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**SUBSTITUTE SENATE BILL 6104**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

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

Read first time 1/30/92.

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

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

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

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

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

1 (b) Intentionally assaults the child and either:  
2 (i) Recklessly inflicts great bodily harm; or  
3 (ii) Causes substantial bodily harm, and the person either has  
4 previously engaged in a pattern or practice of assaulting the child or  
5 has previously caused the child pain or agony that is equivalent to  
6 that produced by torture.

7 (2) Assault of a child in the first degree is a class A felony.

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

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

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

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

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

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

23 (1) A person eighteen years of age or older is guilty of the crime  
24 of assault of a child in the third degree if the child is under the age  
25 of thirteen and the person:

26 (a) Commits the crime of assault in the third degree as defined in  
27 RCW 9A.36.031(1)(d) or (f) against a child;

1 (b) With criminal negligence, causes bodily harm that is greater  
2 than transient pain or minor temporary marks; or

3 (c) Intentionally assaults the child and causes bodily harm that is  
4 greater than transient pain or minor temporary marks.

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

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

8 TABLE 2

9 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

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

1                    act))  
2                    Robbery 1 (RCW 9A.56.200)  
3                    Manslaughter 1 (RCW 9A.32.060)  
4                    Explosive devices prohibited (RCW 70.74.180)  
5                    Indecent Liberties (with forcible compulsion)  
6                    (RCW 9A.44.100(1)(a))  
7                    Endangering life and property by explosives with threat to  
8                    human being (RCW 70.74.270)  
9                    Over 18 and deliver narcotic from Schedule III, IV, or V  
10                   or a nonnarcotic from Schedule I-V to someone under  
11                   18 and 3 years junior (RCW 69.50.406)  
12                   Controlled Substance Homicide (RCW 69.50.415)  
13                   Sexual Exploitation (RCW 9.68A.040)  
14                   Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))  
15                   VIII Arson 1 (RCW 9A.48.020)  
16                   Promoting Prostitution 1 (RCW 9A.88.070)  
17                   Selling for profit (controlled or counterfeit)  
18                   any controlled substance (RCW 69.50.410)  
19                   Manufacture, deliver, or possess with intent to deliver  
20                   heroin or cocaine (RCW 69.50.401(a)(1)(i))  
21                   Manufacture, deliver, or possess with intent to deliver  
22                   methamphetamine (RCW 69.50.401(a)(1)(ii))  
23                   Vehicular Homicide, by being under the influence of  
24                   intoxicating liquor or any drug or by the operation of  
25                   any vehicle in a reckless manner (RCW 46.61.520)  
26                   VII Burglary 1 (RCW 9A.52.020)  
27                   Vehicular Homicide, by disregard for the safety of others  
28                   (RCW 46.61.520)  
29                   Introducing Contraband 1 (RCW 9A.76.140)  
30                   Indecent Liberties (without forcible compulsion)

1 (RCW 9A.44.100(1) (b) and (c))  
2 Child Molestation 2 (RCW 9A.44.086)  
3 Dealing in depictions of minor engaged in sexually explicit  
4 conduct (RCW 9.68A.050)  
5 Sending, bringing into state depictions of minor engaged  
6 in sexually explicit conduct (RCW 9.68A.060)  
7 Involving a minor in drug dealing (RCW 69.50.401(f))  
8 VI Bribery (RCW 9A.68.010)  
9 Manslaughter 2 (RCW 9A.32.070)  
10 Rape of a Child 3 (RCW 9A.44.079)  
11 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)  
12 Damaging building, etc., by explosion with no threat to  
13 human being (RCW 70.74.280(2))  
14 Endangering life and property by explosives with no threat  
15 to human being (RCW 70.74.270)  
16 Incest 1 (RCW 9A.64.020(1))  
17 Manufacture, deliver, or possess with intent to deliver  
18 narcotics from Schedule I or II (except heroin or  
19 cocaine) (RCW 69.50.401(a)(1)(i))  
20 Intimidating a Judge (RCW 9A.72.160)  
21 Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))  
22 V Criminal Mistreatment 1 (RCW 9A.42.020)  
23 Rape 3 (RCW 9A.44.060)  
24 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)  
25 Child Molestation 3 (RCW 9A.44.089)  
26 Kidnapping 2 (RCW 9A.40.030)  
27 Extortion 1 (RCW 9A.56.120)  
28 Incest 2 (RCW 9A.64.020(2))  
29 Perjury 1 (RCW 9A.72.020)  
30 Extortionate Extension of Credit (RCW 9A.82.020)

1 Advancing money or property for extortionate extension of  
2 credit (RCW 9A.82.030)  
3 Extortionate Means to Collect Extensions of Credit  
4 (RCW 9A.82.040)  
5 Rendering Criminal Assistance 1 (RCW 9A.76.070)  
6 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))  
7 Delivery of imitation controlled substance by person  
8 eighteen or over to person under eighteen  
9 (RCW 69.52.030(2))  
10 IV Residential Burglary (RCW 9A.52.025)  
11 Theft of Livestock 1 (RCW 9A.56.080)  
12 Robbery 2 (RCW 9A.56.210)  
13 Assault 2 (RCW 9A.36.021)  
14 Escape 1 (RCW 9A.76.110)  
15 Arson 2 (RCW 9A.48.030)  
16 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090,  
17 9A.72.100)  
18 Malicious Harassment (RCW 9A.36.080)  
19 Threats to Bomb (RCW 9.61.160)  
20 Willful Failure to Return from Furlough (RCW 72.66.060)  
21 Hit and Run -- Injury Accident (RCW 46.52.020(4))  
22 Vehicular Assault (RCW 46.61.522)  
23 Manufacture, deliver, or possess with intent to deliver  
24 narcotics from Schedule III, IV, or V or nonnarcotics  
25 from Schedule I-V (except marijuana or  
26 methamphetamines) (RCW 69.50.401(a)(1)(ii)  
27 through (iv))  
28 Influencing Outcome of Sporting Event (RCW 9A.82.070)  
29 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080  
30 (1) and (2))

1                    Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))  
2            III    Criminal mistreatment 2 (RCW 9A.42.030)  
3                    Extortion 2 (RCW 9A.56.130)  
4                    Unlawful Imprisonment (RCW 9A.40.040)  
5                    Assault 3 (RCW 9A.36.031)  
6                    Assault of a Child 3 (RCW 9A.36.--- (section 3 of this  
7                                    act))  
8                    Custodial Assault (RCW 9A.36.100)  
9                    Unlawful possession of firearm or pistol by felon  
10                                    (RCW 9.41.040)  
11                    Harassment (RCW 9A.46.020)  
12                    Promoting Prostitution 2 (RCW 9A.88.080)  
13                    Willful Failure to Return from Work Release (RCW 72.65.070)  
14                    Burglary 2 (RCW 9A.52.030)  
15                    Introducing Contraband 2 (RCW 9A.76.150)  
16                                    Communication with a Minor for Immoral Purposes  
17                                    (RCW 9.68A.090)  
18                    Patronizing a Juvenile Prostitute (RCW 9.68A.100)  
19                    Escape 2 (RCW 9A.76.120)  
20                    Perjury 2 (RCW 9A.72.030)  
21                    Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))  
22                    Intimidating a Public Servant (RCW 9A.76.180)  
23                    Tampering with a Witness (RCW 9A.72.120)  
24                    Manufacture, deliver, or possess with intent to deliver  
25                                    marijuana (RCW 69.50.401(a)(1)(ii))  
26                    Delivery of a material in lieu of a controlled substance  
27                                    (RCW 69.50.401(c))  
28                    Manufacture, distribute, or possess with intent to  
29                                    distribute an imitation controlled substance  
30                                    (RCW 69.52.030(1))

1 Recklessly Trafficking in Stolen Property  
2 (RCW 9A.82.050(1))  
3 Theft of livestock 2 (RCW 9A.56.080)  
4 Securities Act violation (RCW 21.20.400)  
5 II Malicious Mischief 1 (RCW 9A.48.070)  
6 Possession of Stolen Property 1 (RCW 9A.56.150)  
7 Theft 1 (RCW 9A.56.030)  
8 Possession of controlled substance that is either heroin  
9 or narcotics from Schedule I or II (RCW 69.50.401(d))  
10 Possession of phencyclidine (PCP) (RCW 69.50.401(d))  
11 Create, deliver, or possess a counterfeit controlled  
12 substance (RCW 69.50.401(b))  
13 Computer Trespass 1 (RCW 9A.52.110)  
14 Reckless Endangerment 1 (RCW 9A.36.045)  
15 I Theft 2 (RCW 9A.56.040)  
16 Possession of Stolen Property 2 (RCW 9A.56.160)  
17 Forgery (RCW 9A.60.020)  
18 Taking Motor Vehicle Without Permission (RCW 9A.56.070)  
19 Vehicle Prowl 1 (RCW 9A.52.095)  
20 Attempting to Elude a Pursuing Police Vehicle  
21 (RCW 46.61.024)  
22 Malicious Mischief 2 (RCW 9A.48.080)  
23 Reckless Burning 1 (RCW 9A.48.040)  
24 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)  
25 Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))  
26 False Verification for Welfare (RCW 74.08.055)  
27 Forged Prescription (RCW 69.41.020)  
28 Forged Prescription for a Controlled Substance  
29 (RCW 69.50.403)  
30 Possess Controlled Substance that is a Narcotic from

1 Schedule III, IV, or V or Non-narcotic from Schedule  
2 I-V (except phencyclidine) (RCW 69.50.401(d))

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

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

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

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

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

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

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

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

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

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

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

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

13       (3) "Community corrections officer" means an employee of the  
14 department who is responsible for carrying out specific duties in  
15 supervision of sentenced offenders and monitoring of sentence  
16 conditions.

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

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

28       (6) "Community service" means compulsory service, without  
29 compensation, performed for the benefit of the community by the  
30 offender.

1 (7) "Community supervision" means a period of time during which a  
2 convicted offender is subject to crime-related prohibitions and other  
3 sentence conditions imposed by a court pursuant to this chapter or RCW  
4 46.61.524. For first-time offenders, the supervision may include  
5 crime-related prohibitions and other conditions imposed pursuant to RCW  
6 9.94A.120(5). For purposes of the interstate compact for out-of-state  
7 supervision of parolees and probationers, RCW 9.95.270, community  
8 supervision is the functional equivalent of probation and should be  
9 considered the same as probation by other states.

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

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

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

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

29 (12)(a) "Criminal history" means the list of a defendant's prior  
30 convictions, whether in this state, in federal court, or elsewhere.

1 The history shall include, where known, for each conviction (i) whether  
2 the defendant has been placed on probation and the length and terms  
3 thereof; and (ii) whether the defendant has been incarcerated and the  
4 length of incarceration.

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

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

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

24 (15) "Disposable earnings" means that part of the earnings of an  
25 individual remaining after the deduction from those earnings of any  
26 amount required by law to be withheld. For the purposes of this  
27 definition, "earnings" means compensation paid or payable for personal  
28 services, whether denominated as wages, salary, commission, bonuses, or  
29 otherwise, and, notwithstanding any other provision of law making the  
30 payments exempt from garnishment, attachment, or other process to

1 satisfy a court-ordered legal financial obligation, specifically  
2 includes periodic payments pursuant to pension or retirement programs,  
3 or insurance policies of any type, but does not include payments made  
4 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
5 or Title 74 RCW.

6 (16) "Drug offense" means:

7 (a) Any felony violation of chapter 69.50 RCW except possession of  
8 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
9 controlled substance (RCW 69.50.403);

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

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

16 (17) "Escape" means:

17 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
18 second degree (RCW 9A.76.120), willful failure to return from furlough  
19 (RCW 72.66.060), willful failure to return from work release (RCW  
20 72.65.070), or willful failure to comply with any limitations on the  
21 inmate's movements while in community custody (RCW 72.09.310); or

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

25 (18) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
27 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
28 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

22 (22) "Offender" means a person who has committed a felony  
23 established by state law and is eighteen years of age or older or is  
24 less than eighteen years of age but whose case has been transferred by  
25 the appropriate juvenile court to a criminal court pursuant to RCW  
26 13.40.110. Throughout this chapter, the terms "offender" and  
27 "defendant" are used interchangeably.

28 (23) "Partial confinement" means confinement for no more than one  
29 year in a facility or institution operated or utilized under contract  
30 by the state or any other unit of government, or, if home detention or

1 work crew has been ordered by the court, in an approved residence, for  
2 a substantial portion of each day with the balance of the day spent in  
3 the community. Partial confinement includes work release, home  
4 detention, work crew, and a combination of work crew and home detention  
5 as defined in this section.

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

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

12 (26) "Serious traffic offense" means:

13 (a) Driving while under the influence of intoxicating liquor or any  
14 drug (RCW 46.61.502), actual physical control while under the influence  
15 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
16 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
17 or

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

21 (27) "Serious violent offense" is a subcategory of violent offense  
22 and means:

23 (a) Murder in the first degree, homicide by abuse, murder in the  
24 second degree, assault in the first degree, kidnapping in the first  
25 degree, or rape in the first degree, assault of a child in the first  
26 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
27 commit one of these felonies; or

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

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

3 (29) "Sex offense" means:

4 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
5 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal  
6 attempt, criminal solicitation, or criminal conspiracy to commit such  
7 crimes;

8 (b) A felony with a finding of sexual motivation under RCW  
9 9.94A.127; or

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

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

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

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

23 (33) "Violent offense" means:

24 (a) Any of the following felonies, as now existing or hereafter  
25 amended: Any felony defined under any law as a class A felony or an  
26 attempt to commit a class A felony, criminal solicitation of or  
27 criminal conspiracy to commit a class A felony, manslaughter in the  
28 first degree, manslaughter in the second degree, indecent liberties if  
29 committed by forcible compulsion, kidnapping in the second degree,  
30 arson in the second degree, assault in the second degree, assault of a

1 child in the second degree, extortion in the first degree, robbery in  
2 the second degree, vehicular assault, and vehicular homicide, when  
3 proximately caused by the driving of any vehicle by any person while  
4 under the influence of intoxicating liquor or any drug as defined by  
5 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

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

28 (35) "Work release" means a program of partial confinement  
29 available to offenders who are employed or engaged as a student in a  
30 regular course of study at school. Participation in work release shall

1 be conditioned upon the offender attending work or school at regularly  
2 defined hours and abiding by the rules of the work release facility.

3 (36) "Home detention" means a program of partial confinement  
4 available to offenders wherein the offender is confined in a private  
5 residence subject to electronic surveillance. Home detention may not  
6 be imposed for offenders convicted of a violent offense, any sex  
7 offense, any drug offense, reckless burning in the first or second  
8 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
9 degree as defined in RCW 9A.36.031, assault of a child in the third  
10 degree, unlawful imprisonment as defined in RCW 9A.40.040, or  
11 harassment as defined in RCW 9A.46.020. Home detention may be imposed  
12 for offenders convicted of possession of a controlled substance (RCW  
13 69.50.401(d)) or forged prescription for a controlled substance (RCW  
14 69.50.403) if the offender fulfills the participation conditions set  
15 forth in this subsection and is monitored for drug use by treatment  
16 alternatives to street crime (TASC) or a comparable court or agency-  
17 referred program.

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

29 (b) Participation in a home detention program shall be conditioned  
30 upon: (i) The offender obtaining or maintaining current employment or

1 attending a regular course of school study at regularly defined hours,  
2 or the offender performing parental duties to offspring or minors  
3 normally in the custody of the offender, (ii) abiding by the rules of  
4 the home detention program, and (iii) compliance with court-ordered  
5 legal financial obligations. The home detention program may also be  
6 made available to offenders whose charges and convictions do not  
7 otherwise disqualify them if medical or health-related conditions,  
8 concerns or treatment would be better addressed under the home  
9 detention program, or where the health and welfare of the offender,  
10 other inmates, or staff would be jeopardized by the offender's  
11 incarceration. Participation in the home detention program for medical  
12 or health-related reasons is conditioned on the offender abiding by the  
13 rules of the home detention program and complying with court-ordered  
14 restitution.

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

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

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

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

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

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

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

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

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

28 (c) Pursue a prescribed, secular course of study or vocational  
29 training;

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

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

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

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

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

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

29 The examiner shall assess and report regarding the defendant's  
30 amenability to treatment and relative risk to the community. A

1 proposed treatment plan shall be provided and shall include, at a  
2 minimum:

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

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

6 (C) Monitoring plans, including any requirements regarding living  
7 conditions, lifestyle requirements, and monitoring by family members  
8 and others;

9 (D) Anticipated length of treatment; and

10 (E) Recommended crime-related prohibitions.

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

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

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

29 (B) The court shall order treatment for any period up to three  
30 years in duration. The court in its discretion shall order outpatient

1 sex offender treatment or inpatient sex offender treatment, if  
2 available. A community mental health center may not be used for such  
3 treatment unless it has an appropriate program designed for sex  
4 offender treatment. The offender shall not change sex offender  
5 treatment providers or treatment conditions without first notifying the  
6 prosecutor, the community corrections officer, and the court, and shall  
7 not change providers without court approval after a hearing if the  
8 prosecutor or community corrections officer object to the change. In  
9 addition, as conditions of the suspended sentence, the court may impose  
10 other sentence conditions including up to six months of confinement,  
11 not to exceed the sentence range of confinement for that offense,  
12 crime-related prohibitions, and requirements that the offender perform  
13 any one or more of the following:

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

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

18 (III) Report as directed to the court and a community corrections  
19 officer;

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

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

25 (iii) The sex offender therapist shall submit quarterly reports on  
26 the defendant's progress in treatment to the court and the parties.  
27 The report shall reference the treatment plan and include at a minimum  
28 the following: Dates of attendance, defendant's compliance with  
29 requirements, treatment activities, the defendant's relative progress

1 in treatment, and any other material as specified by the court at  
2 sentencing.

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

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

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

1 For purposes of this subsection, "victim" means any person who has  
2 sustained emotional, psychological, physical, or financial injury to  
3 person or property as a result of the crime charged. "Victim" also  
4 means a parent or guardian of a victim who is a minor child unless the  
5 parent or guardian is the perpetrator of the offense.

6 (b) When an offender is convicted of any felony sex offense  
7 committed before July 1, 1987, and is sentenced to a term of  
8 confinement of more than one year but less than six years, the  
9 sentencing court may, on its own motion or on the motion of the  
10 offender or the state, order the offender committed for up to thirty  
11 days to the custody of the secretary of social and health services for  
12 evaluation and report to the court on the offender's amenability to  
13 treatment at these facilities. If the secretary of social and health  
14 services cannot begin the evaluation within thirty days of the court's  
15 order of commitment, the offender shall be transferred to the state for  
16 confinement pending an opportunity to be evaluated at the appropriate  
17 facility. The court shall review the reports and may order that the  
18 term of confinement imposed be served in the sexual offender treatment  
19 program at the location determined by the secretary of social and  
20 health services or the secretary's designee, only if the report  
21 indicates that the offender is amenable to the treatment program  
22 provided at these facilities. The offender shall be transferred to the  
23 state pending placement in the treatment program. Any offender who has  
24 escaped from the treatment program shall be referred back to the  
25 sentencing court.

26 If the offender does not comply with the conditions of the  
27 treatment program, the secretary of social and health services may  
28 refer the matter to the sentencing court. The sentencing court shall  
29 commit the offender to the department of corrections to serve the  
30 balance of the term of confinement.

1        If the offender successfully completes the treatment program before  
2 the expiration of the term of confinement, the court may convert the  
3 balance of confinement to community supervision and may place  
4 conditions on the offender including crime-related prohibitions and  
5 requirements that the offender perform any one or more of the  
6 following:

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

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

11       (iii) Report as directed to the court and a community corrections  
12 officer;

13       (iv) Undergo available outpatient treatment.

14       If the offender violates any of the terms of community supervision,  
15 the court may order the offender to serve out the balance of the  
16 community supervision term in confinement in the custody of the  
17 department of corrections.

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

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

27       Except for an offender who has been convicted of a violation of RCW  
28 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
29 before the expiration of his term of confinement, the department of  
30 corrections may request the court to convert the balance of confinement

1 to community supervision and to place conditions on the offender  
2 including crime-related prohibitions and requirements that the offender  
3 perform any one or more of the following:

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

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

8 (iii) Report as directed to the court and a community corrections  
9 officer;

10 (iv) Undergo available outpatient treatment.

11 If the offender violates any of the terms of his community  
12 supervision, the court may order the offender to serve out the balance  
13 of his community supervision term in confinement in the custody of the  
14 department of corrections.

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

19 (d) Offenders convicted and sentenced for a sex offense committed  
20 prior to July 1, 1987, may, subject to available funds, request an  
21 evaluation by the department of corrections to determine whether they  
22 are amenable to treatment. If the offender is determined to be  
23 amenable to treatment, the offender may request placement in a  
24 treatment program within a correctional facility operated by the  
25 department. Placement in such treatment program is subject to  
26 available funds.

27 (8)(a) When a court sentences a person to a term of total  
28 confinement to the custody of the department of corrections for an  
29 offense categorized as a sex offense or a serious violent offense  
30 committed after July 1, 1988, but before July 1, 1990, assault in the

1 second degree, assault of a child in the second degree, any crime  
2 against a person where it is determined in accordance with RCW  
3 9.94A.125 that the defendant or an accomplice was armed with a deadly  
4 weapon at the time of commission, or any felony offense under chapter  
5 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall  
6 in addition to the other terms of the sentence, sentence the offender  
7 to a one-year term of community placement beginning either upon  
8 completion of the term of confinement or at such time as the offender  
9 is transferred to community custody in lieu of earned early release in  
10 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an  
11 offender under this subsection to the statutory maximum period of  
12 confinement then the community placement portion of the sentence shall  
13 consist entirely of such community custody to which the offender may  
14 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
15 period of community custody actually served shall be credited against  
16 the community placement portion of the sentence.

17 (b) When a court sentences a person to a term of total confinement  
18 to the custody of the department of corrections for an offense  
19 categorized as a sex offense or serious violent offense committed on or  
20 after July 1, 1990, the court shall in addition to other terms of the  
21 sentence, sentence the offender to community placement for two years or  
22 up to the period of earned early release awarded pursuant to RCW  
23 9.94A.150 (1) and (2), whichever is longer. The community placement  
24 shall begin either upon completion of the term of confinement or at  
25 such time as the offender is transferred to community custody in lieu  
26 of earned early release in accordance with RCW 9.94A.150 (1) and (2).  
27 When the court sentences an offender under this subsection to the  
28 statutory maximum period of confinement then the community placement  
29 portion of the sentence shall consist entirely of the community custody  
30 to which the offender may become eligible, in accordance with RCW

1 9.94A.150 (1) and (2). Any period of community custody actually served  
2 shall be credited against the community placement portion of the  
3 sentence. Unless a condition is waived by the court, the terms of  
4 community placement for offenders sentenced pursuant to this section  
5 shall include the following conditions:

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

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

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

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

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

16 (c) The court may also order any of the following special  
17 conditions:

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

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

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

24 (iv) The offender shall not consume alcohol;

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

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

29 (d) Prior to transfer to, or during, community placement, any  
30 conditions of community placement may be removed or modified so as not

1 to be more restrictive by the sentencing court, upon recommendation of  
2 the department of corrections.

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

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

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

5 (12) All offenders sentenced to terms involving community  
6 supervision, community service, community placement, or legal financial  
7 obligation shall be under the supervision of the secretary of the  
8 department of corrections or such person as the secretary may designate  
9 and shall follow explicitly the instructions of the secretary including  
10 reporting as directed to a community corrections officer, remaining  
11 within prescribed geographical boundaries, notifying the community  
12 corrections officer of any change in the offender's address or  
13 employment, and paying the supervision fee assessment.

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

24 (14) The sentencing court shall give the offender credit for all  
25 confinement time served before the sentencing if that confinement was  
26 solely in regard to the offense for which the offender is being  
27 sentenced.

28 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)  
29 governing whether sentences are to be served consecutively or  
30 concurrently is an exceptional sentence subject to the limitations in

1 subsections (2) and (3) of this section, and may be appealed by the  
2 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

3 (16) The court shall order restitution whenever the offender is  
4 convicted of a felony that results in injury to any person or damage to  
5 or loss of property, whether the offender is sentenced to confinement  
6 or placed under community supervision, unless extraordinary  
7 circumstances exist that make restitution inappropriate in the court's  
8 judgment. The court shall set forth the extraordinary circumstances in  
9 the record if it does not order restitution.

10 (17) As a part of any sentence, the court may impose and enforce an  
11 order that relates directly to the circumstances of the crime for which  
12 the offender has been convicted, prohibiting the offender from having  
13 any contact with other specified individuals or a specific class of  
14 individuals for a period not to exceed the maximum allowable sentence  
15 for the crime, regardless of the expiration of the offender's term of  
16 community supervision or community placement.

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

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

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

27 No person serving a sentence imposed pursuant to this chapter and  
28 committed to the custody of the department shall leave the confines of

1 the correctional facility or be released prior to the expiration of the  
2 sentence except as follows:

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

24 (2) A person convicted of a sex offense or an offense categorized  
25 as a serious violent offense, assault in the second degree, assault of  
26 a child in the second degree, any crime against a person where it is  
27 determined in accordance with RCW 9.94A.125 that the defendant or an  
28 accomplice was armed with a deadly weapon at the time of commission, or  
29 any felony offense under chapter 69.50 or 69.52 RCW may become  
30 eligible, in accordance with a program developed by the department, for

1 transfer to community custody status in lieu of earned early release  
2 time pursuant to subsection (1) of this section;

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

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

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

14 (6) The governor may pardon any offender;

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

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

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

23 (1) TABLE 1  
24 Sentencing Grid  
25 SERIOUSNESS  
26 SCORE OFFENDER SCORE 9  
27 0 1 2 3 4 5 6 7 8 or more  
28

---

1	XV	Life Sentence without Parole/Death Penalty									
2	<hr/>										
3	XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
4		240-	250-	261-	271-	281 -	291-	312-	338-	370-	411-
5		320	333	347	361	374	388	416	450	493	548
6	<hr/>										
7	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
8		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
9		164	178	192	205	219	233	260	288	342	397
10	<hr/>										
11	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
12		93-	102-	111-	120-	129-	138-	162 -	178-	209-	240-
13		123	136	147	160	171	184	216	236	277	318
14	<hr/>										
15	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
16		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
17		102	114	125	136	147	158	194	211	245	280
18	<hr/>										
19	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
20		51-	57-	62-	67-	72-	77-	98-	108-	129 -	149-
21		68	75	82	89	96	102	130	144	171	198
22	<hr/>										
23	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
24		31-	36-	41-	46-	51-	57-	77-	87-	108 -	129-
25		41	48	54	61	68	75	102	116	144	171
26	<hr/>										
27	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
28		21-	26-	31-	36-	41-	46-	67-	77-	87 -	108-
29		27	34	41	48	54	61	89	102	116	144
30	<hr/>										

1	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
2		15-	21-	26-	31-	36-	41-	57-	67-	77 -	87-
3		20	27	34	41	48	54	75	89	102	116
4											
5	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
6		12+-	15-	21-	26-	31-	36-	46-	57-	67 -	77-
7		14	20	27	34	41	48	61	75	89	102
8											
9	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
10		6-	12+-	13-	15-	22-	33-	41-	51-	62 -	72-
11		12	14	17	20	29	43	54	68	82	96
12	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
13		3-	6-	12+-	13-	15-	22-	33-	43-	53 -	63-
14		9	12	14	17	20	29	43	57	70	84
15											
16	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
17		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
18		3	8	12	12	16	22	29	43	57	68
19											
20	II	4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m	
21		0-90	2-	3-	4-	12+-	14-	17-	22-	33 -	43-
22		Days	6	9	12	14	18	22	29	43	57
23											
24	I	3m	4m	5m	8m	13m	16m	20m	2y2m		
25		0-60	0-90	2-	2-	3-	4-	12+-	14-	17 -	22-
26		Days	Days	5	6	8	12	14	18	22	29

27 NOTE: Numbers in the first horizontal row of each seriousness category  
28 represent sentencing midpoints in years(y) and months(m). Numbers in

1 the second and third rows represent presumptive sentencing ranges in  
2 months, or in days if so designated. 12+ equals one year and one day.

3 (2) For persons convicted of the anticipatory offenses of criminal  
4 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
5 presumptive sentence is determined by locating the sentencing grid  
6 sentence range defined by the appropriate offender score and the  
7 seriousness level of the completed crime, and multiplying the range by  
8 75 percent.

9 (3) The following additional times shall be added to the  
10 presumptive sentence if the offender or an accomplice was armed with a  
11 deadly weapon as defined in this chapter and the offender is being  
12 sentenced for one of the crimes listed in this subsection. If the  
13 offender or an accomplice was armed with a deadly weapon and the  
14 offender is being sentenced for an anticipatory offense under chapter  
15 9A.28 RCW to commit one of the crimes listed in this subsection, the  
16 following times shall be added to the presumptive range determined  
17 under subsection (2) of this section:

18 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW  
19 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

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

21 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault  
22 of a Child 2 (RCW 9A.36.--- (section 2 of this act)), Escape  
23 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2  
24 of a building other than a dwelling (RCW 9A.52.030), Theft  
25 of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

26 (4) The following additional times shall be added to the  
27 presumptive sentence if the offender or an accomplice committed the  
28 offense while in a county jail or state correctional facility as that  
29 term is defined in this chapter and the offender is being sentenced for  
30 one of the crimes listed in this subsection. If the offender or an

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

8 (a) Eighteen months for offenses committed under RCW  
9 69.50.401(a)(1)(i) or 69.50.410;

10 (b) Fifteen months for offenses committed under RCW  
11 69.50.401(a)(1)(ii), (iii), and (iv);

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

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

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

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

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

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

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

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

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

24           (4) Always include juvenile convictions for sex offenses. Include  
25 other class A juvenile felonies only if the offender was 15 or older at  
26 the time the juvenile offense was committed. Include other class B and  
27 C juvenile felony convictions only if the offender was 15 or older at  
28 the time the juvenile offense was committed and the offender was less  
29 than 23 at the time the offense for which he or she is being sentenced  
30 was committed.

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

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

6 (a) Prior adult offenses which were found, under RCW  
7 9.94A.400(1)(a), to encompass the same criminal conduct, shall be  
8 counted as one offense, the offense that yields the highest offender  
9 score. The current sentencing court shall determine with respect to  
10 other prior adult offenses for which sentences were served concurrently  
11 whether those offenses shall be counted as one offense or as separate  
12 offenses, and if the court finds that they shall be counted as one  
13 offense, then the offense that yields the highest offender score shall  
14 be used;

15 (b) Juvenile prior convictions entered or sentenced on the same  
16 date shall count as one offense, the offense that yields the highest  
17 offender score, except for juvenile prior convictions for violent  
18 offenses with separate victims, which shall count as separate offenses;  
19 and

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

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

29 (8) If the present conviction is for a nonviolent offense and not  
30 covered by subsection (12) or (13) of this section, count one point for

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

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

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

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

21 (12) If the present conviction is for a felony traffic offense  
22 count two points for each adult or juvenile prior conviction for  
23 Vehicular Homicide or Vehicular Assault; for each felony offense or  
24 serious traffic offense, count one point for each adult and 1/2 point  
25 for each juvenile prior conviction.

26 (13) If the present conviction is for a drug offense count three  
27 points for each adult prior felony drug offense conviction and two  
28 points for each juvenile drug offense. All other adult and juvenile  
29 felonies are scored as in subsection (9) of this section if the current

1 drug offense is violent, or as in subsection (8) of this section if the  
2 current drug offense is nonviolent.

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

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

11 (16) If the present conviction is for Burglary 2 or residential  
12 burglary, count priors as in subsection (8) of this section; however,  
13 count two points for each adult and juvenile prior Burglary 1  
14 conviction, two points for each adult prior Burglary 2 or residential  
15 burglary conviction, and one point for each juvenile prior Burglary 2  
16 or residential burglary conviction.

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

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

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

24 (1) Decision not to prosecute.

25 STANDARD: A prosecuting attorney may decline to prosecute, even  
26 though technically sufficient evidence to prosecute exists, in  
27 situations where prosecution would serve no public purpose, would  
28 defeat the underlying purpose of the law in question or would result in  
29 decreased respect for the law.

1 GUIDELINE/COMMENTARY:

2 Examples

3 The following are examples of reasons not to prosecute which could  
4 satisfy the standard.

5 (a) Contrary to Legislative Intent - It may be proper to decline to  
6 charge where the application of criminal sanctions would be clearly  
7 contrary to the intent of the legislature in enacting the particular  
8 statute.

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

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

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

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

16 (iv) The statute has not been recently reconsidered by the  
17 legislature.

18 This reason is not to be construed as the basis for declining cases  
19 because the law in question is unpopular or because it is difficult to  
20 enforce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (i) Assault cases where the victim has suffered little or no  
5 injury;

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

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

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

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

13 Notification

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

16 (2) Decision to prosecute.

17 STANDARD:

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

28 Crimes against property/other crimes will be filed if the  
29 admissible evidence is of such convincing force as to make it probable  
30 that a reasonable and objective fact-finder would convict after hearing

1 all the admissible evidence and the most plausible defense that could  
2 be raised.

3 See table below for the crimes within these categories.

4 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

5 CRIMES AGAINST PERSONS

6 Aggravated Murder

7 1st Degree Murder

8 2nd Degree Murder

9 1st Degree Kidnaping

10 1st Degree Assault

11 1st Degree Assault of a Child

12 1st Degree Rape

13 1st Degree Robbery

14 1st Degree Rape of a Child

15 1st Degree Arson

16 2nd Degree Kidnaping

17 2nd Degree Assault

18 2nd Degree Assault of a Child

19 2nd Degree Rape

20 2nd Degree Robbery

21 1st Degree Burglary

22 1st Degree Manslaughter

23 2nd Degree Manslaughter

24 1st Degree Extortion

25 Indecent Liberties

26 Incest

27 2nd Degree Rape of a Child

- 1 Vehicular Homicide
- 2 Vehicular Assault
- 3 3rd Degree Rape
- 4 3rd Degree Rape of a Child
- 5 1st Degree Child Molestation
- 6 2nd Degree Child Molestation
- 7 3rd Degree Child Molestation
- 8 2nd Degree Extortion
- 9 1st Degree Promoting Prostitution
- 10 Intimidating a Juror
- 11 Communication with a Minor
- 12 Intimidating a Witness
- 13 Intimidating a Public Servant
- 14 Bomb Threat (if against person)
- 15 3rd Degree Assault
- 16 3rd Degree Assault of a Child
- 17 Unlawful Imprisonment
- 18 Promoting a Suicide Attempt
- 19 Riot (if against person)
  
- 20 CRIMES AGAINST PROPERTY/OTHER CRIMES
  
- 21 2nd Degree Arson
- 22 1st Degree Escape
- 23 2nd Degree Burglary
- 24 1st Degree Theft
- 25 1st Degree Perjury
- 26 1st Degree Introducing Contraband
- 27 1st Degree Possession of Stolen Property
- 28 Bribery

1       Bribing a Witness  
2       Bribe received by a Witness  
3       Bomb Threat (if against property)  
4       1st Degree Malicious Mischief  
5       2nd Degree Theft  
6       2nd Degree Escape  
7       2nd Degree Introducing Contraband  
8       2nd Degree Possession of Stolen Property  
9       2nd Degree Malicious Mischief  
10      1st Degree Reckless Burning  
11      Taking a Motor Vehicle without Authorization  
12      Forgery  
13      2nd Degree Perjury  
14      2nd Degree Promoting Prostitution  
15      Tampering with a Witness  
16      Trading in Public Office  
17      Trading in Special Influence  
18      Receiving/Granting Unlawful Compensation  
19      Bigamy  
20      Eluding a Pursuing Police Vehicle  
21      Willful Failure to Return from Furlough  
22      Riot (if against property)  
23      Thefts of Livestock

24      ALL OTHER UNCLASSIFIED FELONIES

25      Selection of Charges/Degree of Charge

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

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

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

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

5 Overcharging includes:

6 (a) Charging a higher degree;

7 (b) Charging additional counts.

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

14 GUIDELINES/COMMENTARY:

15 Police Investigation

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

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

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

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

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

#### 4 Exceptions

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

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

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

10 (3) The arrest of the suspect is necessary to complete the  
11 investigation of the crime.

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

#### 17 Investigation Techniques

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

20 (1) Polygraph testing;

21 (2) Hypnosis;

22 (3) Electronic surveillance;

23 (4) Use of informants.

#### 24 Pre-Filing Discussions with Defendant

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

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

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

3 (1) Harassment (RCW 9A.46.020);

4 (2) Malicious harassment (RCW 9A.36.080);

5 (3) Telephone harassment (RCW 9.61.230);

6 (4) Assault in the first degree (RCW 9A.36.011);

7 (5) Assault of a child in the first degree (RCW 9A.36.--- (section  
8 1 of this act)));

9 (6) Assault in the second degree (RCW 9A.36.021);

10 (~~((6) Simple assault [Assault in the fourth degree])~~) (7) Assault  
11 of a child in the second degree (RCW 9A.36.--- (section 2 of this  
12 act)));

13 (8) Assault in the fourth degree (RCW 9A.36.041);

14 (~~((7))~~) (9) Reckless endangerment (~~([in the second degree])~~) in the  
15 second degree (RCW 9A.36.050);

16 (~~((8))~~) (10) Extortion in the first degree (RCW 9A.56.120);

17 (~~((9))~~) (11) Extortion in the second degree (RCW 9A.56.130);

18 (~~((10))~~) (12) Coercion (RCW 9A.36.070);

19 (~~((11))~~) (13) Burglary in the first degree (RCW 9A.52.020);

20 (~~((12))~~) (14) Burglary in the second degree (RCW 9A.52.030);

21 (~~((13))~~) (15) Criminal trespass in the first degree (RCW  
22 9A.52.070);

23 (~~((14))~~) (16) Criminal trespass in the second degree (RCW  
24 9A.52.080);

25 (~~((15))~~) (17) Malicious mischief in the first degree (RCW  
26 9A.48.070);

27 (~~((16))~~) (18) Malicious mischief in the second degree (RCW  
28 9A.48.080);

29 (~~((17))~~) (19) Malicious mischief in the third degree (RCW  
30 9A.48.090);

1       (~~(18)~~) (20) Kidnapping in the first degree (RCW 9A.40.020);  
2       (~~(19)~~) (21) Kidnapping in the second degree (RCW 9A.40.030);  
3       (~~(20)~~) (22) Unlawful imprisonment (RCW 9A.40.040);  
4       (~~(21)~~) (23) Rape in the first degree (RCW 9A.44.040);  
5       (~~(22)~~) (24) Rape in the second degree (RCW 9A.44.050);  
6       (~~(23)~~) (25) Rape in the third degree (RCW 9A.44.060);  
7       (~~(24)~~) (26) Indecent liberties (RCW 9A.44.100);  
8       (~~(25)~~) (27) Rape of a child in the first degree (RCW 9A.44.073);  
9       (~~(26)~~) (28) Rape of a child in the second degree (RCW 9A.44.076);  
10      (~~(27)~~) (29) Rape of a child in the third degree (RCW 9A.44.079);  
11      (~~(28)~~) (30) Child molestation in the first degree (RCW  
12 9A.44.083);  
13      (~~(29)~~) (31) Child molestation in the second degree (RCW  
14 9A.44.086); and  
15      (~~(30)~~) (32) Child molestation in the third degree (RCW  
16 9A.44.089).

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

19       Unless the context requires the contrary, the definitions in this  
20 section apply throughout this chapter.

21       (1) "Creditor" means a person making an extension of credit or a  
22 person claiming by, under, or through a person making an extension of  
23 credit.

24       (2) "Debtor" means a person to whom an extension of credit is made  
25 or a person who guarantees the repayment of an extension of credit or  
26 in any manner undertakes to indemnify the creditor against loss  
27 resulting from the failure of a person to whom an extension is made to  
28 repay the same.

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

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

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

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

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

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

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

24 (10) "Traffic" means to sell, transfer, distribute, dispense, or  
25 otherwise dispose of stolen property to another person, or to buy,  
26 receive, possess, or obtain control of stolen property, with intent to  
27 sell, transfer, distribute, dispense, or otherwise dispose of the  
28 property to another person.

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

1 (12) "Enterprise" includes any individual, sole proprietorship,  
2 partnership, corporation, business trust, or other profit or nonprofit  
3 legal entity, and includes any union, association, or group of  
4 individuals associated in fact although not a legal entity, and both  
5 illicit and licit enterprises and governmental and nongovernmental  
6 entities.

7 (13) "Financial institution" means any bank, trust company, savings  
8 and loan association, savings bank, mutual savings bank, credit union,  
9 or loan company under the jurisdiction of the state or an agency of the  
10 United States.

11 (14) "Criminal profiteering" means any act, including any  
12 anticipatory or completed offense, committed for financial gain, that  
13 is chargeable or indictable under the laws of the state in which the  
14 act occurred and, if the act occurred in a state other than this state,  
15 would be chargeable or indictable under the laws of this state had the  
16 act occurred in this state and punishable as a felony and by  
17 imprisonment for more than one year, regardless of whether the act is  
18 charged or indicted, as any of the following:

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

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

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

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

23 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and  
24 9A.56.080;

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

26 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
27 9A.68.050;

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

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

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

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

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

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

6 (n) Delivery or manufacture of controlled substances or possession  
7 with intent to deliver or manufacture controlled substances under  
8 chapter 69.50 RCW;

9 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;

10 (p) Leading organized crime, as defined in RCW 9A.82.060;

11 (q) Obstructing criminal investigations or prosecutions in  
12 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
13 9A.76.070, or 9A.76.180;

14 (r) Fraud in the purchase or sale of securities, as defined in RCW  
15 21.20.010;

16 (s) Promoting pornography, as defined in RCW 9.68.140;

17 (t) Sexual exploitation of children, as defined in RCW 9.68A.040,  
18 9.68A.050, and 9.68A.060;

19 (u) Promoting prostitution, as defined in RCW 9A.88.070 and  
20 9A.88.080;

21 (v) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

22 (w) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

23 (x) Assault of a child, as defined in RCW 9A.36.--- and 9A.36.---  
24 (sections 1 and 2 of this act);

25 (y) A pattern of equity skimming, as defined in RCW 61.34.020; or

26 ~~((y))~~ (z) Commercial telephone solicitation in violation of RCW  
27 19.158.040(1).

28 (15) "Pattern of criminal profiteering activity" means engaging in  
29 at least three acts of criminal profiteering, one of which occurred  
30 after July 1, 1985, and the last of which occurred within five years,

1 excluding any period of imprisonment, after the commission of the  
2 earliest act of criminal profiteering. In order to constitute a  
3 pattern, the three acts must have the same or similar intent, results,  
4 accomplices, principals, victims, or methods of commission, or be  
5 otherwise interrelated by distinguishing characteristics including a  
6 nexus to the same enterprise, and must not be isolated events.  
7 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by  
8 any person other than the attorney general or county prosecuting  
9 attorney in which one or more acts of fraud in the purchase or sale of  
10 securities are asserted as acts of criminal profiteering activity, it  
11 is a condition to civil liability under RCW 9A.82.100 that the  
12 defendant has been convicted in a criminal proceeding of fraud in the  
13 purchase or sale of securities under RCW 21.20.400 or under the laws of  
14 another state or of the United States requiring the same elements of  
15 proof, but such conviction need not relate to any act or acts asserted  
16 as acts of criminal profiteering activity in such civil action under  
17 RCW 9A.82.100.

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

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

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

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

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

1 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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

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

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

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

16 (b) "Beneficial interest" does not include the interest of a  
17 stockholder in a corporation or the interest of a partner in a general  
18 partnership or limited partnership.

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

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

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

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

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

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

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

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

5 (ii) A trustee of any testamentary trust;

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

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

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

11 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now  
12 or hereafter amended, it has been proven by a preponderance of the  
13 evidence that the child is dependent within the meaning of RCW  
14 13.34.030(2); after consideration of the predisposition report prepared  
15 pursuant to RCW 13.34.110 and after a disposition hearing has been held  
16 pursuant to RCW 13.34.110, the court shall enter an order of  
17 disposition pursuant to this section.

18 (1) The court shall order one of the following dispositions of the  
19 case:

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

27 (b) Order that the child be removed from his or her home and  
28 ordered into the custody, control, and care of a relative or the  
29 department of social and health services or a licensed child placing

1 agency for placement in a foster family home or group care facility  
2 licensed pursuant to chapter 74.15 RCW or in a home not required to be  
3 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable  
4 cause to believe that the safety or welfare of the child would be  
5 jeopardized or that efforts to reunite the parent and child will be  
6 hindered, such child shall be placed with a grandparent, brother,  
7 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom  
8 the child has a relationship and is comfortable, and who is willing and  
9 available to care for the child. An order for out-of-home placement  
10 may be made only if the court finds that reasonable efforts have been  
11 made to prevent or eliminate the need for removal of the child from the  
12 child's home and to make it possible for the child to return home,  
13 specifying the services that have been provided to the child and the  
14 child's parent, guardian, or legal custodian, and that:

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

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

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

22 (iv) The extent of the child's disability is such that the parent,  
23 guardian, or legal custodian is unable to provide the necessary care  
24 for the child and the parent, guardian, or legal custodian has  
25 determined that the child would benefit from placement outside of the  
26 home.

27 (2) If the court has ordered a child removed from his or her home  
28 pursuant to ((RCW 13.34.130)) subsection (1)(b) of this section, the  
29 court may order that a petition seeking termination of the parent and  
30 child relationship be filed if the court finds it is recommended by the

1 supervising agency, that it is in the best interests of the child and  
2 that it is not reasonable to provide further services to reunify the  
3 family because the existence of aggravated circumstances make it  
4 unlikely that services will effectuate the return of the child to the  
5 child's parents in the near future. In determining whether aggravated  
6 circumstances exist, the court shall consider one or more of the  
7 following:

8 (a) Conviction of the parent of rape of the child in the first,  
9 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
10 9A.44.079;

11 (b) Conviction of the parent of criminal mistreatment of the child  
12 in the first or second degree as defined in RCW 9A.42.020 and  
13 9A.42.030;

14 (c) Conviction of the parent of one of the following assault  
15 crimes, when the child is the victim: Assault ((of the child)) in the  
16 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or  
17 assault of a child in the first or second degree as defined in RCW  
18 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

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

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

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

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

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

5 (b) Unless the court has ordered, pursuant to ((~~RCW 13.34.130~~))  
6 subsection (2) of this section, that a termination petition be filed,  
7 a specific plan as to where the child will be placed, what steps will  
8 be taken to return the child home, and what actions the agency will  
9 take to maintain parent-child ties. All aspects of the plan shall  
10 include the goal of achieving permanence for the child.

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

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

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

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

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

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

27 (5) Except for children whose cases are reviewed by a citizen  
28 review board under chapter 13.70 RCW, the status of all children found  
29 to be dependent shall be reviewed by the court at least every six  
30 months from the beginning date of the placement episode or the date

1 dependency is established, whichever is first, at a hearing in which it  
2 shall be determined whether court supervision should continue. The  
3 review shall include findings regarding the agency and parental  
4 completion of disposition plan requirements, and if necessary, revised  
5 permanency time limits.

6 (a) A child shall not be returned home at the review hearing unless  
7 the court finds that a reason for removal as set forth in this section  
8 no longer exists. The parents, guardian, or legal custodian shall  
9 report to the court the efforts they have made to correct the  
10 conditions which led to removal. If a child is returned, casework  
11 supervision shall continue for a period of six months, at which time  
12 there shall be a hearing on the need for continued intervention.

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

15 (i) Whether reasonable services have been provided to or offered to  
16 the parties to facilitate reunion, specifying the services provided or  
17 offered;

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

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

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

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

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

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

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

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

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

10 After hearings pursuant to RCW 13.34.110, the court may enter an  
11 order terminating all parental rights to a child if the court finds  
12 that:

13 (1) The allegations contained in the petition as provided in RCW  
14 13.34.180 (1) through (6) are established by clear, cogent, and  
15 convincing evidence; or

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

19 (~~((e) — [(3)]~~)) (3) The allegation under RCW 13.34.180(7) is  
20 established beyond a reasonable doubt. In determining whether RCW  
21 13.34.180 (5) and (6) are established beyond a reasonable doubt, the  
22 court shall consider one or more of the following:

23 (a) Conviction of the parent of rape of the child in the first,  
24 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
25 9A.44.079;

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

28 (c) Conviction of the parent of one of the following assault  
29 crimes, when the child is the victim: Assault ((of the child)) in the

1 first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or  
2 assault of a child in the first or second degree as defined in RCW  
3 9A.36.--- or 9A.36.--- (sections 1 and 2 of this act);

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

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

8 (f) Failure of the parent to complete available treatment ordered  
9 under this chapter or the equivalent laws of another state, where such  
10 failure has resulted in a prior termination of parental rights to  
11 another child and the parent has failed to effect significant change in  
12 the interim; and

13 ((~~(3)~~—~~[(4)]~~)) (4) Such an order is in the best interests of the  
14 child.

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

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

19 (1) "Applicant" means:

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

24 (b) Any prospective volunteer who will have regularly scheduled  
25 unsupervised access to children under sixteen years of age,  
26 developmentally disabled persons, or vulnerable adults during the  
27 course of his or her employment or involvement with the business or  
28 organization under circumstances where such access will or may involve  
29 groups of (i) five or fewer children under twelve years of age, (ii)

1 three or fewer children between twelve and sixteen years of age, (iii)  
2 developmentally disabled persons, or (iv) vulnerable adults; or

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

4 (2) "Business or organization" means a business or organization  
5 licensed in this state, any agency of the state, or other governmental  
6 entity, that educates, trains, treats, supervises, or provides  
7 recreation to developmentally disabled persons, vulnerable adults, or  
8 children under sixteen years of age, including school districts and  
9 educational service districts.

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

22 (4) "Conviction record" means "conviction record" information as  
23 defined in RCW 10.97.030(3) relating to a crime against children or  
24 other persons committed by either an adult or a juvenile. It does not  
25 include a conviction for an offense that has been the subject of an  
26 expungement, pardon, annulment, certificate of rehabilitation, or other  
27 equivalent procedure based on a finding of the rehabilitation of the  
28 person convicted, or a conviction that has been the subject of a  
29 pardon, annulment, or other equivalent procedure based on a finding of  
30 innocence. It does include convictions for offenses for which the

1 defendant received a deferred or suspended sentence, unless the record  
2 has been expunged according to law.

3 (5) "Crime against children or other persons" means a conviction of  
4 any of the following offenses: Aggravated murder; first or second  
5 degree murder; first or second degree kidnaping; first, second, or  
6 third degree assault; first, second, or third degree assault of a  
7 child; first, second, or third degree rape; first, second, or third  
8 degree rape of a child; first or second degree robbery; first degree  
9 arson; first degree burglary; first or second degree manslaughter;  
10 first or second degree extortion; indecent liberties; incest; vehicular  
11 homicide; first degree promoting prostitution; communication with a  
12 minor; unlawful imprisonment; simple assault; sexual exploitation of  
13 minors; first or second degree criminal mistreatment; child abuse or  
14 neglect as defined in RCW 26.44.020; first or second degree custodial  
15 interference; malicious harassment; first, second, or third degree  
16 child molestation; first or second degree sexual misconduct with a  
17 minor; first or second degree rape of a child; patronizing a juvenile  
18 prostitute; child abandonment; promoting pornography; selling or  
19 distributing erotic material to a minor; custodial assault; violation  
20 of child abuse restraining order; child buying or selling;  
21 prostitution; felony indecent exposure; or any of these crimes as they  
22 may be renamed in the future.

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

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

30 (a) Chiropractic;

- 1 (b) Dentistry;
- 2 (c) Dental hygiene;
- 3 (d) Massage;
- 4 (e) Midwifery;
- 5 (f) Naturopathy;
- 6 (g) Osteopathy;
- 7 (h) Physical therapy;
- 8 (i) Physicians;
- 9 (j) Practical nursing;
- 10 (k) Registered nursing;
- 11 (l) Psychology; and
- 12 (m) Real estate brokers and salesmen.

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

14 (a) Another employee or volunteer from the same business or  
15 organization as the applicant; or

16 (b) Any relative or guardian of any of the children or  
17 developmentally disabled persons to which the applicant has access  
18 during the course of his or her employment or involvement with the  
19 business or organization.

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

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

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

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

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

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

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

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

16       (4) "Sexually violent offense" means an act committed on, before,  
17 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as  
18 rape in the first degree, rape in the second degree by forcible  
19 compulsion, rape of a child in the first or second degree, statutory  
20 rape in the first or second degree, indecent liberties by forcible  
21 compulsion, indecent liberties against a child under age fourteen,  
22 incest against a child under age fourteen, or child molestation in the  
23 first or second degree; (b) a felony offense in effect at any time  
24 prior to July 1, 1990, that is comparable to a sexually violent offense  
25 as defined in (a) of this subsection, or any federal or out-of-state  
26 conviction for a felony offense that under the laws of this state would  
27 be a sexually violent offense as defined in this subsection; (c) an act  
28 of murder in the first or second degree, assault in the first or second  
29 degree, assault of a child in the first or second degree, kidnapping in  
30 the first or second degree, burglary in the first degree, residential

1 burglary, or unlawful imprisonment, which act, either at the time of  
2 sentencing for the offense or subsequently during civil commitment  
3 proceedings pursuant to chapter 71.09 RCW, has been determined beyond  
4 a reasonable doubt to have been sexually motivated, as that term is  
5 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28  
6 RCW, that is an attempt, criminal solicitation, or criminal conspiracy  
7 to commit one of the felonies designated in (a), (b), or (c) of this  
8 subsection.