HOUSE BILL 2619

State of Washington 65th Legislature 2018 Regular Session

By Representatives Irwin, Eslick, Orwall, Pellicciotti, Volz, Walsh, Griffey, Hayes, Johnson, Van Werven, Stambaugh, Wylie, Muri, McDonald, and Young

Read first time 01/11/18. Referred to Committee on Public Safety.

AN ACT Relating to protecting the public by increasing penalties for certain repeat offenders who engage in lurid criminal conduct; amending RCW 9A.36.041 and 9A.88.010; reenacting and amending RCW 9.94A.515; and prescribing penalties.

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

6 Sec. 1. RCW 9A.36.041 and 2017 c 272 s 1 are each amended to 7 read as follows:

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

(2) Assault in the fourth degree is a gross misdemeanor, except
 as provided in subsections (3) and (4) of this section.

(3) Assault in the fourth degree, where domestic violence was pleaded and proven after July 23, 2017, is a class C felony if the person has two or more prior adult convictions within ten years for any of the following offenses where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017:

18 (a) Repetitive domestic violence offense as defined in RCW19 9.94A.030;

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

21 (c) Assault in the third degree;

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1 (d) Assault in the second degree;

2 (e) Assault in the first degree; or

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

4 (4) Assault in the fourth degree, where sexual motivation was
5 pleaded and proven after the effective date of this section, is a
6 class C felony if the person has two or more prior adult convictions
7 within ten years for any of the following offenses where sexual
8 motivation was pleaded and proven:

9 <u>(a)</u> Assault in the fourth degree;

10 (b) Assault in the third degree;

11 (c) Assault in the second degree;

12 (d) Assault in the first degree;

13 (e) A municipal offense comparable to an offense under (a) 14 through (d) of this subsection; or

15 (f) An out-of-state offense comparable to an offense under (a) 16 through (d) of this subsection.

17 (5) For purposes of subsection (3) of this section, family or household members means spouses, domestic partners, former spouses, 18 19 former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together 20 at any time, persons sixteen years of age or older who are presently 21 residing together or who have resided together in the past and who 22 have or have had a dating relationship, and persons sixteen years of 23 age or older with whom a person sixteen years of age or older has or 24 25 has had a dating relationship.

26 **Sec. 2.** RCW 9A.88.010 and 2003 c 53 s 92 are each amended to 27 read as follows:

(1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

33 (2)(a) Except as provided in (b) and (c) of this subsection,34 indecent exposure is a misdemeanor.

35 (b) Indecent exposure is a gross misdemeanor on the first offense 36 if the person exposes himself or herself to a person under the age of 37 fourteen years.

38 (c) Indecent exposure is a class C felony if the person <u>exposes</u>
 39 <u>himself or herself to a person under the age of fourteen years and</u>

has previously been convicted under this section ((or)), of a sex offense as defined in RCW 9.94A.030, or of a municipal offense or out-of-state offense comparable to indecent exposure under this section or a sex offense as defined in RCW 9.94A.030.

5 <u>(d) Indecent exposure is a class C felony if the person exposes</u> 6 himself or herself to a person fourteen years of age or older and has 7 previously been convicted under this section, of a sex offense as 8 defined in RCW 9.94A.030, or of a municipal offense or out-of-state 9 offense comparable to indecent exposure under this section or a sex 10 offense as defined in RCW 9.94A.030.

Sec. 3. RCW 9.94A.515 and 2017 c 335 s 4, 2017 c 292 s 3, 2017 c 272 s 10, and 2017 c 266 s 8 are each reenacted and amended to read as follows:

14	TABLE 2
15	CRIMES INCLUDED WITHIN EACH
16	SERIOUSNESS LEVEL
17 XVI	Aggravated Murder 1 (RCW 10.95.020)
18 XV	Homicide by abuse (RCW 9A.32.055)
19	Malicious explosion 1 (RCW
20	70.74.280(1))
21	Murder 1 (RCW 9A.32.030)
22 XIV	Murder 2 (RCW 9A.32.050)
23	Trafficking 1 (RCW 9A.40.100(1))
24 XIII	Malicious explosion 2 (RCW
25	70.74.280(2))
26	Malicious placement of an explosive 1
27	(RCW 70.74.270(1))
28 XII	Assault 1 (RCW 9A.36.011)
29	Assault of a Child 1 (RCW 9A.36.120)
30	Malicious placement of an imitation
31	device 1 (RCW 70.74.272(1)(a))
32	Promoting Commercial Sexual Abuse of
33	a Minor (RCW 9.68A.101)
34	Rape 1 (RCW 9A.44.040)
35	Rape of a Child 1 (RCW 9A.44.073)

1		Trafficking 2 (RCW 9A.40.100(3))
2	XI	Manslaughter 1 (RCW 9A.32.060)
3		Rape 2 (RCW 9A.44.050)
4		Rape of a Child 2 (RCW 9A.44.076)
5		Vehicular Homicide, by being under the
6		influence of intoxicating liquor or
7		any drug (RCW 46.61.520)
8		Vehicular Homicide, by the operation of
9		any vehicle in a reckless manner
10		(RCW 46.61.520)
11	Х	Child Molestation 1 (RCW 9A.44.083)
12		Criminal Mistreatment 1 (RCW
13		9A.42.020)
14		Indecent Liberties (with forcible
15		compulsion) (RCW
16		9A.44.100(1)(a))
17		Kidnapping 1 (RCW 9A.40.020)
18		Leading Organized Crime (RCW
19		9A.82.060(1)(a))
20		Malicious explosion 3 (RCW
21		70.74.280(3))
22		Sexually Violent Predator Escape (RCW
23		9A.76.115)
24	IX	Abandonment of Dependent Person 1
25		(RCW 9A.42.060)
26		Assault of a Child 2 (RCW 9A.36.130)
27		Explosive devices prohibited (RCW
28		70.74.180)
29		Hit and Run—Death (RCW
30		46.52.020(4)(a))
31		Homicide by Watercraft, by being under
32		the influence of intoxicating liquor
33		or any drug (RCW 79A.60.050)
34		Inciting Criminal Profiteering (RCW
35		9A.82.060(1)(b))

1		Malicious placement of an explosive 2
2		(RCW 70.74.270(2))
3		Robbery 1 (RCW 9A.56.200)
4		Sexual Exploitation (RCW 9.68A.040)
5	VIII	Arson 1 (RCW 9A.48.020)
6 7		Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
8		Homicide by Watercraft, by the
9 10		operation of any vessel in a reckless manner (RCW 79A.60.050)
11		Manslaughter 2 (RCW 9A.32.070)
12 13		Promoting Prostitution 1 (RCW 9A.88.070)
14		Theft of Ammonia (RCW 69.55.010)
15 16 17	VII	Air bag diagnostic systems (causing bodily injury or death) (RCW 46.37.660(2)(b))
18 19 20		Air bag replacement requirements (causing bodily injury or death) (RCW 46.37.660(1)(b))
21		Burglary 1 (RCW 9A.52.020)
22		Child Molestation 2 (RCW 9A.44.086)
23 24		Civil Disorder Training (RCW 9A.48.120)
25 26 27		Dealing in depictions of minor engaged in sexually explicit conduct 1
		(RCW 9.68A.050(1))
28		Drive-by Shooting (RCW 9A.36.045)
29 30 31		Homicide by Watercraft, by disregard for the safety of others (RCW
32		79A.60.050)
33 34		Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))

1		Introducing Contraband 1 (RCW
2		9A.76.140)
3		Malicious placement of an explosive 3
4		(RCW 70.74.270(3))
5		Manufacture or import counterfeit,
б		nonfunctional, damaged, or
7		previously deployed air bag
8		(causing bodily injury or death)
9		(RCW 46.37.650(1)(b))
10		Negligently Causing Death By Use of a
11		Signal Preemption Device (RCW
12		46.37.675)
13		((Sale [of])) Sell, install, or reinstall
14		counterfeit, nonfunctional,
15		damaged, or previously deployed
16		airbag (RCW 46.37.650(2)(b))
17		Sending, bringing into state depictions
18		of minor engaged in sexually
19		explicit conduct 1 (RCW
20		9.68A.060(1))
21		Unlawful Possession of a Firearm in the
22		first degree (RCW 9.41.040(1))
23		Use of a Machine Gun in Commission
24		of a Felony (RCW 9.41.225)
25		Vehicular Homicide, by disregard for
26		the safety of others (RCW
27		46.61.520)
28	VI	Bail Jumping with Murder 1 (RCW
29		9A.76.170(3)(a))
30		Bribery (RCW 9A.68.010)
31		Incest 1 (RCW 9A.64.020(1))
32		Intimidating a Judge (RCW 9A.72.160)
33		Intimidating a Juror/Witness (RCW
34		9A.72.110, 9A.72.130)
35		Malicious placement of an imitation
36		device 2 (RCW 70.74.272(1)(b))

1	Possession of Depictions of a Minor	
2	Engaged in Sexually Explicit	
3	Conduct 1 (RCW 9.68A.070(1))	
4	Rape of a Child 3 (RCW 9A.44.079)	
5	Theft of a Firearm (RCW 9A.56.300)	
6 7	Theft from a Vulnerable Adult 1 (RCW 9A.56.400(1))	
8 9	Unlawful Storage of Ammonia (RCW 69.55.020)	
10	V Abandonment of Dependent Person 2	
11	(RCW 9A.42.070)	
12	Advancing money or property for	
13 14	extortionate extension of credit (RCW 9A.82.030)	
15	Air bag diagnostic systems (RCW	
16	46.37.660(2)(c))	
17	Air bag replacement requirements	
18	(RCW 46.37.660(1)(c))	
19	Bail Jumping with class A Felony	
20	(RCW 9A.76.170(3)(b))	
21	Child Molestation 3 (RCW 9A.44.089)	
22	Criminal Mistreatment 2 (RCW	
23	9A.42.030)	
24	Custodial Sexual Misconduct 1 (RCW	
25	9A.44.160)	
26	Dealing in Depictions of Minor	
27	Engaged in Sexually Explicit	
28	Conduct 2 (RCW 9.68A.050(2))	
29	Domestic Violence Court Order	
30	Violation (RCW 10.99.040,	
31	10.99.050, 26.09.300, 26.10.220,	
32	26.26.138, 26.50.110, 26.52.070, or	
33	74.34.145)	
34	Extortion 1 (RCW 9A.56.120)	
35	Extortionate Extension of Credit (RCW	
36	9A.82.020)	

1		Extortionate Means to Collect
2		Extensions of Credit (RCW
3		9A.82.040)
4		Incest 2 (RCW 9A.64.020(2))
5		Kidnapping 2 (RCW 9A.40.030)
6		Manufacture or import counterfeit,
7		nonfunctional, damaged, or
8		previously deployed air bag (RCW
9		46.37.650(1)(c))
10		Perjury 1 (RCW 9A.72.020)
11		Persistent prison misbehavior (RCW
12		9.94.070)
13		Possession of a Stolen Firearm (RCW
14		9A.56.310)
15		Rape 3 (RCW 9A.44.060)
16		Rendering Criminal Assistance 1 (RCW
17		9A.76.070)
18		((Sale [of])) Sell, install, or reinstall
19		counterfeit, nonfunctional,
20		damaged, or previously deployed
21		airbag (RCW 46.37.650(2)(c))
22		Sending, Bringing into State Depictions
23		of Minor Engaged in Sexually
24		Explicit Conduct 2 (RCW
25		9.68A.060(2))
26		Sexual Misconduct with a Minor 1
27		(RCW 9A.44.093)
28		Sexually Violating Human Remains
29		(RCW 9A.44.105)
30		Stalking (RCW 9A.46.110)
31		Taking Motor Vehicle Without
32		Permission 1 (RCW 9A.56.070)
33	IV	Arson 2 (RCW 9A.48.030)
34		Assault 2 (RCW 9A.36.021)

1	Assault 3 (of a Peace Officer with a
2	Projectile Stun Gun) (RCW
3	9A.36.031(1)(h))
4	Assault 4 (third domestic violence
5	offense) (RCW 9A.36.041(3))
6	Assault by Watercraft (RCW
7	79A.60.060)
8 9	Bribing a Witness/Bribe Received by
10	Witness (RCW 9A.72.090, 9A.72.100)
11	Cheating 1 (RCW 9.46.1961)
12	
	Commercial Bribery (RCW 9A.68.060)
13	Counterfeiting (RCW 9.16.035(4))
14 15	Driving While Under the Influence
	(RCW 46.61.502(6))
16 17	Endangerment with a Controlled
	Substance (RCW 9A.42.100)
18	Escape 1 (RCW 9A.76.110)
19 20	Hit and Run—Injury (RCW
	46.52.020(4)(b))
21 22	Hit and Run with Vessel—Injury
	Accident (RCW 79A.60.200(3))
23	Identity Theft 1 (RCW 9.35.020(2))
24 25	Indecent Exposure to Person Under Age
26	Fourteen (subsequent sex offense) (RCW 9A.88.010(2)(c))
27	
28	Influencing Outcome of Sporting Event (RCW 9A.82.070)
29	Malicious Harassment (RCW
30	9A.36.080)
31	Physical Control of a Vehicle While
32	Under the Influence (RCW
33	46.61.504(6))
34	Possession of Depictions of a Minor
35	Engaged in Sexually Explicit
36	Conduct 2 (RCW 9.68A.070(2))

1		Residential Burglary (RCW 9A.52.025)
2		Robbery 2 (RCW 9A.56.210)
3		Theft of Livestock 1 (RCW 9A.56.080)
4		Threats to Bomb (RCW 9.61.160)
5		Trafficking in Stolen Property 1 (RCW
6		9A.82.050)
7		Unlawful factoring of a credit card or
8		payment card transaction (RCW
9		9A.56.290(4)(b))
10		Unlawful transaction of health coverage
11		as a health care service contractor
12		(RCW 48.44.016(3))
13		Unlawful transaction of health coverage
14		as a health maintenance
15		organization (RCW 48.46.033(3))
16		Unlawful transaction of insurance
17		business (RCW 48.15.023(3))
18		Unlicensed practice as an insurance
19		professional (RCW 48.17.063(2))
20		Use of Proceeds of Criminal
21		Profiteering (RCW 9A.82.080 (1)
22		and (2))
23		Vehicle Prowling 2 (third or subsequent
24		offense) (RCW 9A.52.100(3))
25		Vehicular Assault, by being under the
26		influence of intoxicating liquor or
27		any drug, or by the operation or
28		driving of a vehicle in a reckless
29		manner (RCW 46.61.522)
30		Viewing of Depictions of a Minor
31		Engaged in Sexually Explicit
32		Conduct 1 (RCW 9.68A.075(1))
33		Willful Failure to Return from Furlough
34		(RCW 72.66.060)
35	III	Animal Cruelty 1 (Sexual Conduct or
36		Contact) (RCW 16.52.205(3))

1 2 3	Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection
4	(1)(h))
5 6	Assault 4 with Sexual Motivation (third offense) (RCW 9A.36.041(4))
7	Assault of a Child 3 (RCW 9A.36.140)
8 9	Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
10	Burglary 2 (RCW 9A.52.030)
11 12 13	Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
14 15	Criminal Gang Intimidation (RCW 9A.46.120)
16	Custodial Assault (RCW 9A.36.100)
17 18	Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
19	Escape 2 (RCW 9A.76.120)
20	Extortion 2 (RCW 9A.56.130)
21	Harassment (RCW 9A.46.020)
22 23	Intimidating a Public Servant (RCW 9A.76.180)
24 25	Introducing Contraband 2 (RCW 9A.76.150)
26 27	Malicious Injury to Railroad Property (RCW 81.60.070)
28	Mortgage Fraud (RCW 19.144.080)
29 30 31	Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW
32 33	46.37.674)
34	Organized Retail Theft 1 (RCW 9A.56.350(2))
35	Perjury 2 (RCW 9A.72.030)

1 2	Possession of Incendiary Device (RCW 9.40.120)
3	
5 4	Possession of Machine Gun or Short-
5	Barreled Shotgun or Rifle (RCW 9.41.190)
6	Promoting Prostitution 2 (RCW
7	9A.88.080)
8	Retail Theft with Special Circumstances
9	1 (RCW 9A.56.360(2))
10	Securities Act violation (RCW
11	21.20.400)
12	Tampering with a Witness (RCW
13	9A.72.120)
14	Telephone Harassment (subsequent
15	conviction or threat of death) (RCW
16	9.61.230(2))
17	Theft of Livestock 2 (RCW 9A.56.083)
18	Theft with the Intent to Resell 1 (RCW
19	9A.56.340(2))
20	Trafficking in Stolen Property 2 (RCW
21	9A.82.055)
22	Unlawful Hunting of Big Game 1 (RCW
23	77.15.410(3)(b))
24	Unlawful Imprisonment (RCW
25	9A.40.040)
26	Unlawful Misbranding of Food Fish or
27	Shellfish 1 (RCW 69.04.938(3))
28	Unlawful possession of firearm in the
29	second degree (RCW 9.41.040(2))
30	Unlawful Taking of Endangered Fish or
31	Wildlife 1 (RCW 77.15.120(3)(b))
32	Unlawful Trafficking in Fish, Shellfish,
33	or Wildlife 1 (RCW
34	77.15.260(3)(b))
35	Unlawful Use of a Nondesignated
36	Vessel (RCW 77.15.530(4))

1	Vehicular Assault, by the operation or
2	driving of a vehicle with disregard
3	for the safety of others (RCW
4	46.61.522)
5	Willful Failure to Return from Work
6	Release (RCW 72.65.070)
7 II	Commercial Fishing Without a License
8	1 (RCW 77.15.500(3)(b))
9	Computer Trespass 1 (RCW 9A.90.040)
10	Counterfeiting (RCW 9.16.035(3))
11	Electronic Data Service Interference
12	(RCW 9A.90.060)
13	Electronic Data Tampering 1 (RCW
14	9A.90.080)
15	Electronic Data Theft (RCW 9A.90.100)
16	Engaging in Fish Dealing Activity
17	Unlicensed 1 (RCW 77.15.620(3))
18	Escape from Community Custody
19	(RCW 72.09.310)
20	Failure to Register as a Sex Offender
21	(second or subsequent offense)
22	(RCW 9A.44.130 prior to June 10,
23	2010, and RCW 9A.44.132)
24	Health Care False Claims (RCW
25	48.80.030)
26	Identity Theft 2 (RCW 9.35.020(3))
27	Improperly Obtaining Financial
28	Information (RCW 9.35.010)
29	Indecent Exposure to Person Age
30	Fourteen or Older (subsequent
31	offense) (RCW 9A.88.010(2)(d))
32	Malicious Mischief 1 (RCW 9A.48.070)
33	Organized Retail Theft 2 (RCW
34	9A.56.350(3))
35	Possession of Stolen Property 1 (RCW
36	9A.56.150)

1	Possession of a Stolen Vehicle (RCW
2	9A.56.068)
3	Retail Theft with Special Circumstances
4	2 (RCW 9A.56.360(3))
5	Scrap Processing, Recycling, or
6	Supplying Without a License
7	(second or subsequent offense)
8	(RCW 19.290.100)
9	Theft 1 (RCW 9A.56.030)
10	Theft of a Motor Vehicle (RCW
11	9A.56.065)
12	Theft of Rental, Leased, Lease-
13	purchased, or Loaned Property
14	(valued at five thousand dollars or
15	more) (RCW 9A.56.096(5)(a))
16	Theft with the Intent to Resell 2 (RCW
17	9A.56.340(3))
18	Trafficking in Insurance Claims (RCW
19	48.30A.015)
20	Unlawful factoring of a credit card or
21	payment card transaction (RCW
22	9A.56.290(4)(a))
23	Unlawful Participation of Non-Indians
24	in Indian Fishery (RCW
25	77.15.570(2))
26	Unlawful Practice of Law (RCW
27	2.48.180)
28	Unlawful Purchase or Use of a License
29	(RCW 77.15.650(3)(b))
30	Unlawful Trafficking in Fish, Shellfish,
31	or Wildlife 2 (RCW
32	77.15.260(3)(a))
33	Unlicensed Practice of a Profession or
34	Business (RCW 18.130.190(7))
35	Voyeurism 1 (RCW 9A.44.115)

1	Ι	Attempting to Elude a Pursuing Police
2		Vehicle (RCW 46.61.024)
3		False Verification for Welfare (RCW
4		74.08.055)
5		Forgery (RCW 9A.60.020)
6		Fraudulent Creation or Revocation of a
7		Mental Health Advance Directive
8		(RCW 9A.60.060)
9		Malicious Mischief 2 (RCW 9A.48.080)
10		Mineral Trespass (RCW 78.44.330)
11		Possession of Stolen Property 2 (RCW
12		9A.56.160)
13		Reckless Burning 1 (RCW 9A.48.040)
14		Spotlighting Big Game 1 (RCW
15		77.15.450(3)(b))
16		Suspension of Department Privileges 1
17		(RCW 77.15.670(3)(b))
18		Taking Motor Vehicle Without
19		Permission 2 (RCW 9A.56.075)
20		Theft 2 (RCW 9A.56.040)
21		Theft from a Vulnerable Adult 2 (RCW
22		9A.56.400(2))
23		Theft of Rental, Leased, Lease-
24		purchased, or Loaned Property
25		(valued at seven hundred fifty
26		dollars or more but less than five
27		thousand dollars) (RCW
28		9A.56.096(5)(b))
29		Transaction of insurance business
30		beyond the scope of licensure
31		(RCW 48.17.063)
32		Unlawful Fish and Shellfish Catch
33		Accounting (RCW 77.15.630(3)(b))
34		Unlawful Issuance of Checks or Drafts
35		(RCW 9A.56.060)

1	Unlawful Possession of Fictitious
2	Identification (RCW 9A.56.320)
3	Unlawful Possession of Instruments of
4	Financial Fraud (RCW 9A.56.320)
5	Unlawful Possession of Payment
6	Instruments (RCW 9A.56.320)
7	Unlawful Possession of a Personal
8	Identification Device (RCW
9	9A.56.320)
10	Unlawful Production of Payment
11	Instruments (RCW 9A.56.320)
12	Unlawful Releasing, Planting,
13	Possessing, or Placing Deleterious
14	Exotic Wildlife (RCW
15	77.15.250(2)(b))
16	Unlawful Trafficking in Food Stamps
17	(RCW 9.91.142)
18	Unlawful Use of Food Stamps (RCW
19	9.91.144)
20	Unlawful Use of Net to Take Fish 1
21	(RCW 77.15.580(3)(b))
22	Unlawful Use of Prohibited Aquatic
23	Animal Species (RCW
24	77.15.253(3))
25	Vehicle Prowl 1 (RCW 9A.52.095)
26	Violating Commercial Fishing Area or
27	Time 1 (RCW 77.15.550(3)(b))

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