
SUBSTITUTE HOUSE BILL 2968

State of Washington

60th Legislature

2008 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives Pearson, O'Brien, Kelley, Simpson, and Kretz)

READ FIRST TIME 02/05/08.

1 AN ACT Relating to crimes against persons; amending RCW 9.94A.421,
2 9.94A.431, 9.94A.470, 9.94A.501, 9.94A.545, 9.94A.640, 9.94A.728,
3 10.77.092, 10.97.050, 13.40.070, 13.40.077, 43.43.8321, and 43.43.842;
4 reenacting and amending RCW 9.94A.030, 9.94A.411, and 9.94A.715; and
5 creating a new section.

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

7 **Sec. 1.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c
8 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
9 amended to read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Board" means the indeterminate sentence review board created
13 under chapter 9.95 RCW.

14 (2) "Collect," or any derivative thereof, "collect and remit," or
15 "collect and deliver," when used with reference to the department,
16 means that the department, either directly or through a collection
17 agreement authorized by RCW 9.94A.760, is responsible for monitoring
18 and enforcing the offender's sentence with regard to the legal

1 financial obligation, receiving payment thereof from the offender, and,
2 consistent with current law, delivering daily the entire payment to the
3 superior court clerk without depositing it in a departmental account.

4 (3) "Commission" means the sentencing guidelines commission.

5 (4) "Community corrections officer" means an employee of the
6 department who is responsible for carrying out specific duties in
7 supervision of sentenced offenders and monitoring of sentence
8 conditions.

9 (5) "Community custody" means that portion of an offender's
10 sentence of confinement in lieu of earned release time or imposed
11 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
12 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
13 community subject to controls placed on the offender's movement and
14 activities by the department. For offenders placed on community
15 custody for crimes committed on or after July 1, 2000, the department
16 shall assess the offender's risk of reoffense and may establish and
17 modify conditions of community custody, in addition to those imposed by
18 the court, based upon the risk to community safety.

19 (6) "Community custody range" means the minimum and maximum period
20 of community custody included as part of a sentence under RCW
21 9.94A.715, as established by the commission or the legislature under
22 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

30 (8) "Community protection zone" means the area within eight hundred
31 eighty feet of the facilities and grounds of a public or private
32 school.

33 (9) "Community restitution" means compulsory service, without
34 compensation, performed for the benefit of the community by the
35 offender.

36 (10) "Community supervision" means a period of time during which a
37 convicted offender is subject to crime-related prohibitions and other
38 sentence conditions imposed by a court pursuant to this chapter or RCW

1 16.52.200(6) or 46.61.524. Where the court finds that any offender has
2 a chemical dependency that has contributed to his or her offense, the
3 conditions of supervision may, subject to available resources, include
4 treatment. For purposes of the interstate compact for out-of-state
5 supervision of parolees and probationers, RCW 9.95.270, community
6 supervision is the functional equivalent of probation and should be
7 considered the same as probation by other states.

8 (11) "Confinement" means total or partial confinement.

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

12 (13) "Crime against persons" means any of the following felonies or
13 a felony attempt, solicitation, or conspiracy to commit any of the
14 following felonies:

15 (a) Aggravated first degree murder;

16 (b) Arson in the first degree;

17 (c) Assault in the first degree;

18 (d) Assault in the second degree;

19 (e) Assault in the third degree;

20 (f) Assault of a child in the first degree;

21 (g) Assault of a child in the second degree;

22 (h) Assault of a child in the third degree;

23 (i) Bomb threat (if against a person);

24 (j) Burglary in the first degree;

25 (k) Child molestation in the first degree;

26 (l) Child molestation in the second degree;

27 (m) Child molestation in the third degree;

28 (n) Communicating with a minor for immoral purposes;

29 (o) Counterfeiting (if a violation of RCW 9.16.035(4));

30 (p) Custodial assault;

31 (q) Domestic violence court order violation (RCW 10.99.040,
32 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or
33 74.34.145);

34 (r) Extortion in the first degree;

35 (s) Extortion in the second degree;

36 (t) Incest in the first degree;

37 (u) Incest in the second degree;

38 (v) Identity theft in the first degree;

1 (w) Identity theft in the second degree;
2 (x) Indecent liberties;
3 (y) Intimidating a juror;
4 (z) Intimidating a public servant;
5 (aa) Intimidating a witness;
6 (bb) Kidnapping in the first degree;
7 (cc) Kidnapping in the second degree;
8 (dd) Manslaughter in the first degree;
9 (ee) Manslaughter in the second degree;
10 (ff) Murder in the first degree;
11 (gg) Murder in the second degree;
12 (hh) Promoting a suicide attempt;
13 (ii) Promoting prostitution in the first degree;
14 (jj) Rape in the first degree;
15 (kk) Rape in the second degree;
16 (ll) Rape in the third degree;
17 (mm) Rape of a child in the first degree;
18 (nn) Rape of a child in the second degree;
19 (oo) Rape of a child in the third degree;
20 (pp) Riot (against a person);
21 (qq) Robbery in the first degree;
22 (rr) Robbery in the second degree;
23 (ss) Stalking;
24 (tt) Unlawful imprisonment;
25 (uu) Vehicular assault; or
26 (vv) Vehicular homicide.

27 (14) "Crime-related prohibition" means an order of a court
28 prohibiting conduct that directly relates to the circumstances of the
29 crime for which the offender has been convicted, and shall not be
30 construed to mean orders directing an offender affirmatively to
31 participate in rehabilitative programs or to otherwise perform
32 affirmative conduct. However, affirmative acts necessary to monitor
33 compliance with the order of a court may be required by the department.

34 ~~((14))~~ (15) "Criminal history" means the list of a defendant's
35 prior convictions and juvenile adjudications, whether in this state, in
36 federal court, or elsewhere.

37 (a) The history shall include, where known, for each conviction (i)

1 whether the defendant has been placed on probation and the length and
2 terms thereof; and (ii) whether the defendant has been incarcerated and
3 the length of incarceration.

4 (b) A conviction may be removed from a defendant's criminal history
5 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
6 a similar out-of-state statute, or if the conviction has been vacated
7 pursuant to a governor's pardon.

8 (c) The determination of a defendant's criminal history is distinct
9 from the determination of an offender score. A prior conviction that
10 was not included in an offender score calculated pursuant to a former
11 version of the sentencing reform act remains part of the defendant's
12 criminal history.

13 ~~((+15+))~~ (16) "Day fine" means a fine imposed by the sentencing
14 court that equals the difference between the offender's net daily
15 income and the reasonable obligations that the offender has for the
16 support of the offender and any dependents.

17 ~~((+16+))~~ (17) "Day reporting" means a program of enhanced
18 supervision designed to monitor the offender's daily activities and
19 compliance with sentence conditions, and in which the offender is
20 required to report daily to a specific location designated by the
21 department or the sentencing court.

22 ~~((+17+))~~ (18) "Department" means the department of corrections.

23 ~~((+18+))~~ (19) "Determinate sentence" means a sentence that states
24 with exactitude the number of actual years, months, or days of total
25 confinement, of partial confinement, of community supervision, the
26 number of actual hours or days of community restitution work, or
27 dollars or terms of a legal financial obligation. The fact that an
28 offender through earned release can reduce the actual period of
29 confinement shall not affect the classification of the sentence as a
30 determinate sentence.

31 ~~((+19+))~~ (20) "Disposable earnings" means that part of the earnings
32 of an offender remaining after the deduction from those earnings of any
33 amount required by law to be withheld. For the purposes of this
34 definition, "earnings" means compensation paid or payable for personal
35 services, whether denominated as wages, salary, commission, bonuses, or
36 otherwise, and, notwithstanding any other provision of law making the
37 payments exempt from garnishment, attachment, or other process to
38 satisfy a court-ordered legal financial obligation, specifically

1 includes periodic payments pursuant to pension or retirement programs,
2 or insurance policies of any type, but does not include payments made
3 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
4 or Title 74 RCW.

5 ~~((+20+))~~ (21) "Drug offender sentencing alternative" is a
6 sentencing option available to persons convicted of a felony offense
7 other than a violent offense or a sex offense and who are eligible for
8 the option under RCW 9.94A.660.

9 ~~((+21+))~~ (22) "Drug offense" means:

10 (a) Any felony violation of chapter 69.50 RCW except possession of
11 a controlled substance (RCW 69.50.4013) or forged prescription for a
12 controlled substance (RCW 69.50.403);

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

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

19 ~~((+22+))~~ (23) "Earned release" means earned release from
20 confinement as provided in RCW 9.94A.728.

21 ~~((+23+))~~ (24) "Escape" means:

22 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
23 first degree (RCW 9A.76.110), escape in the second degree (RCW
24 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
25 willful failure to return from work release (RCW 72.65.070), or willful
26 failure to be available for supervision by the department while in
27 community custody (RCW 72.09.310); or

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

31 ~~((+24+))~~ (25) "Felony traffic offense" means:

32 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
33 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
34 run injury-accident (RCW 46.52.020(4)), felony driving while under the
35 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
36 felony physical control of a vehicle while under the influence of
37 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

4 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the
5 sentencing court to be paid by the offender to the court over a
6 specific period of time.

7 ~~((+26+))~~ (27) "First-time offender" means any person who has no
8 prior convictions for a felony and is eligible for the first-time
9 offender waiver under RCW 9.94A.650.

10 ~~((+27+))~~ (28) "Home detention" means a program of partial
11 confinement available to offenders wherein the offender is confined in
12 a private residence subject to electronic surveillance.

13 ~~((+28+))~~ (29) "Legal financial obligation" means a sum of money
14 that is ordered by a superior court of the state of Washington for
15 legal financial obligations which may include restitution to the
16 victim, statutorily imposed crime victims' compensation fees as
17 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
18 drug funds, court-appointed attorneys' fees, and costs of defense,
19 fines, and any other financial obligation that is assessed to the
20 offender as a result of a felony conviction. Upon conviction for
21 vehicular assault while under the influence of intoxicating liquor or
22 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
23 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
24 legal financial obligations may also include payment to a public agency
25 of the expense of an emergency response to the incident resulting in
26 the conviction, subject to RCW 38.52.430.

27 ~~((+29+))~~ (30) "Most serious offense" means any of the following
28 felonies or a felony attempt to commit any of the following felonies:

29 (a) Any felony defined under any law as a class A felony or
30 criminal solicitation of or criminal conspiracy to commit a class A
31 felony;

32 (b) Assault in the second degree;

33 (c) Assault of a child in the second degree;

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

37 (g) Incest when committed against a child under age fourteen;

38 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Robbery in the second degree;
- 8 (p) Sexual exploitation;
- 9 (q) Vehicular assault, when caused by the operation or driving of
10 a vehicle by a person while under the influence of intoxicating liquor
11 or any drug or by the operation or driving of a vehicle in a reckless
12 manner;
- 13 (r) Vehicular homicide, when proximately caused by the driving of
14 any vehicle by any person while under the influence of intoxicating
15 liquor or any drug as defined by RCW 46.61.502, or by the operation of
16 any vehicle in a reckless manner;
- 17 (s) Any other class B felony offense with a finding of sexual
18 motivation;
- 19 (t) Any other felony with a deadly weapon verdict under RCW
20 9.94A.602;
- 21 (u) Any felony offense in effect at any time prior to December 2,
22 1993, that is comparable to a most serious offense under this
23 subsection, or any federal or out-of-state conviction for an offense
24 that under the laws of this state would be a felony classified as a
25 most serious offense under this subsection;
- 26 (v)(i) A prior conviction for indecent liberties under RCW
27 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
28 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
29 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
30 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 31 (ii) A prior conviction for indecent liberties under RCW
32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
33 if: (A) The crime was committed against a child under the age of
34 fourteen; or (B) the relationship between the victim and perpetrator is
35 included in the definition of indecent liberties under RCW
36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
37 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
38 through July 27, 1997.

1 (~~(+30+)~~) (31) "Nonviolent offense" means an offense which is not a
2 violent offense.

3 (~~(+31+)~~) (32) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case is under superior court
6 jurisdiction under RCW 13.04.030 or has been transferred by the
7 appropriate juvenile court to a criminal court pursuant to RCW
8 13.40.110. Throughout this chapter, the terms "offender" and
9 "defendant" are used interchangeably.

10 (~~(+32+)~~) (33) "Partial confinement" means confinement for no more
11 than one year in a facility or institution operated or utilized under
12 contract by the state or any other unit of government, or, if home
13 detention or work crew has been ordered by the court, in an approved
14 residence, for a substantial portion of each day with the balance of
15 the day spent in the community. Partial confinement includes work
16 release, home detention, work crew, and a combination of work crew and
17 home detention.

18 (~~(+33+)~~) (34) "Persistent offender" is an offender who:

19 (a)(i) Has been convicted in this state of any felony considered a
20 most serious offense; and

21 (ii) Has, before the commission of the offense under (a) of this
22 subsection, been convicted as an offender on at least two separate
23 occasions, whether in this state or elsewhere, of felonies that under
24 the laws of this state would be considered most serious offenses and
25 would be included in the offender score under RCW 9.94A.525; provided
26 that of the two or more previous convictions, at least one conviction
27 must have occurred before the commission of any of the other most
28 serious offenses for which the offender was previously convicted; or

29 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
30 of a child in the first degree, child molestation in the first degree,
31 rape in the second degree, rape of a child in the second degree, or
32 indecent liberties by forcible compulsion; (B) any of the following
33 offenses with a finding of sexual motivation: Murder in the first
34 degree, murder in the second degree, homicide by abuse, kidnapping in
35 the first degree, kidnapping in the second degree, assault in the first
36 degree, assault in the second degree, assault of a child in the first
37 degree, assault of a child in the second degree, or burglary in the

1 first degree; or (C) an attempt to commit any crime listed in this
2 subsection (~~(33)~~) (34)(b)(i); and

3 (ii) Has, before the commission of the offense under (b)(i) of this
4 subsection, been convicted as an offender on at least one occasion,
5 whether in this state or elsewhere, of an offense listed in (b)(i) of
6 this subsection or any federal or out-of-state offense or offense under
7 prior Washington law that is comparable to the offenses listed in
8 (b)(i) of this subsection. A conviction for rape of a child in the
9 first degree constitutes a conviction under (b)(i) of this subsection
10 only when the offender was sixteen years of age or older when the
11 offender committed the offense. A conviction for rape of a child in
12 the second degree constitutes a conviction under (b)(i) of this
13 subsection only when the offender was eighteen years of age or older
14 when the offender committed the offense.

15 (~~(34)~~) (35) "Postrelease supervision" is that portion of an
16 offender's community placement that is not community custody.

17 (~~(35)~~) (36) "Predatory" means: (a) The perpetrator of the crime
18 was a stranger to the victim, as defined in this section; (b) the
19 perpetrator established or promoted a relationship with the victim
20 prior to the offense and the victimization of the victim was a
21 significant reason the perpetrator established or promoted the
22 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
23 volunteer, or other person in authority in any public or private school
24 and the victim was a student of the school under his or her authority
25 or supervision. For purposes of this subsection, "school" does not
26 include home-based instruction as defined in RCW 28A.225.010; (ii) a
27 coach, trainer, volunteer, or other person in authority in any
28 recreational activity and the victim was a participant in the activity
29 under his or her authority or supervision; or (iii) a pastor, elder,
30 volunteer, or other person in authority in any church or religious
31 organization, and the victim was a member or participant of the
32 organization under his or her authority.

33 (~~(36)~~) (37) "Private school" means a school regulated under
34 chapter 28A.195 or 28A.205 RCW.

35 (~~(37)~~) (38) "Public school" has the same meaning as in RCW
36 28A.150.010.

37 (~~(38)~~) (39) "Restitution" means a specific sum of money ordered

1 by the sentencing court to be paid by the offender to the court over a
2 specified period of time as payment of damages. The sum may include
3 both public and private costs.

4 ~~((39))~~ (40) "Risk assessment" means the application of an
5 objective instrument supported by research and adopted by the
6 department for the purpose of assessing an offender's risk of
7 reoffense, taking into consideration the nature of the harm done by the
8 offender, place and circumstances of the offender related to risk, the
9 offender's relationship to any victim, and any information provided to
10 the department by victims. The results of a risk assessment shall not
11 be based on unconfirmed or unconfirmable allegations.

12 ~~((40))~~ (41) "Serious traffic offense" means:

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

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

21 ~~((41))~~ (42) "Serious violent offense" is a subcategory of violent
22 offense and means:

23 (a)(i) Murder in the first degree;

24 (ii) Homicide by abuse;

25 (iii) Murder in the second degree;

26 (iv) Manslaughter in the first degree;

27 (v) Assault in the first degree;

28 (vi) Kidnapping in the first degree;

29 (vii) Rape in the first degree;

30 (viii) Assault of a child in the first degree; or

31 (ix) An attempt, criminal solicitation, or criminal conspiracy to
32 commit one of these felonies; or

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

36 ~~((42))~~ (43) "Sex offense" means:

37 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
38 RCW 9A.44.130~~((11))~~ (12);

1 (ii) A violation of RCW 9A.64.020;
2 (iii) A felony that is a violation of chapter 9.68A RCW other than
3 RCW 9.68A.080; or
4 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
5 criminal solicitation, or criminal conspiracy to commit such crimes;
6 (b) Any conviction for a felony offense in effect at any time prior
7 to July 1, 1976, that is comparable to a felony classified as a sex
8 offense in (a) of this subsection;
9 (c) A felony with a finding of sexual motivation under RCW
10 9.94A.835 or 13.40.135; or
11 (d) Any federal or out-of-state conviction for an offense that
12 under the laws of this state would be a felony classified as a sex
13 offense under (a) of this subsection.
14 (~~(43)~~) (44) "Sexual motivation" means that one of the purposes
15 for which the defendant committed the crime was for the purpose of his
16 or her sexual gratification.
17 (~~(44)~~) (45) "Standard sentence range" means the sentencing
18 court's discretionary range in imposing a nonappealable sentence.
19 (~~(45)~~) (46) "Statutory maximum sentence" means the maximum length
20 of time for which an offender may be confined as punishment for a crime
21 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
22 the crime, or other statute defining the maximum penalty for a crime.
23 (~~(46)~~) (47) "Stranger" means that the victim did not know the
24 offender twenty-four hours before the offense.
25 (~~(47)~~) (48) "Total confinement" means confinement inside the
26 physical boundaries of a facility or institution operated or utilized
27 under contract by the state or any other unit of government for twenty-
28 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
29 (~~(48)~~) (49) "Transition training" means written and verbal
30 instructions and assistance provided by the department to the offender
31 during the two weeks prior to the offender's successful completion of
32 the work ethic camp program. The transition training shall include
33 instructions in the offender's requirements and obligations during the
34 offender's period of community custody.
35 (~~(49)~~) (50) "Victim" means any person who has sustained
36 emotional, psychological, physical, or financial injury to person or
37 property as a direct result of the crime charged.
38 (~~(50)~~) (51) "Violent offense" means:

1 (a) Any of the following felonies:
2 (i) Any felony defined under any law as a class A felony or an
3 attempt to commit a class A felony;
4 (ii) Criminal solicitation of or criminal conspiracy to commit a
5 class A felony;
6 (iii) Manslaughter in the first degree;
7 (iv) Manslaughter in the second degree;
8 (v) Indecent liberties if committed by forcible compulsion;
9 (vi) Kidnapping in the second degree;
10 (vii) Arson in the second degree;
11 (viii) Assault in the second degree;
12 (ix) Assault of a child in the second degree;
13 (x) Extortion in the first degree;
14 (xi) Robbery in the second degree;
15 (xii) Drive-by shooting;
16 (xiii) Vehicular assault, when caused by the operation or driving
17 of a vehicle by a person while under the influence of intoxicating
18 liquor or any drug or by the operation or driving of a vehicle in a
19 reckless manner; and
20 (xiv) Vehicular homicide, when proximately caused by the driving of
21 any vehicle by any person while under the influence of intoxicating
22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
23 any vehicle in a reckless manner;
24 (b) Any conviction for a felony offense in effect at any time prior
25 to July 1, 1976, that is comparable to a felony classified as a violent
26 offense in (a) of this subsection; and
27 (c) Any federal or out-of-state conviction for an offense that
28 under the laws of this state would be a felony classified as a violent
29 offense under (a) or (b) of this subsection.
30 ((+51+)) (52) "Work crew" means a program of partial confinement
31 consisting of civic improvement tasks for the benefit of the community
32 that complies with RCW 9.94A.725.
33 ((+52+)) (53) "Work ethic camp" means an alternative incarceration
34 program as provided in RCW 9.94A.690 designed to reduce recidivism and
35 lower the cost of corrections by requiring offenders to complete a
36 comprehensive array of real-world job and vocational experiences,
37 character-building work ethics training, life management skills

1 development, substance abuse rehabilitation, counseling, literacy
2 training, and basic adult education.

3 ((+53+)) (54) "Work release" means a program of partial confinement
4 available to offenders who are employed or engaged as a student in a
5 regular course of study at school.

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

8 (1) Decision not to prosecute.

9 STANDARD: A prosecuting attorney may decline to prosecute, even
10 though technically sufficient evidence to prosecute exists, in
11 situations where prosecution would serve no public purpose, would
12 defeat the underlying purpose of the law in question or would result in
13 decreased respect for the law.

14 GUIDELINE/COMMENTARY:

15 Examples

16 The following are examples of reasons not to prosecute which could
17 satisfy the standard.

18 (a) Contrary to Legislative Intent - It may be proper to decline to
19 charge where the application of criminal sanctions would be clearly
20 contrary to the intent of the legislature in enacting the particular
21 statute.

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

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

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

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

29 (iv) The statute has not been recently reconsidered by the
30 legislature.

31 This reason is not to be construed as the basis for declining cases
32 because the law in question is unpopular or because it is difficult to
33 enforce.

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

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

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

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

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

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

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

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

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

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

20 (f) High Disproportionate Cost of Prosecution - It may be proper to
21 decline to charge where the cost of locating or transporting, or the
22 burden on, prosecution witnesses is highly disproportionate to the
23 importance of prosecuting the offense in question. This reason should
24 be limited to minor cases and should not be relied upon in serious
25 cases.

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

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

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

1 (i) Assault cases where the victim has suffered little or no
2 injury;

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

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

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

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

10 Notification

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

13 (2) Decision to prosecute.

14 (a) STANDARD:

15 Crimes against persons will be filed if sufficient admissible
16 evidence exists, which, when considered with the most plausible,
17 reasonably foreseeable defense that could be raised under the evidence,
18 would justify conviction by a reasonable and objective fact-finder.
19 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
20 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
21 9A.64.020 the prosecutor should avoid pre-filing agreements or
22 diversions intended to place the accused in a program of treatment or
23 counseling, so that treatment, if determined to be beneficial, can be
24 provided pursuant to RCW 9.94A.670.

25 Crimes against property/other crimes will be filed if the
26 admissible evidence is of such convincing force as to make it probable
27 that a reasonable and objective fact-finder would convict after hearing
28 all the admissible evidence and the most plausible defense that could
29 be raised.

30 See table below for the crimes within these categories.

31 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

32 CRIMES ((~~AGAINST~~)) AFFECTING PERSONS

33 Aggravated Murder

34 1st Degree Murder

35 2nd Degree Murder

36 1st Degree Manslaughter

37 2nd Degree Manslaughter

38 1st Degree Kidnapping

1 2nd Degree Kidnapping
2 1st Degree Assault
3 2nd Degree Assault
4 3rd Degree Assault
5 1st Degree Assault of a Child
6 2nd Degree Assault of a Child
7 3rd Degree Assault of a Child
8 1st Degree Rape
9 2nd Degree Rape
10 3rd Degree Rape
11 1st Degree Rape of a Child
12 2nd Degree Rape of a Child
13 3rd Degree Rape of a Child
14 1st Degree Robbery
15 2nd Degree Robbery
16 1st Degree Arson
17 1st Degree Burglary
18 1st Degree Identity Theft
19 2nd Degree Identity Theft
20 1st Degree Extortion
21 2nd Degree Extortion
22 Indecent Liberties
23 Incest
24 Vehicular Homicide
25 Vehicular Assault
26 1st Degree Child Molestation
27 2nd Degree Child Molestation
28 3rd Degree Child Molestation
29 1st Degree Promoting Prostitution
30 Intimidating a Juror
31 Communication with a Minor
32 Intimidating a Witness
33 Intimidating a Public Servant
34 Bomb Threat (if against person)
35 Unlawful Imprisonment
36 Promoting a Suicide Attempt
37 Riot (if against person)
38 Stalking

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

1 Escape from Community Custody

2 Riot (if against property)

3 1st Degree Theft of Livestock

4 2nd Degree Theft of Livestock

5 ALL OTHER UNCLASSIFIED FELONIES

6 Selection of Charges/Degree of Charge

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

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

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

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

15 (A) Charging a higher degree;

16 (B) Charging additional counts.

17 This standard is intended to direct prosecutors to charge those
18 crimes which demonstrate the nature and seriousness of a defendant's
19 criminal conduct, but to decline to charge crimes which are not
20 necessary to such an indication. Crimes which do not merge as a matter
21 of law, but which arise from the same course of conduct, do not all
22 have to be charged.

23 (b) GUIDELINES/COMMENTARY:

24 (i) Police Investigation

25 A prosecuting attorney is dependent upon law enforcement agencies
26 to conduct the necessary factual investigation which must precede the
27 decision to prosecute. The prosecuting attorney shall ensure that a
28 thorough factual investigation has been conducted before a decision to
29 prosecute is made. In ordinary circumstances the investigation should
30 include the following:

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

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

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

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

1 (ii) Exceptions

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

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

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

7 (C) The arrest of the suspect is necessary to complete the
8 investigation of the crime.

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

14 (iii) Investigation Techniques

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

17 (A) Polygraph testing;

18 (B) Hypnosis;

19 (C) Electronic surveillance;

20 (D) Use of informants.

21 (iv) Pre-Filing Discussions with Defendant

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

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

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

31 **Sec. 3.** RCW 9.94A.421 and 1995 c 288 s 1 are each amended to read
32 as follows:

33 The prosecutor and the attorney for the defendant, or the defendant
34 when acting pro se, may engage in discussions with a view toward
35 reaching an agreement that, upon the entering of a plea to a charged
36 offense or to a lesser or related offense, the prosecutor will do any
37 of the following:

- 1 (1) Move for dismissal of other charges or counts;
- 2 (2) Recommend a particular sentence within the sentence range
- 3 applicable to the offense or offenses to which the offender pled
- 4 guilty;
- 5 (3) Recommend a particular sentence outside of the sentence range;
- 6 (4) Agree to file a particular charge or count;
- 7 (5) Agree not to file other charges or counts; or
- 8 (6) Make any other promise to the defendant, except that in no
- 9 instance may the prosecutor agree not to allege prior convictions.

10 In a case involving a crime (~~against~~) affecting persons as
11 defined in RCW 9.94A.411, the prosecutor shall make reasonable efforts
12 to inform the victim of the violent offense of the nature of and
13 reasons for the plea agreement, including all offenses the prosecutor
14 has agreed not to file, and ascertain any objections or comments the
15 victim has to the plea agreement.

16 The court shall not participate in any discussions under this
17 section.

18 **Sec. 4.** RCW 9.94A.431 and 1995 c 288 s 2 are each amended to read
19 as follows:

20 (1) If a plea agreement has been reached by the prosecutor and the
21 defendant pursuant to RCW 9.94A.421, they shall at the time of the
22 defendant's plea state to the court, on the record, the nature of the
23 agreement and the reasons for the agreement. The prosecutor shall
24 inform the court on the record whether the victim or victims of all
25 crimes (~~against~~) affecting persons, as defined in RCW 9.94A.411,
26 covered by the plea agreement have expressed any objections to or
27 comments on the nature of and reasons for the plea agreement. The
28 court, at the time of the plea, shall determine if the agreement is
29 consistent with the interests of justice and with the prosecuting
30 standards. If the court determines it is not consistent with the
31 interests of justice and with the prosecuting standards, the court
32 shall, on the record, inform the defendant and the prosecutor that they
33 are not bound by the agreement and that the defendant may withdraw the
34 defendant's plea of guilty, if one has been made, and enter a plea of
35 not guilty.

36 (2) The sentencing judge is not bound by any recommendations

1 contained in an allowed plea agreement and the defendant shall be so
2 informed at the time of plea.

3 **Sec. 5.** RCW 9.94A.470 and 2002 c 290 s 14 are each amended to read
4 as follows:

5 Notwithstanding the current placement or listing of crimes in
6 categories or classifications of prosecuting standards for deciding to
7 prosecute under RCW 9.94A.411(2), any and all felony crimes involving
8 any deadly weapon special verdict under RCW 9.94A.602, any deadly
9 weapon enhancements under RCW 9.94A.533 (3) or (4), or both, and any
10 and all felony crimes as defined in RCW 9.94A.533 (3)(f) or (4)(f), or
11 both, which are excluded from the deadly weapon enhancements shall all
12 be treated as crimes against a person and subject to the prosecuting
13 standards for deciding to prosecute under RCW 9.94A.411(2) as crimes
14 (~~against~~) affecting persons.

15 **Sec. 6.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read
16 as follows:

17 (1) When the department performs a risk assessment pursuant to RCW
18 9.94A.500, or to determine a person's conditions of supervision, the
19 risk assessment shall classify the offender or a probationer sentenced
20 in superior court into one of at least four risk categories.

21 (2) The department shall supervise every offender sentenced to a
22 term of community custody, community placement, or community
23 supervision and every misdemeanor and gross misdemeanor probationer
24 ordered by a superior court to probation under the supervision of the
25 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

26 (a) Whose risk assessment places that offender or probationer in
27 one of the two highest risk categories; or

28 (b) Regardless of the offender's or probationer's risk category if:

29 (i) The offender's or probationer's current conviction is for:

30 (A) A sex offense;

31 (B) A violent offense;

32 (C) A crime against persons as defined in RCW (~~9.94A.411~~)
33 9.94A.030;

34 (D) A felony that is domestic violence as defined in RCW 10.99.020;

35 (E) A violation of RCW 9A.52.025 (residential burglary);

1 (F) A violation of, or an attempt, solicitation, or conspiracy to
2 violate, RCW 69.50.401 by manufacture or delivery or possession with
3 intent to deliver methamphetamine; or

4 (G) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

6 (ii) The offender or probationer has a prior conviction for:

7 (A) A sex offense;

8 (B) A violent offense;

9 (C) A crime against persons as defined in RCW (~~9.94A.411~~)
10 9.94A.030;

11 (D) A felony that is domestic violence as defined in RCW 10.99.020;

12 (E) A violation of RCW 9A.52.025 (residential burglary);

13 (F) A violation of, or an attempt, solicitation, or conspiracy to
14 violate, RCW 69.50.401 by manufacture or delivery or possession with
15 intent to deliver methamphetamine; or

16 (G) A violation of, or an attempt, solicitation, or conspiracy to
17 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

18 (iii) The conditions of the offender's community custody, community
19 placement, or community supervision or the probationer's supervision
20 include chemical dependency treatment;

21 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;

22 or

23 (v) The offender is subject to supervision pursuant to RCW
24 9.94A.745.

25 (3) The department is not authorized to, and may not, supervise any
26 offender sentenced to a term of community custody, community placement,
27 or community supervision or any probationer unless the offender or
28 probationer is one for whom supervision is required under subsection
29 (2) of this section.

30 (4) This section expires July 1, 2010.

31 **Sec. 7.** RCW 9.94A.545 and 2006 c 128 s 4 are each amended to read
32 as follows:

33 (1) Except as provided in RCW 9.94A.650 and in subsection (2) of
34 this section, on all sentences of confinement for one year or less, in
35 which the offender is convicted of a sex offense, a violent offense, a
36 crime against (~~a person under RCW 9.94A.411~~) persons as defined in
37 RCW 9.94A.030, or felony violation of chapter 69.50 or 69.52 RCW or an

1 attempt, conspiracy, or solicitation to commit such a crime, the court
2 may impose up to one year of community custody, subject to conditions
3 and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An
4 offender shall be on community custody as of the date of sentencing.
5 However, during the time for which the offender is in total or partial
6 confinement pursuant to the sentence or a violation of the sentence,
7 the period of community custody shall toll.

8 (2) If the offender is guilty of failure to register under RCW
9 9A.44.130(~~(+10)~~) (11)(a), the court shall impose a term of community
10 custody under RCW 9.94A.715.

11 **Sec. 8.** RCW 9.94A.640 and 2006 c 73 s 8 are each amended to read
12 as follows:

13 (1) Every offender who has been discharged under RCW 9.94A.637 may
14 apply to the sentencing court for a vacation of the offender's record
15 of conviction. If the court finds the offender meets the tests
16 prescribed in subsection (2) of this section, the court may clear the
17 record of conviction by: (a) Permitting the offender to withdraw the
18 offender's plea of guilty and to enter a plea of not guilty; or (b) if
19 the offender has been convicted after a plea of not guilty, by the
20 court setting aside the verdict of guilty; and (c) by the court
21 dismissing the information or indictment against the offender.

22 (2) An offender may not have the record of conviction cleared if:
23 (a) There are any criminal charges against the offender pending in any
24 court of this state or another state, or in any federal court; (b) the
25 offense was a violent offense as defined in RCW 9.94A.030; (c) the
26 offense was a crime against children or other persons as defined in RCW
27 43.43.830; (d) the offender has been convicted of a new crime in this
28 state, another state, or federal court since the date of the offender's
29 discharge under RCW 9.94A.637; (e) the offense is a class B felony and
30 less than ten years have passed since the date the applicant was
31 discharged under RCW 9.94A.637; (f) the offense was a class C felony,
32 other than a class C felony described in RCW 46.61.502(6) or
33 46.61.504(6), and less than five years have passed since the date the
34 applicant was discharged under RCW 9.94A.637; or (g) the offense was a
35 class C felony described in RCW 46.61.502(6) or 46.61.504(6) and less
36 than ten years have passed since the applicant was discharged under RCW
37 9.94A.637.

1 (3) Once the court vacates a record of conviction under subsection
2 (1) of this section, the fact that the offender has been convicted of
3 the offense shall not be included in the offender's criminal history
4 for purposes of determining a sentence in any subsequent conviction,
5 and the offender shall be released from all penalties and disabilities
6 resulting from the offense. For all purposes, including responding to
7 questions on employment applications, an offender whose conviction has
8 been vacated may state that the offender has never been convicted of
9 that crime. Nothing in this section affects or prevents the use of an
10 offender's prior conviction in a later criminal prosecution.

11 **Sec. 9.** RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are
12 each reenacted and amended to read as follows:

13 (1) When a court sentences a person to the custody of the
14 department for a sex offense not sentenced under RCW 9.94A.712, a
15 violent offense, any crime against persons (~~((under RCW 9.94A.411(2)))~~)
16 as defined in RCW 9.94A.030, or a felony offense under chapter 69.50 or
17 69.52 RCW, committed on or after July 1, 2000, or when a court
18 sentences a person to a term of confinement of one year or less for a
19 violation of RCW 9A.44.130(~~((+10))~~) (11)(a) committed on or after June
20 7, 2006, the court shall in addition to the other terms of the
21 sentence, sentence the offender to community custody for the community
22 custody range established under RCW 9.94A.850 or up to the period of
23 earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever
24 is longer. The community custody shall begin: (a) Upon completion of
25 the term of confinement; (b) at such time as the offender is
26 transferred to community custody in lieu of earned release in
27 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
28 offenders sentenced under RCW 9.94A.660, upon failure to complete or
29 administrative termination from the special drug offender sentencing
30 alternative program. Except as provided in RCW 9.94A.501, the
31 department shall supervise any sentence of community custody imposed
32 under this section.

33 (2)(a) Unless a condition is waived by the court, the conditions of
34 community custody shall include those provided for in RCW 9.94A.700(4).
35 The conditions may also include those provided for in RCW 9.94A.700(5).
36 The court may also order the offender to participate in rehabilitative
37 programs or otherwise perform affirmative conduct reasonably related to

1 the circumstances of the offense, the offender's risk of reoffending,
2 or the safety of the community, and the department shall enforce such
3 conditions pursuant to subsection (6) of this section.

4 (b) As part of any sentence that includes a term of community
5 custody imposed under this subsection, the court shall also require the
6 offender to comply with any conditions imposed by the department under
7 RCW 9.94A.720. The department shall assess the offender's risk of
8 reoffense and may establish and modify additional conditions of the
9 offender's community custody based upon the risk to community safety.
10 In addition, the department may require the offender to participate in
11 rehabilitative programs, or otherwise perform affirmative conduct, and
12 to obey all laws. The department may impose electronic monitoring as
13 a condition of community custody for an offender sentenced to a term of
14 community custody under this section pursuant to a conviction for a sex
15 offense. Within the resources made available by the department for
16 this purpose, the department shall carry out any electronic monitoring
17 imposed under this section using the most appropriate technology given
18 the individual circumstances of the offender. As used in this section,
19 "electronic monitoring" means the monitoring of an offender using an
20 electronic offender tracking system including, but not limited to, a
21 system using radio frequency or active or passive global positioning
22 system technology.

23 (c) The department may not impose conditions that are contrary to
24 those ordered by the court and may not contravene or decrease court
25 imposed conditions. The department shall notify the offender in
26 writing of any such conditions or modifications. In setting,
27 modifying, and enforcing conditions of community custody, the
28 department shall be deemed to be performing a quasi-judicial function.

29 (3) If an offender violates conditions imposed by the court or the
30 department pursuant to this section during community custody, the
31 department may transfer the offender to a more restrictive confinement
32 status and impose other available sanctions as provided in RCW
33 9.94A.737 and 9.94A.740.

34 (4) Except for terms of community custody under RCW 9.94A.670, the
35 department shall discharge the offender from community custody on a
36 date determined by the department, which the department may modify,
37 based on risk and performance of the offender, within the range or at
38 the end of the period of earned release, whichever is later.

1 (5) At any time prior to the completion or termination of a sex
2 offender's term of community custody, if the court finds that public
3 safety would be enhanced, the court may impose and enforce an order
4 extending any or all of the conditions imposed pursuant to this section
5 for a period up to the maximum allowable sentence for the crime as it
6 is classified in chapter 9A.20 RCW, regardless of the expiration of the
7 offender's term of community custody. If a violation of a condition
8 extended under this subsection occurs after the expiration of the
9 offender's term of community custody, it shall be deemed a violation of
10 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
11 contempt of court as provided for in RCW 7.21.040. If the court
12 extends a condition beyond the expiration of the term of community
13 custody, the department is not responsible for supervision of the
14 offender's compliance with the condition.

15 (6) Within the funds available for community custody, the
16 department shall determine conditions and duration of community custody
17 on the basis of risk to community safety, and shall supervise offenders
18 during community custody on the basis of risk to community safety and
19 conditions imposed by the court. The secretary shall adopt rules to
20 implement the provisions of this subsection.

21 (7) By the close of the next business day after receiving notice of
22 a condition imposed or modified by the department, an offender may
23 request an administrative review under rules adopted by the department.
24 The condition shall remain in effect unless the reviewing officer finds
25 that it is not reasonably related to any of the following: (a) The
26 crime of conviction; (b) the offender's risk of reoffending; or (c) the
27 safety of the community.

28 **Sec. 10.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to
29 read as follows:

30 No person serving a sentence imposed pursuant to this chapter and
31 committed to the custody of the department shall leave the confines of
32 the correctional facility or be released prior to the expiration of the
33 sentence except as follows:

34 (1) Except as otherwise provided for in subsection (2) of this
35 section, the term of the sentence of an offender committed to a
36 correctional facility operated by the department may be reduced by
37 earned release time in accordance with procedures that shall be

1 developed and promulgated by the correctional agency having
2 jurisdiction in which the offender is confined. The earned release
3 time shall be for good behavior and good performance, as determined by
4 the correctional agency having jurisdiction. The correctional agency
5 shall not credit the offender with earned release credits in advance of
6 the offender actually earning the credits. Any program established
7 pursuant to this section shall allow an offender to earn early release
8 credits for presentence incarceration. If an offender is transferred
9 from a county jail to the department, the administrator of a county
10 jail facility shall certify to the department the amount of time spent
11 in custody at the facility and the amount of earned release time. An
12 offender who has been convicted of a felony committed after July 23,
13 1995, that involves any applicable deadly weapon enhancements under RCW
14 9.94A.533 (3) or (4), or both, shall not receive any good time credits
15 or earned release time for that portion of his or her sentence that
16 results from any deadly weapon enhancements.

17 (a) In the case of an offender convicted of a serious violent
18 offense, or a sex offense that is a class A felony, committed on or
19 after July 1, 1990, and before July 1, 2003, the aggregate earned
20 release time may not exceed fifteen percent of the sentence. In the
21 case of an offender convicted of a serious violent offense, or a sex
22 offense that is a class A felony, committed on or after July 1, 2003,
23 the aggregate earned release time may not exceed ten percent of the
24 sentence.

25 (b)(i) In the case of an offender who qualifies under (b)(ii) of
26 this subsection, the aggregate earned release time may not exceed fifty
27 percent of the sentence.

28 (ii) An offender is qualified to earn up to fifty percent of
29 aggregate earned release time under this subsection (1)(b) if he or
30 she:

31 (A) Is classified in one of the two lowest risk categories under
32 (b)(iii) of this subsection;

33 (B) Is not confined pursuant to a sentence for:

34 (I) A sex offense;

35 (II) A violent offense;

36 (III) A crime against persons as defined in RCW (~~9.94A.411~~)
37 9.94A.030;

1 (IV) A felony that is domestic violence as defined in RCW
2 10.99.020;

3 (V) A violation of RCW 9A.52.025 (residential burglary);

4 (VI) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.401 by manufacture or delivery or possession with
6 intent to deliver methamphetamine; or

7 (VII) A violation of, or an attempt, solicitation, or conspiracy to
8 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

9 (C) Has no prior conviction for:

10 (I) A sex offense;

11 (II) A violent offense;

12 (III) A crime against persons as defined in RCW (~~9.94A.411~~)
13 9.94A.030;

14 (IV) A felony that is domestic violence as defined in RCW
15 10.99.020;

16 (V) A violation of RCW 9A.52.025 (residential burglary);

17 (VI) A violation of, or an attempt, solicitation, or conspiracy to
18 violate, RCW 69.50.401 by manufacture or delivery or possession with
19 intent to deliver methamphetamine; or

20 (VII) A violation of, or an attempt, solicitation, or conspiracy to
21 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

22 (D) Participates in programming or activities as directed by the
23 offender's individual reentry plan as provided under RCW 72.09.270 to
24 the extent that such programming or activities are made available by
25 the department; and

26 (E) Has not committed a new felony after July 22, 2007, while under
27 community supervision, community placement, or community custody.

28 (iii) For purposes of determining an offender's eligibility under
29 this subsection (1)(b), the department shall perform a risk assessment
30 of every offender committed to a correctional facility operated by the
31 department who has no current or prior conviction for a sex offense, a
32 violent offense, a crime against persons as defined in RCW
33 (~~9.94A.411~~) 9.94A.030, a felony that is domestic violence as defined
34 in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary),
35 a violation of, or an attempt, solicitation, or conspiracy to violate,
36 RCW 69.50.401 by manufacture or delivery or possession with intent to
37 deliver methamphetamine, or a violation of, or an attempt,
38 solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a

1 controlled substance to a minor). The department must classify each
2 assessed offender in one of four risk categories between highest and
3 lowest risk.

4 (iv) The department shall recalculate the earned release time and
5 reschedule the expected release dates for each qualified offender under
6 this subsection (1)(b).

7 (v) This subsection (1)(b) applies retroactively to eligible
8 offenders serving terms of total confinement in a state correctional
9 facility as of July 1, 2003.

10 (vi) This subsection (1)(b) does not apply to offenders convicted
11 after July 1, 2010.

12 (c) In no other case shall the aggregate earned release time exceed
13 one-third of the total sentence;

14 (2)(a) A person convicted of a sex offense or an offense
15 categorized as a serious violent offense, assault in the second degree,
16 vehicular homicide, vehicular assault, assault of a child in the second
17 degree, any crime against persons where it is determined in accordance
18 with RCW 9.94A.602 that the offender or an accomplice was armed with a
19 deadly weapon at the time of commission, or any felony offense under
20 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
21 eligible, in accordance with a program developed by the department, for
22 transfer to community custody status in lieu of earned release time
23 pursuant to subsection (1) of this section;

24 (b) A person convicted of a sex offense, a violent offense, any
25 crime against persons (~~(under RCW 9.94A.411(2))~~) as defined in RCW
26 9.94A.030, or a felony offense under chapter 69.50 or 69.52 RCW,
27 committed on or after July 1, 2000, may become eligible, in accordance
28 with a program developed by the department, for transfer to community
29 custody status in lieu of earned release time pursuant to subsection
30 (1) of this section;

31 (c) The department shall, as a part of its program for release to
32 the community in lieu of earned release, require the offender to
33 propose a release plan that includes an approved residence and living
34 arrangement. All offenders with community placement or community
35 custody terms eligible for release to community custody status in lieu
36 of earned release shall provide an approved residence and living
37 arrangement prior to release to the community;

1 (d) The department may deny transfer to community custody status in
2 lieu of earned release time pursuant to subsection (1) of this section
3 if the department determines an offender's release plan, including
4 proposed residence location and living arrangements, may violate the
5 conditions of the sentence or conditions of supervision, place the
6 offender at risk to violate the conditions of the sentence, place the
7 offender at risk to reoffend, or present a risk to victim safety or
8 community safety. The department's authority under this section is
9 independent of any court-ordered condition of sentence or statutory
10 provision regarding conditions for community custody or community
11 placement;

12 (e) If the department denies transfer to community custody status
13 in lieu of earned early release pursuant to (d) of this subsection, the
14 department may transfer an offender to partial confinement in lieu of
15 earned early release up to three months. The three months in partial
16 confinement is in addition to that portion of the offender's term of
17 confinement that may be served in partial confinement as provided in
18 this section;

19 (f) An offender serving a term of confinement imposed under RCW
20 9.94A.670(4)(a) is not eligible for earned release credits under this
21 section;

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

26 (4)(a) The secretary may authorize an extraordinary medical
27 placement for an offender when all of the following conditions exist:

28 (i) The offender has a medical condition that is serious enough to
29 require costly care or treatment;

30 (ii) The offender poses a low risk to the community because he or
31 she is physically incapacitated due to age or the medical condition;
32 and

33 (iii) Granting the extraordinary medical placement will result in
34 a cost savings to the state.

35 (b) An offender sentenced to death or to life imprisonment without
36 the possibility of release or parole is not eligible for an
37 extraordinary medical placement.

1 (c) The secretary shall require electronic monitoring for all
2 offenders in extraordinary medical placement unless the electronic
3 monitoring equipment interferes with the function of the offender's
4 medical equipment or results in the loss of funding for the offender's
5 medical care. The secretary shall specify who shall provide the
6 monitoring services and the terms under which the monitoring shall be
7 performed.

8 (d) The secretary may revoke an extraordinary medical placement
9 under this subsection at any time;

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

14 (6) No more than the final six months of the offender's term of
15 confinement may be served in partial confinement designed to aid the
16 offender in finding work and reestablishing himself or herself in the
17 community. This is in addition to that period of earned early release
18 time that may be exchanged for partial confinement pursuant to
19 subsection (2)(e) of this section;

20 (7) The governor may pardon any offender;

21 (8) The department may release an offender from confinement any
22 time within ten days before a release date calculated under this
23 section; and

24 (9) An offender may leave a correctional facility prior to
25 completion of his or her sentence if the sentence has been reduced as
26 provided in RCW 9.94A.870.

27 Notwithstanding any other provisions of this section, an offender
28 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
29 mandatory minimum sentence of total confinement shall not be released
30 from total confinement before the completion of the listed mandatory
31 minimum sentence for that felony crime of conviction unless allowed
32 under RCW 9.94A.540, however persistent offenders are not eligible for
33 extraordinary medical placement.

34 **Sec. 11.** RCW 10.77.092 and 2004 c 157 s 3 are each amended to read
35 as follows:

36 (1) For purposes of determining whether a court may authorize
37 involuntary medication for the purpose of competency restoration

1 pursuant to RCW 10.77.090, a pending charge involving any one or more
2 of the following crimes is a serious offense per se in the context of
3 competency restoration:

4 (a) Any violent offense, sex offense, serious traffic offense,
5 crimes against persons, and most serious offense, as those terms are
6 defined in RCW 9.94A.030;

7 ~~((Any offense, except nonfelony counterfeiting offenses,
8 included in crimes against persons in RCW 9.94A.411;~~

9 ~~(+e))~~ Any offense contained in chapter 9.41 RCW (firearms and
10 dangerous weapons);

11 ~~((+d))~~ (c) Any offense listed as domestic violence in RCW
12 10.99.020;

13 ~~((+e))~~ (d) Any offense listed as a harassment offense in chapter
14 9A.46 RCW;

15 ~~((+f))~~ (e) Any violation of chapter 69.50 RCW that is a class B
16 felony; or

17 ~~((+g))~~ (f) Any city or county ordinance or statute that is
18 equivalent to an offense referenced in this subsection.

19 (2)(a) In a particular case, a court may determine that a pending
20 charge not otherwise defined as serious by state or federal law or by
21 a city or county ordinance is, nevertheless, a serious offense within
22 the context of competency restoration treatment when the conduct in the
23 charged offense falls within the standards established in (b) of this
24 subsection.

25 (b) To determine that the particular case is a serious offense
26 within the context of competency restoration, the court must consider
27 the following factors and determine that one or more of the following
28 factors creates a situation in which the offense is serious:

29 (i) The charge includes an allegation that the defendant actually
30 inflicted bodily or emotional harm on another person or that the
31 defendant created a reasonable apprehension of bodily or emotional harm
32 to another;

33 (ii) The extent of the impact of the alleged offense on the basic
34 human need for security of the citizens within the jurisdiction;

35 (iii) The number and nature of related charges pending against the
36 defendant;

37 (iv) The length of potential confinement if the defendant is
38 convicted; and

1 (v) The number of potential and actual victims or persons impacted
2 by the defendant's alleged acts.

3 **Sec. 12.** RCW 10.97.050 and 2005 c 421 s 9 are each amended to read
4 as follows:

5 (1) Conviction records may be disseminated without restriction.

6 (2) Any criminal history record information which pertains to an
7 incident that occurred within the last twelve months for which a person
8 is currently being processed by the criminal justice system, including
9 the entire period of correctional supervision extending through final
10 discharge from parole, when applicable, may be disseminated without
11 restriction with the exception of a record being disseminated in
12 response to a request for a conviction record under RCW 43.43.832. A
13 request for a conviction record under RCW 43.43.832 shall not contain
14 information for a person who, within the last twelve months, is
15 currently being processed by the criminal justice system unless it
16 pertains to information relating to a crime against a person as defined
17 in RCW (~~(9.94A.411)~~) 9.94A.030.

18 (3) Criminal history record information which includes
19 nonconviction data may be disseminated by a criminal justice agency to
20 another criminal justice agency for any purpose associated with the
21 administration of criminal justice, or in connection with the
22 employment of the subject of the record by a criminal justice or
23 juvenile justice agency. A criminal justice agency may respond to any
24 inquiry from another criminal justice agency without any obligation to
25 ascertain the purpose for which the information is to be used by the
26 agency making the inquiry.

27 (4) Criminal history record information which includes
28 nonconviction data may be disseminated by a criminal justice agency to
29 implement a statute, ordinance, executive order, or a court rule,
30 decision, or order which expressly refers to records of arrest,
31 charges, or allegations of criminal conduct or other nonconviction data
32 and authorizes or directs that it be available or accessible for a
33 specific purpose.

34 (5) Criminal history record information which includes
35 nonconviction data may be disseminated to individuals and agencies
36 pursuant to a contract with a criminal justice agency to provide
37 services related to the administration of criminal justice. Such

1 contract must specifically authorize access to criminal history record
2 information, but need not specifically state that access to
3 nonconviction data is included. The agreement must limit the use of
4 the criminal history record information to stated purposes and insure
5 the confidentiality and security of the information consistent with
6 state law and any applicable federal statutes and regulations.

7 (6) Criminal history record information which includes
8 nonconviction data may be disseminated to individuals and agencies for
9 the express purpose of research, evaluative, or statistical activities
10 pursuant to an agreement with a criminal justice agency. Such
11 agreement must authorize the access to nonconviction data, limit the
12 use of that information which identifies specific individuals to
13 research, evaluative, or statistical purposes, and contain provisions
14 giving notice to the person or organization to which the records are
15 disseminated that the use of information obtained therefrom and further
16 dissemination of such information are subject to the provisions of this
17 chapter and applicable federal statutes and regulations, which shall be
18 cited with express reference to the penalties provided for a violation
19 thereof.

20 (7) Every criminal justice agency that maintains and disseminates
21 criminal history record information must maintain information
22 pertaining to every dissemination of criminal history record
23 information except a dissemination to the effect that the agency has no
24 record concerning an individual. Information pertaining to
25 disseminations shall include:

- 26 (a) An indication of to whom (agency or person) criminal history
27 record information was disseminated;
28 (b) The date on which the information was disseminated;
29 (c) The individual to whom the information relates; and
30 (d) A brief description of the information disseminated.

31 The information pertaining to dissemination required to be
32 maintained shall be retained for a period of not less than one year.

33 (8) In addition to the other provisions in this section allowing
34 dissemination of criminal history record information, RCW 4.24.550
35 governs dissemination of information concerning offenders who commit
36 sex offenses as defined by RCW 9.94A.030. Criminal justice agencies,
37 their employees, and officials shall be immune from civil liability for

1 dissemination on criminal history record information concerning sex
2 offenders as provided in RCW 4.24.550.

3 **Sec. 13.** RCW 13.40.070 and 2003 c 53 s 98 are each amended to read
4 as follows:

5 (1) Complaints referred to the juvenile court alleging the
6 commission of an offense shall be referred directly to the prosecutor.
7 The prosecutor, upon receipt of a complaint, shall screen the complaint
8 to determine whether:

9 (a) The alleged facts bring the case within the jurisdiction of the
10 court; and

11 (b) On a basis of available evidence there is probable cause to
12 believe that the juvenile did commit the offense.

13 (2) If the identical alleged acts constitute an offense under both
14 the law of this state and an ordinance of any city or county of this
15 state, state law shall govern the prosecutor's screening and charging
16 decision for both filed and diverted cases.

17 (3) If the requirements of subsections (1)(a) and (b) of this
18 section are met, the prosecutor shall either file an information in
19 juvenile court or divert the case, as set forth in subsections (5),
20 (6), and (7) of this section. If the prosecutor finds that the
21 requirements of subsection (1)(a) and (b) of this section are not met,
22 the prosecutor shall maintain a record, for one year, of such decision
23 and the reasons therefor. In lieu of filing an information or
24 diverting an offense a prosecutor may file a motion to modify community
25 supervision where such offense constitutes a violation of community
26 supervision.

27 (4) An information shall be a plain, concise, and definite written
28 statement of the essential facts constituting the offense charged. It
29 shall be signed by the prosecuting attorney and conform to chapter
30 10.37 RCW.

31 (5) Where a case is legally sufficient, the prosecutor shall file
32 an information with the juvenile court if:

33 (a) An alleged offender is accused of a class A felony, a class B
34 felony, an attempt to commit a class B felony, a class C felony listed
35 in RCW (~~(9.94A.411(2))~~) 9.94A.030 as a crime against persons or listed
36 in RCW 9A.46.060 as a crime of harassment, or a class C felony that is
37 a violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

1 (b) An alleged offender is accused of a felony and has a criminal
2 history of any felony, or at least two gross misdemeanors, or at least
3 two misdemeanors; or

4 (c) An alleged offender has previously been committed to the
5 department; or

6 (d) An alleged offender has been referred by a diversion unit for
7 prosecution or desires prosecution instead of diversion; or

8 (e) An alleged offender has two or more diversion agreements on the
9 alleged offender's criminal history; or

10 (f) A special allegation has been filed that the offender or an
11 accomplice was armed with a firearm when the offense was committed.

12 (6) Where a case is legally sufficient the prosecutor shall divert
13 the case if the alleged offense is a misdemeanor or gross misdemeanor
14 or violation and the alleged offense is the offender's first offense or
15 violation. If the alleged offender is charged with a related offense
16 that must or may be filed under subsections (5) and (7) of this
17 section, a case under this subsection may also be filed.

18 (7) Where a case is legally sufficient and falls into neither
19 subsection (5) nor (6) of this section, it may be filed or diverted.
20 In deciding whether to file or divert an offense under this section the
21 prosecutor shall be guided only by the length, seriousness, and recency
22 of the alleged offender's criminal history and the circumstances
23 surrounding the commission of the alleged offense.

24 (8) Whenever a juvenile is placed in custody or, where not placed
25 in custody, referred to a diversion interview, the parent or legal
26 guardian of the juvenile shall be notified as soon as possible
27 concerning the allegation made against the juvenile and the current
28 status of the juvenile. Where a case involves victims of crimes
29 against persons or victims whose property has not been recovered at the
30 time a juvenile is referred to a diversion unit, the victim shall be
31 notified of the referral and informed how to contact the unit.

32 (9) The responsibilities of the prosecutor under subsections (1)
33 through (8) of this section may be performed by a juvenile court
34 probation counselor for any complaint referred to the court alleging
35 the commission of an offense which would not be a felony if committed
36 by an adult, if the prosecutor has given sufficient written notice to
37 the juvenile court that the prosecutor will not review such complaints.

1 (10) The prosecutor, juvenile court probation counselor, or
2 diversion unit may, in exercising their authority under this section or
3 RCW 13.40.080, refer juveniles to mediation or victim offender
4 reconciliation programs. Such mediation or victim offender
5 reconciliation programs shall be voluntary for victims.

6 **Sec. 14.** RCW 13.40.077 and 1997 c 338 s 18 are each amended to
7 read as follows:
8

9 RECOMMENDED PROSECUTING STANDARDS
10 FOR CHARGING AND PLEA DISPOSITIONS

11 INTRODUCTION: These standards are intended solely for the guidance
12 of prosecutors in the state of Washington. They are not intended to,
13 do not, and may not be relied upon to create a right or benefit,
14 substantive or procedural, enforceable at law by a party in litigation
15 with the state.

16 Evidentiary sufficiency.

17 (1) Decision not to prosecute.

18 STANDARD: A prosecuting attorney may decline to prosecute, even
19 though technically sufficient evidence to prosecute exists, in
20 situations where prosecution would serve no public purpose, would
21 defeat the underlying purpose of the law in question, or would result
22 in decreased respect for the law. The decision not to prosecute or
23 divert shall not be influenced by the race, gender, religion, or creed
24 of the suspect.

25 GUIDELINES/COMMENTARY:

26 Examples

27 The following are examples of reasons not to prosecute which could
28 satisfy the standard.

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

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

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

36 (ii) Most members of society act as if it were no longer in
37 existence;

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

3 (iv) The statute has not been recently reconsidered by the
4 legislature.

5 This reason is not to be construed as the basis for declining cases
6 because the law in question is unpopular or because it is difficult to
7 enforce.

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

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

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

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

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

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

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

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

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

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

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

36 (g) Improper Motives of Complainant - It may be proper to decline
37 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the underlying
2 purpose of the law in question, or would result in decreased respect
3 for the law.

4 (h) Immunity - It may be proper to decline to charge where immunity
5 is to be given to an accused in order to prosecute another where the
6 accused information or testimony will reasonably lead to the conviction
7 of others who are responsible for more serious criminal conduct or who
8 represent a greater danger to the public interest.

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

12 (i) Assault cases where the victim has suffered little or no
13 injury;

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

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

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

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

21 Notification

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

24 (2) Decision to prosecute.

25 STANDARD:

26 Crimes (~~against~~) affecting persons will be filed if sufficient
27 admissible evidence exists, which, when considered with the most
28 plausible, reasonably foreseeable defense that could be raised under
29 the evidence, would justify conviction by a reasonable and objective
30 fact-finder. With regard to offenses prohibited by RCW 9A.44.040,
31 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,
32 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling
33 agreements or diversions intended to place the accused in a program of
34 treatment or counseling, so that treatment, if determined to be
35 beneficial, can be proved under RCW 13.40.160(~~(+4)~~) (3).

36 Crimes against property/other crimes will be filed if the
37 admissible evidence is of such convincing force as to make it probable

1 that a reasonable and objective fact-finder would convict after hearing
2 all the admissible evidence and the most plausible defense that could
3 be raised.

4 The categorization of crimes for these charging standards shall be
5 the same as found in RCW 9.94A.411(2).

6 The decision to prosecute or use diversion shall not be influenced
7 by the race, gender, religion, or creed of the respondent.

8 (3) Selection of Charges/Degree of Charge

9 (a) The prosecutor should file charges which adequately describe
10 the nature of the respondent's conduct. Other offenses may be charged
11 only if they are necessary to ensure that the charges:

12 (i) Will significantly enhance the strength of the state's case at
13 trial; or

14 (ii) Will result in restitution to all victims.

15 (b) The prosecutor should not overcharge to obtain a guilty plea.

16 Overcharging includes:

17 (i) Charging a higher degree;

18 (ii) Charging additional counts.

19 This standard is intended to direct prosecutors to charge those
20 crimes which demonstrate the nature and seriousness of a respondent's
21 criminal conduct, but to decline to charge crimes which are not
22 necessary to such an indication. Crimes which do not merge as a matter
23 of law, but which arise from the same course of conduct, do not all
24 have to be charged.

25 (4) Police Investigation

26 A prosecuting attorney is dependent upon law enforcement agencies
27 to conduct the necessary factual investigation which must precede the
28 decision to prosecute. The prosecuting attorney shall ensure that a
29 thorough factual investigation has been conducted before a decision to
30 prosecute is made. In ordinary circumstances the investigation should
31 include the following:

32 (a) The interviewing of all material witnesses, together with the
33 obtaining of written statements whenever possible;

34 (b) The completion of necessary laboratory tests; and

35 (c) The obtaining, in accordance with constitutional requirements,
36 of the suspect's version of the events.

37 If the initial investigation is incomplete, a prosecuting attorney

1 should insist upon further investigation before a decision to prosecute
2 is made, and specify what the investigation needs to include.

3 (5) Exceptions

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

6 (a) Probable cause exists to believe the suspect is guilty; and

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

9 (c) The arrest of the suspect is necessary to complete the
10 investigation of the crime.

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

16 (6) Investigation Techniques

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

19 (a) Polygraph testing;

20 (b) Hypnosis;

21 (c) Electronic surveillance;

22 (d) Use of informants.

23 (7) Prefiling Discussions with Defendant

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

27 (8) Plea dispositions:

28 STANDARD

29 (a) Except as provided in subsection (2) of this section, a
30 respondent will normally be expected to plead guilty to the charge or
31 charges which adequately describe the nature of his or her criminal
32 conduct or go to trial.

33 (b) In certain circumstances, a plea agreement with a respondent in
34 exchange for a plea of guilty to a charge or charges that may not fully
35 describe the nature of his or her criminal conduct may be necessary and
36 in the public interest. Such situations may include the following:

37 (i) Evidentiary problems which make conviction of the original
38 charges doubtful;

1 (ii) The respondent's willingness to cooperate in the investigation
2 or prosecution of others whose criminal conduct is more serious or
3 represents a greater public threat;

4 (iii) A request by the victim when it is not the result of pressure
5 from the respondent;

6 (iv) The discovery of facts which mitigate the seriousness of the
7 respondent's conduct;

8 (v) The correction of errors in the initial charging decision;

9 (vi) The respondent's history with respect to criminal activity;

10 (vii) The nature and seriousness of the offense or offenses
11 charged;

12 (viii) The probable effect of witnesses.

13 (c) No plea agreement shall be influenced by the race, gender,
14 religion, or creed of the respondent. This includes but is not limited
15 to the prosecutor's decision to utilize such disposition alternatives
16 as the Special Sex Offender Disposition Alternative, the Chemical
17 Dependency Disposition Alternative, and manifest injustice.

18 (9) Disposition recommendations:

19 STANDARD

20 The prosecutor may reach an agreement regarding disposition
21 recommendations.

22 The prosecutor shall not agree to withhold relevant information
23 from the court concerning the plea agreement.

24 **Sec. 15.** RCW 43.43.8321 and 2005 c 421 s 10 are each amended to
25 read as follows:

26 When the Washington state patrol disseminates conviction record
27 information in response to a request under RCW 43.43.832, it shall
28 clearly state that: (1) The conviction record data does not include
29 information on civil adjudications, administrative findings, or
30 disciplinary board final decisions and that all such information must
31 be obtained from the courts and licensing agencies; (2) the conviction
32 record that is being disseminated includes information for which a
33 person is currently being processed by the criminal justice system
34 relating to only crimes against a person as defined in RCW
35 (~~(9.94A.411)~~) 9.94A.030 and that it does not include any other current
36 or pending charge information for which a person could be in the

1 current process of being processed by the criminal justice system; and
2 (3) an arrest is not a conviction or a finding of guilt.

3 **Sec. 16.** RCW 43.43.842 and 2007 c 387 s 4 are each amended to read
4 as follows:

5 (1)(a) The secretary of social and health services and the
6 secretary of health shall adopt additional requirements for the
7 licensure or relicensure of agencies, facilities, and licensed
8 individuals who provide care and treatment to vulnerable adults,
9 including nursing pools registered under chapter 18.52C RCW. These
10 additional requirements shall ensure that any person associated with a
11 licensed agency or facility having unsupervised access with a
12 vulnerable adult shall not be the respondent in an active protective
13 order under RCW 74.34.130, nor have been: (i) Convicted of a crime
14 against children or other persons as defined in RCW 43.43.830, except
15 as provided in this section; (ii) convicted of crimes relating to
16 financial exploitation as defined in RCW 43.43.830, except as provided
17 in this section; or (iii) found in any disciplinary board final
18 decision to have abused a vulnerable adult under RCW 43.43.830.

19 (b) A person associated with a licensed agency or facility who has
20 unsupervised access with a vulnerable adult shall make the disclosures
21 specified in RCW 43.43.834(2). The person shall make the disclosures
22 in writing, sign, and swear to the contents under penalty of perjury.
23 The person shall, in the disclosures, specify all crimes against
24 children or other persons, all crimes relating to financial
25 exploitation, and all crimes relating to drugs as defined in RCW
26 43.43.830, committed by the person.

27 (2) The rules adopted under this section shall permit the licensee
28 to consider the criminal history of an applicant for employment in a
29 licensed facility when the applicant has one or more convictions for a
30 past offense and:

31 (a) The offense was simple assault, assault in the fourth degree,
32 or the same offense as it may be renamed, and three or more years have
33 passed between the most recent conviction and the date of application
34 for employment;

35 (b) The offense was prostitution, or the same offense as it may be
36 renamed, and three or more years have passed between the most recent
37 conviction and the date of application for employment;

1 (c) The offense was theft in the third degree, or the same offense
2 as it may be renamed, and three or more years have passed between the
3 most recent conviction and the date of application for employment;

4 (d) The offense was theft in the second degree, or the same offense
5 as it may be renamed, and five or more years have passed between the
6 most recent conviction and the date of application for employment;

7 (e) The offense was forgery, or the same offense as it may be
8 renamed, and five or more years have passed between the most recent
9 conviction and the date of application for employment.

10 The offenses set forth in (a) through (e) of this subsection do not
11 automatically disqualify an applicant from employment by a licensee.
12 Nothing in this section may be construed to require the employment of
13 any person against a licensee's judgment.

14 (3) In consultation with law enforcement personnel, the secretary
15 of social and health services and the secretary of health shall
16 investigate, or cause to be investigated, the conviction record and the
17 protection proceeding record information under this chapter of the
18 staff of each agency or facility under their respective jurisdictions
19 seeking licensure or relicensure. An individual responding to a
20 criminal background inquiry request from his or her employer or
21 potential employer shall disclose the information about his or her
22 criminal history under penalty of perjury. The secretaries shall use
23 the information solely for the purpose of determining eligibility for
24 licensure or relicensure. Criminal justice agencies shall provide the
25 secretaries such information as they may have and that the secretaries
26 may require for such purpose.

27 NEW SECTION. **Sec. 17.** The sentencing guidelines commission shall
28 study the definition of crimes against persons in RCW 9.94A.030. The
29 commission shall determine, in light of the history and purpose of the
30 definition and the purpose of the sentencing reform act as stated in
31 RCW 9.94A.010, whether there are offenses that should be added to the
32 definition and whether there are offenses that should be removed from
33 the definition. The sentencing guidelines commission shall report its
34 findings and any recommendations to the appropriate standing committees
35 of the legislature no later than December 1, 2008.

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