conviction, excluding prior convictions for failure to  
19 register as a sex offender under RCW 9A.44.130 or 9A.44.132, which  
20 shall count as one point.

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

25 (20) If the present conviction is for Theft of a Motor Vehicle,  
26 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
27 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
28 priors as in subsections (7) through (18) of this section; however  
29 count one point for prior convictions of Vehicle Prowling 2, and  
30 three points for each adult and juvenile prior Theft 1 (of a motor  
31 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property  
32 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor  
33 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,  
34 Taking a Motor Vehicle Without Permission 1, or Taking a Motor  
35 Vehicle Without Permission 2 conviction.

36 (21) If the present conviction is for a felony domestic violence  
37 offense where domestic violence as defined in RCW 9.94A.030 was  
38 (~~plead~~—~~[pleaded]~~) pleaded and proven, count priors as in  
39 subsections (7) through (20) of this section; however, count points  
40 as follows:

1 (a) Count two points for each adult prior conviction where  
2 domestic violence as defined in RCW 9.94A.030 was (~~plead [pleaded]~~)  
3 pleaded and proven after August 1, 2011, for any of the following  
4 offenses: A felony violation of a no-contact or protection order  
5 (~~that is a felony offense, a violation of a protection order that is~~  
6 ~~a felony offense~~) RCW 26.50.110, ((a)) felony (~~domestic violence~~)  
7 Harassment (~~offense~~) (RCW 9A.46.020(2)(b)), ((a)) felony (~~domestic~~  
8 ~~violence~~) Stalking (~~offense, a domestic violence~~) (RCW  
9 9A.46.110(5)(b)), Burglary 1 (~~offense~~) (RCW 9A.52.020), ((a  
10 ~~domestic violence~~) Kidnapping 1 (~~offense~~) (RCW 9A.40.020), ((a  
11 ~~domestic violence~~) Kidnapping 2 (~~offense~~) (RCW 9A.40.030), ((a  
12 ~~domestic violence~~) Unlawful imprisonment (~~offense~~) (RCW  
13 9A.40.040), ((a ~~domestic violence~~) Robbery 1 (~~offense~~) (RCW  
14 9A.56.200), ((a ~~domestic violence~~) Robbery 2 (~~offense~~) (RCW  
15 9A.56.210), ((a ~~domestic violence~~) Assault 1 (~~offense~~) (RCW  
16 9A.36.011), ((a ~~domestic violence~~) Assault 2 (~~offense~~) (RCW  
17 9A.36.021), ((a ~~domestic violence~~) Assault 3 (~~offense~~) (RCW  
18 9A.36.031), ((a ~~domestic violence~~) Arson 1 (~~offense~~) (RCW  
19 9A.48.020), or ((a ~~domestic violence~~) Arson 2 (~~offense~~) (RCW  
20 9A.48.030);

21 (b) Count two points for each adult prior conviction where  
22 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
23 after the effective date of this section, for any of the following  
24 offenses: Assault of a child in the first degree, RCW 9A.36.120;  
25 Assault of a child in the second degree, RCW 9A.36.130; Assault of a  
26 child in the third degree, RCW 9A.36.140; Criminal Mistreatment in  
27 the first degree, RCW 9A.42.020; or Criminal Mistreatment in the  
28 second degree, RCW 9A.42.030;

29 (c) Count one point for each second and subsequent juvenile  
30 conviction where domestic violence as defined in RCW 9.94A.030 was  
31 (~~plead [pleaded]~~) pleaded and proven after August 1, 2011, for the  
32 offenses listed in (a) of this subsection; and

33 ((~~e~~)) (d) Count one point for each adult prior conviction for a  
34 repetitive domestic violence offense as defined in RCW 9.94A.030,  
35 where domestic violence as defined in RCW 9.94A.030, was (~~plead~~  
36 ~~[pleaded]~~) pleaded and proven after August 1, 2011.

37 (22) The fact that a prior conviction was not included in an  
38 offender's offender score or criminal history at a previous  
39 sentencing shall have no bearing on whether it is included in the  
40 criminal history or offender score for the current offense. Prior

1 convictions that were not counted in the offender score or included  
2 in criminal history under repealed or previous versions of the  
3 sentencing reform act shall be included in criminal history and shall  
4 count in the offender score if the current version of the sentencing  
5 reform act requires including or counting those convictions. Prior  
6 convictions that were not included in criminal history or in the  
7 offender score shall be included upon any resentencing to ensure  
8 imposition of an accurate sentence.

9       **Sec. 4.** RCW 43.43.754 and 2015 c 261 s 10 are each amended to  
10 read as follows:

11       (1) A biological sample must be collected for purposes of DNA  
12 identification analysis from:

13       (a) Every adult or juvenile individual convicted of a felony, or  
14 any of the following crimes (or equivalent juvenile offenses):

15       (i) Assault in the fourth degree where domestic violence as  
16 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,  
17 9.94A.030);

18       (ii) Assault in the fourth degree with sexual motivation (RCW  
19 9A.36.041, 9.94A.835);

20       (iii) Communication with a minor for immoral purposes (RCW  
21 9.68A.090);

22       (iv) Custodial sexual misconduct in the second degree (RCW  
23 9A.44.170);

24       (v) Failure to register (RCW 9A.44.130 for persons convicted on  
25 or before June 10, 2010, and RCW 9A.44.132 for persons convicted  
26 after June 10, 2010);

27       (vi) Harassment (RCW 9A.46.020);

28       (vii) Patronizing a prostitute (RCW 9A.88.110);

29       (viii) Sexual misconduct with a minor in the second degree (RCW  
30 9A.44.096);

31       (ix) Stalking (RCW 9A.46.110);

32       (x) Violation of a sexual assault protection order granted under  
33 chapter 7.90 RCW; and

34       (b) Every adult or juvenile individual who is required to  
35 register under RCW 9A.44.130.

36       (2) If the Washington state patrol crime laboratory already has a  
37 DNA sample from an individual for a qualifying offense, a subsequent  
38 submission is not required to be submitted.

1 (3) Biological samples shall be collected in the following  
2 manner:

3 (a) For persons convicted of any offense listed in subsection  
4 (1)(a) of this section or adjudicated guilty of an equivalent  
5 juvenile offense who do not serve a term of confinement in a  
6 department of corrections facility, and do serve a term of  
7 confinement in a city or county jail facility, the city or county  
8 shall be responsible for obtaining the biological samples.

9 (b) The local police department or sheriff's office shall be  
10 responsible for obtaining the biological samples for:

11 (i) Persons convicted of any offense listed in subsection (1)(a)  
12 of this section or adjudicated guilty of an equivalent juvenile  
13 offense who do not serve a term of confinement in a department of  
14 corrections facility, and do not serve a term of confinement in a  
15 city or county jail facility; and

16 (ii) Persons who are required to register under RCW 9A.44.130.

17 (c) For persons convicted of any offense listed in subsection  
18 (1)(a) of this section or adjudicated guilty of an equivalent  
19 juvenile offense, who are serving or who are to serve a term of  
20 confinement in a department of corrections facility or a department  
21 of social and health services facility, the facility holding the  
22 person shall be responsible for obtaining the biological samples. For  
23 those persons incarcerated before June 12, 2008, who have not yet had  
24 a biological sample collected, priority shall be given to those  
25 persons who will be released the soonest.

26 (4) Any biological sample taken pursuant to RCW 43.43.752 through  
27 43.43.758 may be retained by the forensic laboratory services bureau,  
28 and shall be used solely for the purpose of providing DNA or other  
29 tests for identification analysis and prosecution of a criminal  
30 offense or for the identification of human remains or missing  
31 persons. Nothing in this section prohibits the submission of results  
32 derived from the biological samples to the federal bureau of  
33 investigation combined DNA index system.

34 (5) The forensic laboratory services bureau of the Washington  
35 state patrol is responsible for testing performed on all biological  
36 samples that are collected under subsection (1) of this section, to  
37 the extent allowed by funding available for this purpose. The  
38 director shall give priority to testing on samples collected from  
39 those adults or juveniles convicted of a felony or adjudicated guilty  
40 of an equivalent juvenile offense that is defined as a sex offense or

1 a violent offense in RCW 9.94A.030. Known duplicate samples may be  
2 excluded from testing unless testing is deemed necessary or advisable  
3 by the director.

4 (6) This section applies to:

5 (a) All adults and juveniles to whom this section applied prior  
6 to June 12, 2008;

7 (b) All adults and juveniles to whom this section did not apply  
8 prior to June 12, 2008, who:

9 (i) Are convicted on or after June 12, 2008, of an offense listed  
10 in subsection (1)(a) of this section; or

11 (ii) Were convicted prior to June 12, 2008, of an offense listed  
12 in subsection (1)(a) of this section and are still incarcerated on or  
13 after June 12, 2008; and

14 (c) All adults and juveniles who are required to register under  
15 RCW 9A.44.130 on or after June 12, 2008, whether convicted before,  
16 on, or after June 12, 2008.

17 (7) This section creates no rights in a third person. No cause of  
18 action may be brought based upon the noncollection or nonanalysis or  
19 the delayed collection or analysis of a biological sample authorized  
20 to be taken under RCW 43.43.752 through 43.43.758.

21 (8) The detention, arrest, or conviction of a person based upon a  
22 database match or database information is not invalidated if it is  
23 determined that the sample was obtained or placed in the database by  
24 mistake, or if the conviction or juvenile adjudication that resulted  
25 in the collection of the biological sample was subsequently vacated  
26 or otherwise altered in any future proceeding including but not  
27 limited to posttrial or postfact-finding motions, appeals, or  
28 collateral attacks.

29 (9) A person commits the crime of refusal to provide DNA if the  
30 person has a duty to register under RCW 9A.44.130 and the person  
31 willfully refuses to comply with a legal request for a DNA sample as  
32 required under this section. The refusal to provide DNA is a gross  
33 misdemeanor.

34 **Sec. 5.** RCW 43.43.830 and 2012 c 44 s 1 are each amended to read  
35 as follows:

36 Unless the context clearly requires otherwise, the definitions in  
37 this section apply throughout RCW 43.43.830 through 43.43.845.

38 (1) "Agency" means any person, firm, partnership, association,  
39 corporation, or facility which receives, provides services to, houses

1 or otherwise cares for vulnerable adults, juveniles, or children, or  
2 which provides child day care, early learning, or early childhood  
3 education services.

4 (2) "Applicant" means:

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

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

18 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
19 or

20 (d) Any prospective custodian in a nonparental custody proceeding  
21 under chapter 26.10 RCW.

22 (3) "Business or organization" means a person, business, or  
23 organization licensed in this state, any agency of the state, or  
24 other governmental entity, that educates, trains, treats, supervises,  
25 houses, or provides recreation to developmentally disabled persons,  
26 vulnerable adults, or children under sixteen years of age, or that  
27 provides child day care, early learning, or early learning childhood  
28 education services, including but not limited to public housing  
29 authorities, school districts, and educational service districts.

30 (4) "Civil adjudication proceeding" is a judicial or  
31 administrative adjudicative proceeding that results in a finding of,  
32 or upholds an agency finding of, domestic violence, abuse, sexual  
33 abuse, neglect, abandonment, violation of a professional licensing  
34 standard regarding a child or vulnerable adult, or exploitation or  
35 financial exploitation of a child or vulnerable adult under any  
36 provision of law, including but not limited to chapter 13.34, 26.44,  
37 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.  
38 "Civil adjudication proceeding" also includes judicial or  
39 administrative findings that become final due to the failure of the

1 alleged perpetrator to timely exercise a legal right to  
2 administratively challenge such findings.

3 (5) "Client" or "resident" means a child, person with  
4 developmental disabilities, or vulnerable adult applying for housing  
5 assistance from a business or organization.

6 (6) "Conviction record" means "conviction record" information as  
7 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed  
8 by either an adult or a juvenile. It does not include a conviction  
9 for an offense that has been the subject of an expungement, pardon,  
10 annulment, certificate of rehabilitation, or other equivalent  
11 procedure based on a finding of the rehabilitation of the person  
12 convicted, or a conviction that has been the subject of a pardon,  
13 annulment, or other equivalent procedure based on a finding of  
14 innocence. It does include convictions for offenses for which the  
15 defendant received a deferred or suspended sentence, unless the  
16 record has been expunged according to law.

17 (7) "Crime against children or other persons" means a conviction  
18 of any of the following offenses: Aggravated murder; first or second  
19 degree murder; first or second degree kidnapping; first, second, or  
20 third degree assault; fourth degree assault (if a violation of RCW  
21 9A.36.041(3)); first, second, or third degree assault of a child;  
22 first, second, or third degree rape; first, second, or third degree  
23 rape of a child; first or second degree robbery; first degree arson;  
24 first degree burglary; first or second degree manslaughter; first or  
25 second degree extortion; indecent liberties; incest; vehicular  
26 homicide; first degree promoting prostitution; communication with a  
27 minor; unlawful imprisonment; simple assault; sexual exploitation of  
28 minors; first or second degree criminal mistreatment; endangerment  
29 with a controlled substance; child abuse or neglect as defined in RCW  
30 26.44.020; first or second degree custodial interference; first or  
31 second degree custodial sexual misconduct; malicious harassment;  
32 first, second, or third degree child molestation; first or second  
33 degree sexual misconduct with a minor; commercial sexual abuse of a  
34 minor; child abandonment; promoting pornography; selling or  
35 distributing erotic material to a minor; custodial assault; violation  
36 of child abuse restraining order; child buying or selling;  
37 prostitution; felony indecent exposure; criminal abandonment; or any  
38 of these crimes as they may be renamed in the future.

1 (8) "Crimes relating to drugs" means a conviction of a crime to  
2 manufacture, delivery, or possession with intent to manufacture or  
3 deliver a controlled substance.

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

8 (10) "Financial exploitation" means "financial exploitation" as  
9 defined in RCW 74.34.020.

10 (11) "Health care facility" means a nursing home licensed under  
11 chapter 18.51 RCW, a (~~boarding home~~) assisted living facility  
12 licensed under chapter 18.20 RCW, or an adult family home licensed  
13 under chapter 70.128 RCW.

14 (12) "Peer counselor" means a nonprofessional person who has  
15 equal standing with another person, providing advice on a topic about  
16 which the nonprofessional person is more experienced or  
17 knowledgeable, and who is a counselor for a peer counseling program  
18 that contracts with or is otherwise approved by the department,  
19 another state or local agency, or the court.

20 (13) "Unsupervised" means not in the presence of:

21 (a) Another employee or volunteer from the same business or  
22 organization as the applicant; or

23 (b) Any relative or guardian of any of the children or  
24 developmentally disabled persons or vulnerable adults to which the  
25 applicant has access during the course of his or her employment or  
26 involvement with the business or organization.

27 With regard to peer counselors, "unsupervised" does not include  
28 incidental contact with children under age sixteen at the location at  
29 which the peer counseling is taking place. "Incidental contact" means  
30 minor or casual contact with a child in an area accessible to and  
31 within visual or auditory range of others. It could include passing a  
32 child while walking down a hallway but would not include being alone  
33 with a child for any period of time in a closed room or office.

34 (14) "Vulnerable adult" means "vulnerable adult" as defined in  
35 chapter 74.34 RCW, except that for the purposes of requesting and  
36 receiving background checks pursuant to RCW 43.43.832, it shall also  
37 include adults of any age who lack the functional, mental, or  
38 physical ability to care for themselves.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 7.36 RCW  
2 to read as follows:

3        Notwithstanding RCW 36.18.040, the sheriff may waive fees  
4 associated with service of a writ of habeas corpus that was issued  
5 for the return of a child when the person who was granted the writ  
6 is, by reason of poverty, unable to pay the cost of service.

7        NEW SECTION.    **Sec. 7.**    (1) The administrative office of the  
8 courts shall, through the Washington state gender and justice  
9 commission of the supreme court, convene a work group to address the  
10 issue of domestic violence perpetrator treatment and the role of  
11 certified perpetrator treatment programs in holding domestic violence  
12 perpetrators accountable.

13        (2) The work group must include a representative for each of the  
14 following organizations or interests: Superior court judges, district  
15 court judges, municipal court judges, court probation officers,  
16 prosecuting attorneys, defense attorneys, civil legal aid attorneys,  
17 domestic violence victim advocates, domestic violence perpetrator  
18 treatment providers, the department of social and health services,  
19 the department of corrections, the Washington state institute for  
20 public policy, and the University of Washington evidence based  
21 practice institute. At least two domestic violence perpetrator  
22 treatment providers must be represented as members of the work group.

23        (3) The work group shall: (a) Review laws, regulations, and court  
24 and agency practices pertaining to domestic violence perpetrator  
25 treatment used in civil and criminal contexts, including criminal  
26 domestic violence felony and misdemeanor offenses, family law, child  
27 welfare, and protection orders; (b) consider the development of a  
28 universal diagnostic evaluation tool to be used by treatment  
29 providers and the department of corrections to assess the treatment  
30 needs of domestic violence perpetrators; and (c) develop  
31 recommendations on changes to existing laws, regulations, and court  
32 and agency practices to improve victim safety, decrease recidivism,  
33 advance treatment outcomes, and increase the courts' confidence in  
34 domestic violence perpetrator treatment.

35        (4) The work group shall report its recommendations to the  
36 affected entities and the appropriate committees of the legislature  
37 no later than June 30, 2018.

38        (5) The work group must operate within existing funds.

39        (6) This section expires June 30, 2019.

1        NEW SECTION.    **Sec. 8.**    (1) The legislature finds that Washington  
2 state has a serious problem with domestic violence offender  
3 recidivism and lethality. The Washington state institute for public  
4 policy studied domestic violence offenders finding not just high  
5 rates of domestic violence recidivism but among the highest rates of  
6 general criminal and violent recidivism. The Washington state  
7 coalition against domestic violence has issued fatality reviews of  
8 domestic violence homicides in Washington under chapter 43.235 RCW  
9 for over fifteen years. These fatality reviews demonstrate the  
10 significant impact of domestic violence on our communities as well as  
11 the barriers and high rates of lethality faced by victims. The  
12 legislature further notes there have been several high profile  
13 domestic violence homicides with multiple prior domestic violence  
14 incidents not accounted for in the legal response. Many jurisdictions  
15 nationally have encountered the same challenges as Washington and now  
16 utilize risk assessment as a best practice to assist in the response  
17 to domestic violence.

18        The Washington domestic violence risk assessment work group is  
19 established to study how and when risk assessment can best be used to  
20 improve the response to domestic violence offenders and victims and  
21 find effective strategies to reduce domestic violence homicides,  
22 serious injuries, and recidivism that are a result of domestic  
23 violence incidents in Washington state.

24        (2)(a) The Washington state gender and justice commission, in  
25 collaboration with the Washington state coalition against domestic  
26 violence and the Washington State University criminal justice  
27 program, shall coordinate the work group and provide staff support.

28        (b) The work group must include a representative from each of the  
29 following organizations:

- 30        (i) The Washington state gender and justice commission;
- 31        (ii) The department of corrections;
- 32        (iii) The department of social and health services;
- 33        (iv) The Washington association of sheriffs and police chiefs;
- 34        (v) The superior court judges' association;
- 35        (vi) The district and municipal court judges' association;
- 36        (vii) The Washington state association of counties;
- 37        (viii) The Washington association of prosecuting attorneys;
- 38        (ix) The Washington defender association or the Washington  
39 association of criminal defense lawyers;
- 40        (x) The Washington state association of cities;

1 (xi) The Washington state coalition against domestic violence;  
2 (xii) The Washington state office of civil legal aid; and  
3 (xiii) The family law section of the Washington state bar  
4 association.

5 (c) The work group must additionally include representation from:

6 (i) Treatment providers;

7 (ii) City law enforcement;

8 (iii) County law enforcement;

9 (iv) Court administrators; and

10 (v) Domestic violence victims or family members of a victim.

11 (3) At a minimum, the work group shall research, review, and make  
12 recommendations on the following:

13 (a) How to best develop and use risk assessment in domestic  
14 violence response utilizing available research and Washington state  
15 data;

16 (b) Providing effective strategies for incorporating risk  
17 assessment in domestic violence response to reduce deaths, serious  
18 injuries, and recidivism due to domestic violence;

19 (c) Promoting access to domestic violence risk assessment for  
20 advocates, police, prosecutors, corrections, and courts to improve  
21 domestic violence response;

22 (d) Whether or how risk assessment could be used as an  
23 alternative to mandatory arrest in domestic violence;

24 (e) Whether or how risk assessment could be used in bail  
25 determinations in domestic violence cases, and in civil protection  
26 order hearings;

27 (f) Whether or how offender risk, needs, and responsivity could  
28 be used in determining eligibility for diversion, sentencing  
29 alternatives, and treatment options;

30 (g) Whether or how victim risk, needs, and responsivity could be  
31 used in improving domestic violence response;

32 (h) Whether or how risk assessment can improve prosecution and  
33 encourage prosecutors to aggressively enforce domestic violence laws;  
34 and

35 (i) Encouraging private sector collaboration.

36 (4) The work group shall compile its findings and recommendations  
37 into a final report and provide its report to the appropriate  
38 committees of the legislature and governor by June 30, 2018.

39 (5) The work group must operate within existing funds.

1 (6) This section expires June 30, 2019.

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