

E2SHB 1163 - S COMM AMD
By Committee on Law & Justice

ADOPTED 04/11/2017

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

3 "Sec. 1. RCW 9A.36.041 and 1987 c 188 s 2 are each amended to
4 read as follows:

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

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

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

16 (a) Repetitive domestic violence offense as defined in RCW
17 9.94A.030;

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

19 (c) Assault in the third degree;

20 (d) Assault in the second degree;

21 (e) Assault in the first degree; or

22 (f) An out-of-state comparable offense.

23 (4) For purposes of subsection (3) of this section, family or
24 household members means spouses, domestic partners, former spouses,
25 former domestic partners, persons who have a child in common
26 regardless of whether they have been married or have lived together
27 at any time, persons sixteen years of age or older who are presently
28 residing together or who have resided together in the past and who
29 have or have had a dating relationship, and persons sixteen years of
30 age or older with whom a person sixteen years of age or older has or
31 has had a dating relationship.

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

3 (1) Decision not to prosecute.

4 STANDARD: A prosecuting attorney may decline to prosecute, even
5 though technically sufficient evidence to prosecute exists, in
6 situations where prosecution would serve no public purpose, would
7 defeat the underlying purpose of the law in question or would result
8 in decreased respect for the law.

9 GUIDELINE/COMMENTARY:

10 Examples

11 The following are examples of reasons not to prosecute which
12 could satisfy the standard.

13 (a) Contrary to Legislative Intent - It may be proper to decline
14 to charge where the application of criminal sanctions would be
15 clearly contrary to the intent of the legislature in enacting the
16 particular statute.

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

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

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

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

24 (iv) The statute has not been recently reconsidered by the
25 legislature.

26 This reason is not to be construed as the basis for declining
27 cases because the law in question is unpopular or because it is
28 difficult to enforce.

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

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

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

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

1 (iii) Conviction of the new offense would not serve any
2 significant 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
10 is not particularly aggravated; and

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

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

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

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

33 (i) Assault cases where the victim has suffered little or no
34 injury;

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

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

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

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

3 Notification

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

7 (2) Decision to prosecute.

8 (a) STANDARD:

9 Crimes against persons will be filed if sufficient admissible
10 evidence exists, which, when considered with the most plausible,
11 reasonably foreseeable defense that could be raised under the
12 evidence, would justify conviction by a reasonable and objective fact
13 finder. With regard to offenses prohibited by RCW 9A.44.040,
14 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,
15 9A.44.089, and 9A.64.020 the prosecutor should avoid prefilng
16 agreements or diversions intended to place the accused in a program
17 of treatment or counseling, so that treatment, if determined to be
18 beneficial, can be provided pursuant to RCW 9.94A.670.

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

24 See table below for the crimes within these categories.

25 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

26 CRIMES AGAINST PERSONS

27 Aggravated Murder

28 1st Degree Murder

29 2nd Degree Murder

30 1st Degree Manslaughter

31 2nd Degree Manslaughter

32 1st Degree Kidnapping

33 2nd Degree Kidnapping

34 1st Degree Assault

35 2nd Degree Assault

36 3rd Degree Assault

37 4th Degree Assault (if a violation of RCW 9A.36.041(3))

38 1st Degree Assault of a Child

39 2nd Degree Assault of a Child

1 3rd Degree Assault of a Child
2 1st Degree Rape
3 2nd Degree Rape
4 3rd Degree Rape
5 1st Degree Rape of a Child
6 2nd Degree Rape of a Child
7 3rd Degree Rape of a Child
8 1st Degree Robbery
9 2nd Degree Robbery
10 1st Degree Arson
11 1st Degree Burglary
12 1st Degree Identity Theft
13 2nd Degree Identity Theft
14 1st Degree Extortion
15 2nd Degree Extortion
16 Indecent Liberties
17 Incest
18 Vehicular Homicide
19 Vehicular Assault
20 1st Degree Child Molestation
21 2nd Degree Child Molestation
22 3rd Degree Child Molestation
23 1st Degree Promoting Prostitution
24 Intimidating a Juror
25 Communication with a Minor
26 Intimidating a Witness
27 Intimidating a Public Servant
28 Bomb Threat (if against person)
29 Unlawful Imprisonment
30 Promoting a Suicide Attempt
31 Riot (if against person)
32 Stalking
33 Custodial Assault
34 Domestic Violence Court Order Violation (RCW 10.99.040,
35 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or
36 74.34.145)
37 Counterfeiting (if a violation of RCW 9.16.035(4))
38 Felony Driving a Motor Vehicle While Under the Influence of
39 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))

1 Felony Physical Control of a Motor Vehicle While Under the
2 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

3 CRIMES AGAINST PROPERTY/OTHER CRIMES

4 2nd Degree Arson

5 1st Degree Escape

6 2nd Degree Escape

7 2nd Degree Burglary

8 1st Degree Theft

9 2nd Degree Theft

10 1st Degree Perjury

11 2nd Degree Perjury

12 1st Degree Introducing Contraband

13 2nd Degree Introducing Contraband

14 1st Degree Possession of Stolen Property

15 2nd Degree Possession of Stolen Property

16 Bribery

17 Bribing a Witness

18 Bribe received by a Witness

19 Bomb Threat (if against property)

20 1st Degree Malicious Mischief

21 2nd Degree Malicious Mischief

22 1st Degree Reckless Burning

23 Taking a Motor Vehicle without Authorization

24 Forgery

25 2nd Degree Promoting Prostitution

26 Tampering with a Witness

27 Trading in Public Office

28 Trading in Special Influence

29 Receiving/Granting Unlawful Compensation

30 Bigamy

31 Eluding a Pursuing Police Vehicle

32 Willful Failure to Return from Furlough

33 Escape from Community Custody

34 Riot (if against property)

35 1st Degree Theft of Livestock

36 2nd Degree Theft of Livestock

37 ALL OTHER UNCLASSIFIED FELONIES

38 Selection of Charges/Degree of Charge

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

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

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

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

9 (A) Charging a higher degree;

10 (B) Charging additional counts.

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

17 (b) GUIDELINES/COMMENTARY:

18 (i) Police Investigation

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

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

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

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

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

34 (ii) Exceptions

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

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

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

3 (C) The arrest of the suspect is necessary to complete the
4 investigation of the crime.

5 In the event that the exception to the standard is applied, the
6 prosecuting attorney shall obtain a commitment from the law
7 enforcement agency involved to complete the investigation in a timely
8 manner. If the subsequent investigation does not produce sufficient
9 evidence to meet the normal charging standard, the complaint should
10 be dismissed.

11 (iii) Investigation Techniques

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

14 (A) Polygraph testing;

15 (B) Hypnosis;

16 (C) Electronic surveillance;

17 (D) Use of informants.

18 (iv) Pre-Filing Discussions with Defendant

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

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

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

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

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

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

35 (1) A prior conviction is a conviction which exists before the
36 date of sentencing for the offense for which the offender score is
37 being computed. Convictions entered or sentenced on the same date as
38 the conviction for which the offender score is being computed shall

1 be deemed "other current offenses" within the meaning of RCW
2 9.94A.589.

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

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

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

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

26 (e) If the present conviction is felony driving while under the
27 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
28 felony physical control of a vehicle while under the influence of
29 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
30 crimes for the offense as defined by RCW 46.61.5055(14) shall be
31 included in the offender score, and prior convictions for felony
32 driving while under the influence of intoxicating liquor or any drug
33 (RCW 46.61.502(6)) or felony physical control of a vehicle while
34 under the influence of intoxicating liquor or any drug (RCW
35 46.61.504(6)) shall always be included in the offender score. All
36 other convictions of the defendant shall be scored according to this
37 section.

38 (f) Prior convictions for a repetitive domestic violence offense,
39 as defined in RCW 9.94A.030, shall not be included in the offender
40 score if, since the last date of release from confinement or entry of

1 judgment and sentence, the offender had spent ten consecutive years
2 in the community without committing any crime that subsequently
3 results in a conviction.

4 (g) This subsection applies to both adult and juvenile prior
5 convictions.

6 (3) Out-of-state convictions for offenses shall be classified
7 according to the comparable offense definitions and sentences
8 provided by Washington law. Federal convictions for offenses shall be
9 classified according to the comparable offense definitions and
10 sentences provided by Washington law. If there is no clearly
11 comparable offense under Washington law or the offense is one that is
12 usually considered subject to exclusive federal jurisdiction, the
13 offense shall be scored as a class C felony equivalent if it was a
14 felony under the relevant federal statute.

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

18 (5)(a) In the case of multiple prior convictions, for the purpose
19 of computing the offender score, count all convictions separately,
20 except:

21 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a),
22 to encompass the same criminal conduct, shall be counted as one
23 offense, the offense that yields the highest offender score. The
24 current sentencing court shall determine with respect to other prior
25 adult offenses for which sentences were served concurrently or prior
26 juvenile offenses for which sentences were served consecutively,
27 whether those offenses shall be counted as one offense or as separate
28 offenses using the "same criminal conduct" analysis found in RCW
29 9.94A.589(1)(a), and if the court finds that they shall be counted as
30 one offense, then the offense that yields the highest offender score
31 shall be used. The current sentencing court may presume that such
32 other prior offenses were not the same criminal conduct from
33 sentences imposed on separate dates, or in separate counties or
34 jurisdictions, or in separate complaints, indictments, or
35 informations;

36 (ii) In the case of multiple prior convictions for offenses
37 committed before July 1, 1986, for the purpose of computing the
38 offender score, count all adult convictions served concurrently as
39 one offense, and count all juvenile convictions entered on the same

1 date as one offense. Use the conviction for the offense that yields
2 the highest offender score.

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

9 (6) If the present conviction is one of the anticipatory offenses
10 of criminal attempt, solicitation, or conspiracy, count each prior
11 conviction as if the present conviction were for a completed offense.
12 When these convictions are used as criminal history, score them the
13 same as a completed crime.

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

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

25 (9) If the present conviction is for a serious violent offense,
26 count three points for prior adult and juvenile convictions for
27 crimes in this category, two points for each prior adult and juvenile
28 violent conviction (not already counted), one point for each prior
29 adult nonviolent felony conviction, and 1/2 point for each prior
30 juvenile nonviolent felony conviction.

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

36 (11) If the present conviction is for a felony traffic offense
37 count two points for each adult or juvenile prior conviction for
38 Vehicular Homicide or Vehicular Assault; for each felony offense
39 count one point for each adult and 1/2 point for each juvenile prior
40 conviction; for each serious traffic offense, other than those used

1 for an enhancement pursuant to RCW 46.61.520(2), count one point for
2 each adult and 1/2 point for each juvenile prior conviction; count
3 one point for each adult and 1/2 point for each juvenile prior
4 conviction for operation of a vessel while under the influence of
5 intoxicating liquor or any drug.

6 (12) If the present conviction is for homicide by watercraft or
7 assault by watercraft count two points for each adult or juvenile
8 prior conviction for homicide by watercraft or assault by watercraft;
9 for each felony offense count one point for each adult and 1/2 point
10 for each juvenile prior conviction; count one point for each adult
11 and 1/2 point for each juvenile prior conviction for driving under
12 the influence of intoxicating liquor or any drug, actual physical
13 control of a motor vehicle while under the influence of intoxicating
14 liquor or any drug, or operation of a vessel while under the
15 influence of intoxicating liquor or any drug.

16 (13) If the present conviction is for manufacture of
17 methamphetamine count three points for each adult prior manufacture
18 of methamphetamine conviction and two points for each juvenile
19 manufacture of methamphetamine offense. If the present conviction is
20 for a drug offense and the offender has a criminal history that
21 includes a sex offense or serious violent offense, count three points
22 for each adult prior felony drug offense conviction and two points
23 for each juvenile drug offense. All other adult and juvenile felonies
24 are scored as in subsection (8) of this section if the current drug
25 offense is violent, or as in subsection (7) of this section if the
26 current drug offense is nonviolent.

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

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

34 (16) If the present conviction is for Burglary 2 or residential
35 burglary, count priors as in subsection (7) of this section; however,
36 count two points for each adult and juvenile prior Burglary 1
37 conviction, two points for each adult prior Burglary 2 or residential
38 burglary conviction, and one point for each juvenile prior Burglary 2
39 or residential burglary conviction.

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

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

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

16 (20) If the present conviction is for Theft of a Motor Vehicle,
17 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
18 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
19 priors as in subsections (7) through (18) of this section; however
20 count one point for prior convictions of Vehicle Prowling 2, and
21 three points for each adult and juvenile prior Theft 1 (of a motor
22 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property
23 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor
24 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,
25 Taking a Motor Vehicle Without Permission 1, or Taking a Motor
26 Vehicle Without Permission 2 conviction.

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

32 (a) Count two points for each adult prior conviction where
33 domestic violence as defined in RCW 9.94A.030 was (~~plead~~~~[pleaded]~~)
34 pleaded and proven after August 1, 2011, for any of the following
35 offenses: A felony violation of a no-contact or protection order
36 (~~that is a felony offense, a violation of a protection order that is~~
37 ~~a felony offense~~) RCW 26.50.110, ((a)) felony (~~domestic violence~~)
38 Harassment (~~offense~~) (RCW 9A.46.020(2)(b)), ((a)) felony (~~domestic~~
39 ~~violence~~) Stalking (~~offense, a domestic violence~~) (RCW
40 9A.46.110(5)(b)), Burglary 1 (~~offense~~) (RCW 9A.52.020), ((a

1 domestic violence)) Kidnapping 1 ((offense)) (RCW 9A.40.020), ((a
2 domestic violence)) Kidnapping 2 ((offense)) (RCW 9A.40.030), ((a
3 domestic violence)) Unlawful imprisonment ((offense)) (RCW
4 9A.40.040), ((a domestic violence)) Robbery 1 ((offense)) (RCW
5 9A.56.200), ((a domestic violence)) Robbery 2 ((offense)) (RCW
6 9A.56.210), ((a domestic violence)) Assault 1 ((offense)) (RCW
7 9A.36.011), ((a domestic violence)) Assault 2 ((offense)) (RCW
8 9A.36.021), ((a domestic violence)) Assault 3 ((offense)) (RCW
9 9A.36.031), ((a domestic violence)) Arson 1 ((offense)) (RCW
10 9A.48.020), or ((a domestic violence)) Arson 2 ((offense)) (RCW
11 9A.48.030);

12 (b) Count two points for each adult prior conviction where
13 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
14 after the effective date of this section, for any of the following
15 offenses: Assault of a child in the first degree, RCW 9A.36.120;
16 Assault of a child in the second degree, RCW 9A.36.130; Assault of a
17 child in the third degree, RCW 9A.36.140; Criminal Mistreatment in
18 the first degree, RCW 9A.42.020; or Criminal Mistreatment in the
19 second degree, RCW 9A.42.030;

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

24 (~~(e)~~) (d) Count one point for each adult prior conviction for a
25 repetitive domestic violence offense as defined in RCW 9.94A.030,
26 where domestic violence as defined in RCW 9.94A.030, was (~~plead~~
27 ~~pleaded~~) pleaded and proven after August 1, 2011.

28 (22) The fact that a prior conviction was not included in an
29 offender's offender score or criminal history at a previous
30 sentencing shall have no bearing on whether it is included in the
31 criminal history or offender score for the current offense. Prior
32 convictions that were not counted in the offender score or included
33 in criminal history under repealed or previous versions of the
34 sentencing reform act shall be included in criminal history and shall
35 count in the offender score if the current version of the sentencing
36 reform act requires including or counting those convictions. Prior
37 convictions that were not included in criminal history or in the
38 offender score shall be included upon any resentencing to ensure
39 imposition of an accurate sentence.

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

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

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

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

10 (ii) Assault in the fourth degree with sexual motivation (RCW
11 9A.36.041, 9.94A.835);

12 (iii) Communication with a minor for immoral purposes (RCW
13 9.68A.090);

14 (iv) Custodial sexual misconduct in the second degree (RCW
15 9A.44.170);

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

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

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

21 (viii) Sexual misconduct with a minor in the second degree (RCW
22 9A.44.096);

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

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

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

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

31 (3) Biological samples shall be collected in the following
32 manner:

33 (a) For persons convicted of any offense listed in subsection
34 (1)(a) of this section or adjudicated guilty of an equivalent
35 juvenile offense who do not serve a term of confinement in a
36 department of corrections facility, and do serve a term of
37 confinement in a city or county jail facility, the city or county
38 shall be responsible for obtaining the biological samples.

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

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

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

7 (c) For persons convicted of any offense listed in subsection
8 (1)(a) of this section or adjudicated guilty of an equivalent
9 juvenile offense, who are serving or who are to serve a term of
10 confinement in a department of corrections facility or a department
11 of social and health services facility, the facility holding the
12 person shall be responsible for obtaining the biological samples. For
13 those persons incarcerated before June 12, 2008, who have not yet had
14 a biological sample collected, priority shall be given to those
15 persons who will be released the soonest.

16 (4) Any biological sample taken pursuant to RCW 43.43.752 through
17 43.43.758 may be retained by the forensic laboratory services bureau,
18 and shall be used solely for the purpose of providing DNA or other
19 tests for identification analysis and prosecution of a criminal
20 offense or for the identification of human remains or missing
21 persons. Nothing in this section prohibits the submission of results
22 derived from the biological samples to the federal bureau of
23 investigation combined DNA index system.

24 (5) The forensic laboratory services bureau of the Washington
25 state patrol is responsible for testing performed on all biological
26 samples that are collected under subsection (1) of this section, to
27 the extent allowed by funding available for this purpose. The
28 director shall give priority to testing on samples collected from
29 those adults or juveniles convicted of a felony or adjudicated guilty
30 of an equivalent juvenile offense that is defined as a sex offense or
31 a violent offense in RCW 9.94A.030. Known duplicate samples may be
32 excluded from testing unless testing is deemed necessary or advisable
33 by the director.

34 (6) This section applies to:

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

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

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

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

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

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

11 (8) The detention, arrest, or conviction of a person based upon a
12 database match or database information is not invalidated if it is
13 determined that the sample was obtained or placed in the database by
14 mistake, or if the conviction or juvenile adjudication that resulted
15 in the collection of the biological sample was subsequently vacated
16 or otherwise altered in any future proceeding including but not
17 limited to posttrial or postfact-finding motions, appeals, or
18 collateral attacks.

19 (9) A person commits the crime of refusal to provide DNA if the
20 person has a duty to register under RCW 9A.44.130 and the person
21 willfully refuses to comply with a legal request for a DNA sample as
22 required under this section. The refusal to provide DNA is a gross
23 misdemeanor.

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

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

28 (1) "Agency" means any person, firm, partnership, association,
29 corporation, or facility which receives, provides services to, houses
30 or otherwise cares for vulnerable adults, juveniles, or children, or
31 which provides child day care, early learning, or early childhood
32 education services.

33 (2) "Applicant" means:

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

38 (b) Any prospective volunteer who will have regularly scheduled
39 unsupervised access to children under sixteen years of age,

1 developmentally disabled persons, or vulnerable adults during the
2 course of his or her employment or involvement with the business or
3 organization under circumstances where such access will or may
4 involve groups of (i) five or fewer children under twelve years of
5 age, (ii) three or fewer children between twelve and sixteen years of
6 age, (iii) developmentally disabled persons, or (iv) vulnerable
7 adults;

8 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
9 or

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

12 (3) "Business or organization" means a person, business, or
13 organization licensed in this state, any agency of the state, or
14 other governmental entity, that educates, trains, treats, supervises,
15 houses, or provides recreation to developmentally disabled persons,
16 vulnerable adults, or children under sixteen years of age, or that
17 provides child day care, early learning, or early learning childhood
18 education services, including but not limited to public housing
19 authorities, school districts, and educational service districts.

20 (4) "Civil adjudication proceeding" is a judicial or
21 administrative adjudicative proceeding that results in a finding of,
22 or upholds an agency finding of, domestic violence, abuse, sexual
23 abuse, neglect, abandonment, violation of a professional licensing
24 standard regarding a child or vulnerable adult, or exploitation or
25 financial exploitation of a child or vulnerable adult under any
26 provision of law, including but not limited to chapter 13.34, 26.44,
27 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.
28 "Civil adjudication proceeding" also includes judicial or
29 administrative findings that become final due to the failure of the
30 alleged perpetrator to timely exercise a legal right to
31 administratively challenge such findings.

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

35 (6) "Conviction record" means "conviction record" information as
36 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed
37 by either an adult or a juvenile. It does not include a conviction
38 for an offense that has been the subject of an expungement, pardon,
39 annulment, certificate of rehabilitation, or other equivalent
40 procedure based on a finding of the rehabilitation of the person

1 convicted, or a conviction that has been the subject of a pardon,
2 annulment, or other equivalent procedure based on a finding of
3 innocence. It does include convictions for offenses for which the
4 defendant received a deferred or suspended sentence, unless the
5 record has been expunged according to law.

6 (7) "Crime against children or other persons" means a conviction
7 of any of the following offenses: Aggravated murder; first or second
8 degree murder; first or second degree kidnapping; first, second, or
9 third degree assault; fourth degree assault (if a violation of RCW
10 9A.36.041(3)); first, second, or third degree assault of a child;
11 first, second, or third degree rape; first, second, or third degree
12 rape of a child; first or second degree robbery; first degree arson;
13 first degree burglary; first or second degree manslaughter; first or
14 second degree extortion; indecent liberties; incest; vehicular
15 homicide; first degree promoting prostitution; communication with a
16 minor; unlawful imprisonment; simple assault; sexual exploitation of
17 minors; first or second degree criminal mistreatment; endangerment
18 with a controlled substance; child abuse or neglect as defined in RCW
19 26.44.020; first or second degree custodial interference; first or
20 second degree custodial sexual misconduct; malicious harassment;
21 first, second, or third degree child molestation; first or second
22 degree sexual misconduct with a minor; commercial sexual abuse of a
23 minor; child abandonment; promoting pornography; selling or
24 distributing erotic material to a minor; custodial assault; violation
25 of child abuse restraining order; child buying or selling;
26 prostitution; felony indecent exposure; criminal abandonment; or any
27 of these crimes as they may be renamed in the future.

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

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

35 (10) "Financial exploitation" means "financial exploitation" as
36 defined in RCW 74.34.020.

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

1 (12) "Peer counselor" means a nonprofessional person who has
2 equal standing with another person, providing advice on a topic about
3 which the nonprofessional person is more experienced or
4 knowledgeable, and who is a counselor for a peer counseling program
5 that contracts with or is otherwise approved by the department,
6 another state or local agency, or the court.

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

8 (a) Another employee or volunteer from the same business or
9 organization as the applicant; or

10 (b) Any relative or guardian of any of the children or
11 developmentally disabled persons or vulnerable adults to which the
12 applicant has access during the course of his or her employment or
13 involvement with the business or organization.

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

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

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

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

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

1 (2) The work group must include a representative for each of the
2 following organizations or interests: Superior court judges, district
3 court judges, municipal court judges, court probation officers,
4 prosecuting attorneys, defense attorneys, civil legal aid attorneys,
5 domestic violence victim advocates, domestic violence perpetrator
6 treatment providers, the department of social and health services,
7 the department of corrections, the Washington state institute for
8 public policy, and the University of Washington evidence based
9 practice institute. At least two domestic violence perpetrator
10 treatment providers must be represented as members of the work group.

11 (3) The work group shall: (a) Review laws, regulations, and court
12 and agency practices pertaining to domestic violence perpetrator
13 treatment used in civil and criminal contexts, including criminal
14 domestic violence felony and misdemeanor offenses, family law, child
15 welfare, and protection orders; (b) consider the development of a
16 universal diagnostic evaluation tool to be used by treatment
17 providers and the department of corrections to assess the treatment
18 needs of domestic violence perpetrators; and (c) develop
19 recommendations on changes to existing laws, regulations, and court
20 and agency practices to improve victim safety, decrease recidivism,
21 advance treatment outcomes, and increase the courts' confidence in
22 domestic violence perpetrator treatment.

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

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

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

28 NEW SECTION. **Sec. 8.** (1) The legislature finds that Washington
29 state has a serious problem with domestic violence offender
30 recidivism and lethality. The Washington state institute for public
31 policy studied domestic violence offenders finding not just high
32 rates of domestic violence recidivism but among the highest rates of
33 general criminal and violent recidivism. The Washington state
34 coalition against domestic violence has issued fatality reviews of
35 domestic violence homicides in Washington under chapter 43.235 RCW
36 for over fifteen years. These fatality reviews demonstrate the
37 significant impact of domestic violence on our communities as well as
38 the barriers and high rates of lethality faced by victims. The
39 legislature further notes there have been several high profile

1 domestic violence homicides with multiple prior domestic violence
2 incidents not accounted for in the legal response. Many jurisdictions
3 nationally have encountered the same challenges as Washington and now
4 utilize risk assessment as a best practice to assist in the response
5 to domestic violence.

6 The Washington domestic violence risk assessment work group is
7 established to study how and when risk assessment can best be used to
8 improve the response to domestic violence offenders and victims and
9 find effective strategies to reduce domestic violence homicides,
10 serious injuries, and recidivism that are a result of domestic
11 violence incidents in Washington state.

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

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

- 18 (i) The Washington state gender and justice commission;
- 19 (ii) The department of corrections;
- 20 (iii) The department of social and health services;
- 21 (iv) The Washington association of sheriffs and police chiefs;
- 22 (v) The superior court judges' association;
- 23 (vi) The district and municipal court judges' association;
- 24 (vii) The Washington state association of counties;
- 25 (viii) The Washington association of prosecuting attorneys;
- 26 (ix) The Washington defender association;
- 27 (x) The Washington association of criminal defense lawyers;
- 28 (xi) The Washington state association of cities;
- 29 (xii) The Washington state coalition against domestic violence;
- 30 (xiii) The Washington state office of civil legal aid; and
- 31 (xiv) The family law section of the Washington state bar
32 association.

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

- 34 (i) Treatment providers;
- 35 (ii) City law enforcement;
- 36 (iii) County law enforcement;
- 37 (iv) Court administrators; and
- 38 (v) Domestic violence victims or family members of a victim.

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

1 (a) How to best develop and use risk assessment in domestic
2 violence response utilizing available research and Washington state
3 data;

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

7 (c) Promoting access to domestic violence risk assessment for
8 advocates, police, prosecutors, corrections, and courts to improve
9 domestic violence response;

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

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

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

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

20 (h) Whether or how risk assessment can improve prosecution and
21 encourage prosecutors to aggressively enforce domestic violence laws;
22 and

23 (i) Encouraging private sector collaboration.

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

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

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

29 **Sec. 9.** RCW 9.96.060 and 2014 c 176 s 1 and 2014 c 109 s 1 are
30 each reenacted and amended to read as follows:

31 (1) Every person convicted of a misdemeanor or gross misdemeanor
32 offense who has completed all of the terms of the sentence for the
33 misdemeanor or gross misdemeanor offense may apply to the sentencing
34 court for a vacation of the applicant's record of conviction for the
35 offense. If the court finds the applicant meets the tests prescribed
36 in subsection (2) of this section, the court may in its discretion
37 vacate the record of conviction by: (a)(i) Permitting the applicant
38 to withdraw the applicant's plea of guilty and to enter a plea of not
39 guilty; or (ii) if the applicant has been convicted after a plea of

1 not guilty, the court setting aside the verdict of guilty; and (b)
2 the court dismissing the information, indictment, complaint, or
3 citation against the applicant and vacating the judgment and
4 sentence.

5 (2) An applicant may not have the record of conviction for a
6 misdemeanor or gross misdemeanor offense vacated if any one of the
7 following is present:

8 (a) There are any criminal charges against the applicant pending
9 in any court of this state or another state, or in any federal court;

10 (b) The offense was a violent offense as defined in RCW 9.94A.030
11 or an attempt to commit a violent offense;

12 (c) The offense was a violation of RCW 46.61.502 (driving while
13 under the influence), 46.61.504 (actual physical control while under
14 the influence), 9.91.020 (operating a railroad, etc. while
15 intoxicated), or the offense is considered a "prior offense" under
16 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
17 violation within ten years of the date of arrest for the prior
18 offense;

19 (d) The offense was any misdemeanor or gross misdemeanor
20 violation, including attempt, of chapter 9.68 RCW (obscenity and
21 pornography), chapter 9.68A RCW (sexual exploitation of children), or
22 chapter 9A.44 RCW (sex offenses);

23 (e) The applicant was convicted of a misdemeanor or gross
24 misdemeanor offense as defined in RCW 10.99.020, or the court
25 determines after a review of the court file that the offense was
26 committed by one family member or household member against another,
27 or the court, after considering the damage to person or property that
28 resulted in the conviction, any prior convictions for crimes defined
29 in RCW 10.99.020, or for comparable offenses in another state or in
30 federal court, and the totality of the records under review by the
31 court regarding the conviction being considered for vacation,
32 determines that the offense involved domestic violence, and any one
33 of the following factors exist:

34 (i) The applicant has not provided written notification of the
35 vacation petition to the prosecuting attorney's office that
36 prosecuted the offense for which vacation is sought, or has not
37 provided that notification to the court;

38 (ii) The applicant has previously had a conviction for domestic
39 violence. For purposes of this subsection, however, if the current
40 application is for more than one conviction that arose out of a

1 single incident, none of those convictions counts as a previous
2 conviction;

3 (iii) The applicant has signed an affidavit under penalty of
4 perjury affirming that the applicant has not previously had a
5 conviction for a domestic violence offense, and a criminal history
6 check reveals that the applicant has had such a conviction; or

7 (iv) Less than five years have elapsed since the person completed
8 the terms of the original conditions of the sentence, including any
9 financial obligations and successful completion of any treatment
10 ordered as a condition of sentencing;

11 (f) For any offense other than those described in (e) of this
12 subsection, less than three years have passed since the person
13 completed the terms of the sentence, including any financial
14 obligations;

15 (g) The offender has been convicted of a new crime in this state,
16 another state, or federal court since the date of conviction;

17 (h) The applicant has ever had the record of another conviction
18 vacated; or

19 (i) The applicant is currently restrained, or has been restrained
20 within five years prior to the vacation application, by a domestic
21 violence protection order, a no-contact order, an antiharassment
22 order, or a civil restraining order which restrains one party from
23 contacting the other party.

24 (3) Subject to RCW 9.96.070, every person convicted of
25 prostitution under RCW 9A.88.030 who committed the offense as a
26 result of being a victim of trafficking, RCW 9A.40.100, promoting
27 prostitution in the first degree, RCW 9A.88.070, promoting commercial
28 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
29 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
30 7101 et seq. may apply to the sentencing court for vacation of the
31 applicant's record of conviction for the prostitution offense. An
32 applicant may not have the record of conviction for prostitution
33 vacated if any one of the following is present:

34 (a) There are any criminal charges against the applicant pending
35 in any court of this state or another state, or in any federal court,
36 for any crime other than prostitution; or

37 (b) The offender has been convicted of another crime, except
38 prostitution, in this state, another state, or federal court since
39 the date of conviction.

1 (4) Every person convicted prior to January 1, 1975, of violating
2 any statute or rule regarding the regulation of fishing activities,
3 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
4 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
5 who claimed to be exercising a treaty Indian fishing right, may apply
6 to the sentencing court for vacation of the applicant's record of the
7 misdemeanor, gross misdemeanor, or felony conviction for the offense.
8 If the person is deceased, a member of the person's family or an
9 official representative of the tribe of which the person was a member
10 may apply to the court on behalf of the deceased person.
11 Notwithstanding the requirements of RCW 9.94A.640, the court shall
12 vacate the record of conviction if:

13 (a) The applicant is a member of a tribe that may exercise treaty
14 Indian fishing rights at the location where the offense occurred; and

15 (b) The state has been enjoined from taking enforcement action of
16 the statute or rule to the extent that it interferes with a treaty
17 Indian fishing right as determined under *United States v. Washington*,
18 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
19 899 (D. Oregon 1969), and any posttrial orders of those courts, or
20 any other state supreme court or federal court decision.

21 (5)(a) Once the court vacates a record of conviction under this
22 section, the person shall be released from all penalties and
23 disabilities resulting from the offense and the fact that the person
24 has been convicted of the offense shall not be included in the
25 person's criminal history for purposes of determining a sentence in
26 any subsequent conviction. For all purposes, including responding to
27 questions on employment or housing applications, a person whose
28 conviction has been vacated under this section may state that he or
29 she has never been convicted of that crime. Except as provided in (b)
30 of this subsection, nothing in this section affects or prevents the
31 use of an offender's prior conviction in a later criminal
32 prosecution.

33 (b) When a court vacates a record of domestic violence as defined
34 in RCW 10.99.020 under this section, the state may not use the
35 vacated conviction in a later criminal prosecution unless the
36 conviction was for: (i) Violating the provisions of a restraining
37 order, no-contact order, or protection order restraining or enjoining
38 the person or restraining the person from going on to the grounds of
39 or entering a residence, workplace, school, or day care, or
40 prohibiting the person from knowingly coming within, or knowingly

1 remaining within, a specified distance of a location (RCW 10.99.040,
2 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150,
3 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)
4 stalking (RCW 9A.46.110). A vacated conviction under this section is
5 not considered a conviction of such an offense for the purposes of 27
6 C.F.R. 478.11.

7 (6) All costs incurred by the court and probation services shall
8 be paid by the person making the motion to vacate the record unless a
9 determination is made pursuant to chapter 10.101 RCW that the person
10 making the motion is indigent, at the time the motion is brought.

11 (7) The clerk of the court in which the vacation order is entered
12 shall immediately transmit the order vacating the conviction to the
13 Washington state patrol identification section and to the local
14 police agency, if any, which holds criminal history information for
15 the person who is the subject of the conviction. The Washington state
16 patrol and any such local police agency shall immediately update
17 their records to reflect the vacation of the conviction, and shall
18 transmit the order vacating the conviction to the federal bureau of
19 investigation. A conviction that has been vacated under this section
20 may not be disseminated or disclosed by the state patrol or local law
21 enforcement agency to any person, except other criminal justice
22 enforcement agencies.

23 **Sec. 10.** RCW 9.94A.515 and 2016 c 213 s 5, 2016 c 164 s 13, and
24 2016 c 6 s 1 are each reenacted and amended to read as follows:

25 TABLE 2

26 CRIMES INCLUDED WITHIN EACH
27 SERIOUSNESS LEVEL

- 28 XVI Aggravated Murder 1 (RCW 10.95.020)
- 29 XV Homicide by abuse (RCW 9A.32.055)
- 30 Malicious explosion 1 (RCW
31 70.74.280(1))
- 32 Murder 1 (RCW 9A.32.030)
- 33 XIV Murder 2 (RCW 9A.32.050)
- 34 Trafficking 1 (RCW 9A.40.100(1))
- 35 XIII Malicious explosion 2 (RCW
36 70.74.280(2))

1 Malicious placement of an explosive 1
2 (RCW 70.74.270(1))
3 XII Assault 1 (RCW 9A.36.011)
4 Assault of a Child 1 (RCW 9A.36.120)
5 Malicious placement of an imitation
6 device 1 (RCW 70.74.272(1)(a))
7 Promoting Commercial Sexual Abuse of
8 a Minor (RCW 9.68A.101)
9 Rape 1 (RCW 9A.44.040)
10 Rape of a Child 1 (RCW 9A.44.073)
11 Trafficking 2 (RCW 9A.40.100(3))
12 XI Manslaughter 1 (RCW 9A.32.060)
13 Rape 2 (RCW 9A.44.050)
14 Rape of a Child 2 (RCW 9A.44.076)
15 Vehicular Homicide, by being under the
16 influence of intoxicating liquor or
17 any drug (RCW 46.61.520)
18 Vehicular Homicide, by the operation of
19 any vehicle in a reckless manner
20 (RCW 46.61.520)
21 X Child Molestation 1 (RCW 9A.44.083)
22 Criminal Mistreatment 1 (RCW
23 9A.42.020)
24 Indecent Liberties (with forcible
25 compulsion) (RCW
26 9A.44.100(1)(a))
27 Kidnapping 1 (RCW 9A.40.020)
28 Leading Organized Crime (RCW
29 9A.82.060(1)(a))
30 Malicious explosion 3 (RCW
31 70.74.280(3))
32 Sexually Violent Predator Escape (RCW
33 9A.76.115)
34 IX Abandonment of Dependent Person 1
35 (RCW 9A.42.060)

1 Assault of a Child 2 (RCW 9A.36.130)
2 Explosive devices prohibited (RCW
3 70.74.180)
4 Hit and Run—Death (RCW
5 46.52.020(4)(a))
6 Homicide by Watercraft, by being under
7 the influence of intoxicating liquor
8 or any drug (RCW 79A.60.050)
9 Inciting Criminal Profiteering (RCW
10 9A.82.060(1)(b))
11 Malicious placement of an explosive 2
12 (RCW 70.74.270(2))
13 Robbery 1 (RCW 9A.56.200)
14 Sexual Exploitation (RCW 9.68A.040)
15 VIII Arson 1 (RCW 9A.48.020)
16 Commercial Sexual Abuse of a Minor
17 (RCW 9.68A.100)
18 Homicide by Watercraft, by the
19 operation of any vessel in a reckless
20 manner (RCW 79A.60.050)
21 Manslaughter 2 (RCW 9A.32.070)
22 Promoting Prostitution 1 (RCW
23 9A.88.070)
24 Theft of Ammonia (RCW 69.55.010)
25 VII Air bag diagnostic systems (causing
26 bodily injury or death) (RCW
27 46.37.660(2)(b))
28 Air bag replacement requirements
29 (causing bodily injury or death)
30 (RCW 46.37.660(1)(b))
31 Burglary 1 (RCW 9A.52.020)
32 Child Molestation 2 (RCW 9A.44.086)
33 Civil Disorder Training (RCW
34 9A.48.120)

1 Dealing in depictions of minor engaged
2 in sexually explicit conduct 1
3 (RCW 9.68A.050(1))
4 Drive-by Shooting (RCW 9A.36.045)
5 Homicide by Watercraft, by disregard
6 for the safety of others (RCW
7 79A.60.050)
8 Indecent Liberties (without forcible
9 compulsion) (RCW 9A.44.100(1)
10 (b) and (c))
11 Introducing Contraband 1 (RCW
12 9A.76.140)
13 Malicious placement of an explosive 3
14 (RCW 70.74.270(3))
15 Manufacture or import counterfeit,
16 nonfunctional, damaged, or
17 previously deployed air bag
18 (causing bodily injury or death)
19 (RCW 46.37.650(1)(b))
20 Negligently Causing Death By Use of a
21 Signal Preemption Device (RCW
22 46.37.675)
23 Sale, install, ~~((for))~~ or reinstall
24 counterfeit, nonfunctional,
25 damaged, or previously deployed
26 airbag (RCW 46.37.650(2)(b))
27 Sending, bringing into state depictions
28 of minor engaged in sexually
29 explicit conduct 1 (RCW
30 9.68A.060(1))
31 Unlawful Possession of a Firearm in the
32 first degree (RCW 9.41.040(1))
33 Use of a Machine Gun in Commission
34 of a Felony (RCW 9.41.225)
35 Vehicular Homicide, by disregard for
36 the safety of others (RCW
37 46.61.520)

1 VI Bail Jumping with Murder 1 (RCW
2 9A.76.170(3)(a))
3 Bribery (RCW 9A.68.010)
4 Incest 1 (RCW 9A.64.020(1))
5 Intimidating a Judge (RCW 9A.72.160)
6 Intimidating a Juror/Witness (RCW
7 9A.72.110, 9A.72.130)
8 Malicious placement of an imitation
9 device 2 (RCW 70.74.272(1)(b))
10 Possession of Depictions of a Minor
11 Engaged in Sexually Explicit
12 Conduct 1 (RCW 9.68A.070(1))
13 Rape of a Child 3 (RCW 9A.44.079)
14 Theft of a Firearm (RCW 9A.56.300)
15 Unlawful Storage of Ammonia (RCW
16 69.55.020)
17 V Abandonment of Dependent Person 2
18 (RCW 9A.42.070)
19 Advancing money or property for
20 extortionate extension of credit
21 (RCW 9A.82.030)
22 Air bag diagnostic systems (RCW
23 46.37.660(2)(c))
24 Air bag replacement requirements
25 (RCW 46.37.660(1)(c))
26 Bail Jumping with class A Felony
27 (RCW 9A.76.170(3)(b))
28 Child Molestation 3 (RCW 9A.44.089)
29 Criminal Mistreatment 2 (RCW
30 9A.42.030)
31 Custodial Sexual Misconduct 1 (RCW
32 9A.44.160)
33 Dealing in Depictions of Minor
34 Engaged in Sexually Explicit
35 Conduct 2 (RCW 9.68A.050(2))

1 Domestic Violence Court Order
2 Violation (RCW 10.99.040,
3 10.99.050, 26.09.300, 26.10.220,
4 26.26.138, 26.50.110, 26.52.070, or
5 74.34.145)
6 Driving While Under the Influence
7 (RCW 46.61.502(6))
8 Extortion 1 (RCW 9A.56.120)
9 Extortionate Extension of Credit (RCW
10 9A.82.020)
11 Extortionate Means to Collect
12 Extensions of Credit (RCW
13 9A.82.040)
14 Incest 2 (RCW 9A.64.020(2))
15 Kidnapping 2 (RCW 9A.40.030)
16 Manufacture or import counterfeit,
17 nonfunctional, damaged, or
18 previously deployed air bag (RCW
19 46.37.650(1)(c))
20 Perjury 1 (RCW 9A.72.020)
21 Persistent prison misbehavior (RCW
22 9.94.070)
23 Physical Control of a Vehicle While
24 Under the Influence (RCW
25 46.61.504(6))
26 Possession of a Stolen Firearm (RCW
27 9A.56.310)
28 Rape 3 (RCW 9A.44.060)
29 Rendering Criminal Assistance 1 (RCW
30 9A.76.070)
31 Sale, install, ~~((for))~~ or reinstall
32 counterfeit, nonfunctional,
33 damaged, or previously deployed
34 airbag (RCW 46.37.650(2)(c))

1 Sending, Bringing into State Depictions
2 of Minor Engaged in Sexually
3 Explicit Conduct 2 (RCW
4 9.68A.060(2))
5 Sexual Misconduct with a Minor 1
6 (RCW 9A.44.093)
7 Sexually Violating Human Remains
8 (RCW 9A.44.105)
9 Stalking (RCW 9A.46.110)
10 Taking Motor Vehicle Without
11 Permission 1 (RCW 9A.56.070)
12 IV Arson 2 (RCW 9A.48.030)
13 Assault 2 (RCW 9A.36.021)
14 Assault 3 (of a Peace Officer with a
15 Projectile Stun Gun) (RCW
16 9A.36.031(1)(h))
17 Assault 4 (third domestic violence
18 offense) (RCW 9A.36.041(3))
19 Assault by Watercraft (RCW
20 79A.60.060)
21 Bribing a Witness/Bribe Received by
22 Witness (RCW 9A.72.090,
23 9A.72.100)
24 Cheating 1 (RCW 9.46.1961)
25 Commercial Bribery (RCW 9A.68.060)
26 Counterfeiting (RCW 9.16.035(4))
27 Endangerment with a Controlled
28 Substance (RCW 9A.42.100)
29 Escape 1 (RCW 9A.76.110)
30 Hit and Run—Injury (RCW
31 46.52.020(4)(b))
32 Hit and Run with Vessel—Injury
33 Accident (RCW 79A.60.200(3))
34 Identity Theft 1 (RCW 9.35.020(2))

1 Indecent Exposure to Person Under Age
2 Fourteen (subsequent sex offense)
3 (RCW 9A.88.010)
4 Influencing Outcome of Sporting Event
5 (RCW 9A.82.070)
6 Malicious Harassment (RCW
7 9A.36.080)
8 Possession of Depictions of a Minor
9 Engaged in Sexually Explicit
10 Conduct 2 (RCW 9.68A.070(2))
11 Residential Burglary (RCW 9A.52.025)
12 Robbery 2 (RCW 9A.56.210)
13 Theft of Livestock 1 (RCW 9A.56.080)
14 Threats to Bomb (RCW 9.61.160)
15 Trafficking in Stolen Property 1 (RCW
16 9A.82.050)
17 Unlawful factoring of a credit card or
18 payment card transaction (RCW
19 9A.56.290(4)(b))
20 Unlawful transaction of health coverage
21 as a health care service contractor
22 (RCW 48.44.016(3))
23 Unlawful transaction of health coverage
24 as a health maintenance
25 organization (RCW 48.46.033(3))
26 Unlawful transaction of insurance
27 business (RCW 48.15.023(3))
28 Unlicensed practice as an insurance
29 professional (RCW 48.17.063(2))
30 Use of Proceeds of Criminal
31 Profiteering (RCW 9A.82.080 (1)
32 and (2))
33 Vehicle Prowling 2 (third or subsequent
34 offense) (RCW 9A.52.100(3))

1 Vehicular Assault, by being under the
2 influence of intoxicating liquor or
3 any drug, or by the operation or
4 driving of a vehicle in a reckless
5 manner (RCW 46.61.522)

6 Viewing of Depictions of a Minor
7 Engaged in Sexually Explicit
8 Conduct 1 (RCW 9.68A.075(1))

9 Willful Failure to Return from Furlough
10 (RCW 72.66.060)

11 III Animal Cruelty 1 (Sexual Conduct or
12 Contact) (RCW 16.52.205(3))

13 Assault 3 (Except Assault 3 of a Peace
14 Officer With a Projectile Stun Gun)
15 (RCW 9A.36.031 except subsection
16 (1)(h))

17 Assault of a Child 3 (RCW 9A.36.140)

18 Bail Jumping with class B or C Felony
19 (RCW 9A.76.170(3)(c))

20 Burglary 2 (RCW 9A.52.030)

21 Communication with a Minor for
22 Immoral Purposes (RCW
23 9.68A.090)

24 Criminal Gang Intimidation (RCW
25 9A.46.120)

26 Custodial Assault (RCW 9A.36.100)

27 Cyberstalking (subsequent conviction or
28 threat of death) (RCW 9.61.260(3))

29 Escape 2 (RCW 9A.76.120)

30 Extortion 2 (RCW 9A.56.130)

31 Harassment (RCW 9A.46.020)

32 Intimidating a Public Servant (RCW
33 9A.76.180)

34 Introducing Contraband 2 (RCW
35 9A.76.150)

1 Malicious Injury to Railroad Property
2 (RCW 81.60.070)
3 Mortgage Fraud (RCW 19.144.080)
4 Negligently Causing Substantial Bodily
5 Harm By Use of a Signal
6 Preemption Device (RCW
7 46.37.674)
8 Organized Retail Theft 1 (RCW
9 9A.56.350(2))
10 Perjury 2 (RCW 9A.72.030)
11 Possession of Incendiary Device (RCW
12 9.40.120)
13 Possession of Machine Gun or Short-
14 Barreled Shotgun or Rifle (RCW
15 9.41.190)
16 Promoting Prostitution 2 (RCW
17 9A.88.080)
18 Retail Theft with Special Circumstances
19 1 (RCW 9A.56.360(2))
20 Securities Act violation (RCW
21 21.20.400)
22 Tampering with a Witness (RCW
23 9A.72.120)
24 Telephone Harassment (subsequent
25 conviction or threat of death) (RCW
26 9.61.230(2))
27 Theft of Livestock 2 (RCW 9A.56.083)
28 Theft with the Intent to Resell 1 (RCW
29 9A.56.340(2))
30 Trafficking in Stolen Property 2 (RCW
31 9A.82.055)
32 Unlawful Hunting of Big Game 1 (RCW
33 77.15.410(3)(b))
34 Unlawful Imprisonment (RCW
35 9A.40.040)

1 Unlawful Misbranding of Food Fish or
2 Shellfish 1 (RCW 69.04.938(3))
3 Unlawful possession of firearm in the
4 second degree (RCW 9.41.040(2))
5 Unlawful Taking of Endangered Fish or
6 Wildlife 1 (RCW 77.15.120(3)(b))
7 Unlawful Trafficking in Fish, Shellfish,
8 or Wildlife 1 (RCW
9 77.15.260(3)(b))
10 Unlawful Use of a Nondesignated
11 Vessel (RCW 77.15.530(4))
12 Vehicular Assault, by the operation or
13 driving of a vehicle with disregard
14 for the safety of others (RCW
15 46.61.522)
16 Willful Failure to Return from Work
17 Release (RCW 72.65.070)
18 II Commercial Fishing Without a License
19 1 (RCW 77.15.500(3)(b))
20 Computer Trespass 1 (RCW 9A.90.040)
21 Counterfeiting (RCW 9.16.035(3))
22 Electronic Data Service Interference
23 (RCW 9A.90.060)
24 Electronic Data Tampering 1 (RCW
25 9A.90.080)
26 Electronic Data Theft (RCW 9A.90.100)
27 Engaging in Fish Dealing Activity
28 Unlicensed 1 (RCW 77.15.620(3))
29 Escape from Community Custody
30 (RCW 72.09.310)
31 Failure to Register as a Sex Offender
32 (second or subsequent offense)
33 (RCW 9A.44.130 prior to June 10,
34 2010, and RCW 9A.44.132)
35 Health Care False Claims (RCW
36 48.80.030)

1 Identity Theft 2 (RCW 9.35.020(3))
2 Improperly Obtaining Financial
3 Information (RCW 9.35.010)
4 Malicious Mischief 1 (RCW 9A.48.070)
5 Organized Retail Theft 2 (RCW
6 9A.56.350(3))
7 Possession of Stolen Property 1 (RCW
8 9A.56.150)
9 Possession of a Stolen Vehicle (RCW
10 9A.56.068)
11 Retail Theft with Special Circumstances
12 2 (RCW 9A.56.360(3))
13 Scrap Processing, Recycling, or
14 Supplying Without a License
15 (second or subsequent offense)
16 (RCW 19.290.100)
17 Theft 1 (RCW 9A.56.030)
18 Theft of a Motor Vehicle (RCW
19 9A.56.065)
20 Theft of Rental, Leased, Lease-
21 purchased, or Loaned Property
22 (valued at five thousand dollars or
23 more) (RCW 9A.56.096(5)(a))
24 Theft with the Intent to Resell 2 (RCW
25 9A.56.340(3))
26 Trafficking in Insurance Claims (RCW
27 48.30A.015)
28 Unlawful factoring of a credit card or
29 payment card transaction (RCW
30 9A.56.290(4)(a))
31 Unlawful Participation of Non-Indians
32 in Indian Fishery (RCW
33 77.15.570(2))
34 Unlawful Practice of Law (RCW
35 2.48.180)

1 Unlawful Purchase or Use of a License
2 (RCW 77.15.650(3)(b))
3 Unlawful Trafficking in Fish, Shellfish,
4 or Wildlife 2 (RCW
5 77.15.260(3)(a))
6 Unlicensed Practice of a Profession or
7 Business (RCW 18.130.190(7))
8 Voyeurism (RCW 9A.44.115)
9 I Attempting to Elude a Pursuing Police
10 Vehicle (RCW 46.61.024)
11 False Verification for Welfare (RCW
12 74.08.055)
13 Forgery (RCW 9A.60.020)
14 Fraudulent Creation or Revocation of a
15 Mental Health Advance Directive
16 (RCW 9A.60.060)
17 Malicious Mischief 2 (RCW 9A.48.080)
18 Mineral Trespass (RCW 78.44.330)
19 Possession of Stolen Property 2 (RCW
20 9A.56.160)
21 Reckless Burning 1 (RCW 9A.48.040)
22 Spotlighting Big Game 1 (RCW
23 77.15.450(3)(b))
24 Suspension of Department Privileges 1
25 (RCW 77.15.670(3)(b))
26 Taking Motor Vehicle Without
27 Permission 2 (RCW 9A.56.075)
28 Theft 2 (RCW 9A.56.040)
29 Theft of Rental, Leased, Lease-
30 purchased, or Loaned Property
31 (valued at seven hundred fifty
32 dollars or more but less than five
33 thousand dollars) (RCW
34 9A.56.096(5)(b))

1 Transaction of insurance business
2 beyond the scope of licensure
3 (RCW 48.17.063)
4 Unlawful Fish and Shellfish Catch
5 Accounting (RCW 77.15.630(3)(b))
6 Unlawful Issuance of Checks or Drafts
7 (RCW 9A.56.060)
8 Unlawful Possession of Fictitious
9 Identification (RCW 9A.56.320)
10 Unlawful Possession of Instruments of
11 Financial Fraud (RCW 9A.56.320)
12 Unlawful Possession of Payment
13 Instruments (RCW 9A.56.320)
14 Unlawful Possession of a Personal
15 Identification Device (RCW
16 9A.56.320)
17 Unlawful Production of Payment
18 Instruments (RCW 9A.56.320)
19 Unlawful Releasing, Planting,
20 Possessing, or Placing Deleterious
21 Exotic Wildlife (RCW
22 77.15.250(2)(b))
23 Unlawful Trafficking in Food Stamps
24 (RCW 9.91.142)
25 Unlawful Use of Food Stamps (RCW
26 9.91.144)
27 Unlawful Use of Net to Take Fish 1
28 (RCW 77.15.580(3)(b))
29 Unlawful Use of Prohibited Aquatic
30 Animal Species (RCW
31 77.15.253(3))
32 Vehicle Prowl 1 (RCW 9A.52.095)
33 Violating Commercial Fishing Area or
34 Time 1 (RCW 77.15.550(3)(b))"

1 On page 1, line 1 of the title, after "violence;" strike the
2 remainder of the title and insert "amending RCW 9A.36.041, 9.94A.525,
3 43.43.754, and 43.43.830; reenacting and amending RCW 9.94A.411,
4 9.96.060, and 9.94A.515; adding a new section to chapter 7.36 RCW;
5 creating new sections; prescribing penalties; and providing
6 expiration dates."

EFFECT: Prevents the state from using a vacated misdemeanor or gross misdemeanor record of domestic violence in a later criminal prosecution unless the conviction was for violation of a restraining order or stalking. Such vacated record is not a conviction for purposes of precluding possession of a firearm under federal law. Ranks assault in the fourth degree where domestic violence was pleaded and proven as a seriousness level IV.

--- END ---

E2SHB 1163 - S COMM AMD
By Committee on Law & Justice

ADOPTED 04/11/2017