
ENGROSSED HOUSE BILL 1632

State of Washington 64th Legislature 2015 Regular Session

By Representatives Goodman, Klippert, Orwall, Hayes, Jinkins, and Wylie

Read first time 01/23/15. Referred to Committee on Public Safety.

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

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

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

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

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

11 (1) A prior conviction is a conviction which exists before the
12 date of sentencing for the offense for which the offender score is
13 being computed. Convictions entered or sentenced on the same date as
14 the conviction for which the offender score is being computed shall
15 be deemed "other current offenses" within the meaning of RCW
16 9.94A.589.

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

19 (b) Class B prior felony convictions other than sex offenses
20 shall not be included in the offender score, if since the last date
21 of release from confinement (including full-time residential

1 treatment) pursuant to a felony conviction, if any, or entry of
2 judgment and sentence, the offender had spent ten consecutive years
3 in the community without committing any crime that subsequently
4 results in a conviction.

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

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

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

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

37 (g) This subsection applies to both adult and juvenile prior
38 convictions.

39 (3) Out-of-state convictions for offenses shall be classified
40 according to the comparable offense definitions and sentences

1 provided by Washington law. Federal convictions for offenses shall be
2 classified according to the comparable offense definitions and
3 sentences provided by Washington law. If there is no clearly
4 comparable offense under Washington law or the offense is one that is
5 usually considered subject to exclusive federal jurisdiction, the
6 offense shall be scored as a class C felony equivalent if it was a
7 felony under the relevant federal statute.

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

11 (5)(a) In the case of multiple prior convictions, for the purpose
12 of computing the offender score, count all convictions separately,
13 except:

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

29 (ii) In the case of multiple prior convictions for offenses
30 committed before July 1, 1986, for the purpose of computing the
31 offender score, count all adult convictions served concurrently as
32 one offense, and count all juvenile convictions entered on the same
33 date as one offense. Use the conviction for the offense that yields
34 the highest offender score.

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

1 (6) If the present conviction is one of the anticipatory offenses
2 of criminal attempt, solicitation, or conspiracy, count each prior
3 conviction as if the present conviction were for a completed offense.
4 When these convictions are used as criminal history, score them the
5 same as a completed crime.

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

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

17 (9) If the present conviction is for a serious violent offense,
18 count three points for prior adult and juvenile convictions for
19 crimes in this category, two points for each prior adult and juvenile
20 violent conviction (not already counted), one point for each prior
21 adult nonviolent felony conviction, and 1/2 point for each prior
22 juvenile nonviolent felony conviction.

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

28 (11) If the present conviction is for a felony traffic offense
29 count two points for each adult or juvenile prior conviction for
30 Vehicular Homicide or Vehicular Assault; for each felony offense
31 count one point for each adult and 1/2 point for each juvenile prior
32 conviction; for each serious traffic offense, other than those used
33 for an enhancement pursuant to RCW 46.61.520(2), count one point for
34 each adult and 1/2 point for each juvenile prior conviction; count
35 one point for each adult and 1/2 point for each juvenile prior
36 conviction for operation of a vessel while under the influence of
37 intoxicating liquor or any drug.

38 (12) If the present conviction is for homicide by watercraft or
39 assault by watercraft count two points for each adult or juvenile
40 prior conviction for homicide by watercraft or assault by watercraft;

1 for each felony offense count one point for each adult and 1/2 point
2 for each juvenile prior conviction; count one point for each adult
3 and 1/2 point for each juvenile prior conviction for driving under
4 the influence of intoxicating liquor or any drug, actual physical
5 control of a motor vehicle while under the influence of intoxicating
6 liquor or any drug, or operation of a vessel while under the
7 influence of intoxicating liquor or any drug.

8 (13) If the present conviction is for manufacture of
9 methamphetamine count three points for each adult prior manufacture
10 of methamphetamine conviction and two points for each juvenile
11 manufacture of methamphetamine offense. If the present conviction is
12 for a drug offense and the offender has a criminal history that
13 includes a sex offense or serious violent offense, count three points
14 for each adult prior felony drug offense conviction and two points
15 for each juvenile drug offense. All other adult and juvenile felonies
16 are scored as in subsection (8) of this section if the current drug
17 offense is violent, or as in subsection (7) of this section if the
18 current drug offense is nonviolent.

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

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

26 (16) If the present conviction is for Burglary 2 or residential
27 burglary, count priors as in subsection (7) of this section; however,
28 count two points for each adult and juvenile prior Burglary 1
29 conviction, two points for each adult prior Burglary 2 or residential
30 burglary conviction, and one point for each juvenile prior Burglary 2
31 or residential burglary conviction.

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

36 (18) If the present conviction is for failure to register as a
37 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in
38 subsections (7) through (11) and (13) through (16) of this section;
39 however count three points for each adult and juvenile prior sex
40 offense conviction, excluding prior convictions for failure to

1 register as a sex offender under RCW 9A.44.130 or 9A.44.132, which
2 shall count as one point.

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

7 (20) If the present conviction is for Theft of a Motor Vehicle,
8 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
9 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
10 priors as in subsections (7) through (18) of this section; however
11 count one point for prior convictions of Vehicle Prowling 2, and
12 three points for each adult and juvenile prior Theft 1 (of a motor
13 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property
14 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor
15 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,
16 Taking a Motor Vehicle Without Permission 1, or Taking a Motor
17 Vehicle Without Permission 2 conviction.

18 (21) If the present conviction is for a felony domestic violence
19 offense where domestic violence as defined in RCW 9.94A.030 was plead
20 and proven, count priors as in subsections (7) through (20) of this
21 section; however, count points as follows:

22 (a) Count two points for each adult prior conviction where
23 domestic violence as defined in RCW 9.94A.030 was plead and proven
24 after August 1, 2011, for any of the following offenses: A felony
25 violation of a no-contact or protection order (~~that is a felony~~
26 ~~offense, a violation of a protection order that is a felony offense,~~
27 a) (RCW 26.50.110), felony (~~domestic violence~~) Harassment
28 (~~offense~~) (RCW 9A.46.020(2)(b)), ((a)) felony (~~domestic violence~~)
29 Stalking (~~offense, a domestic violence~~) (RCW 9A.46.110(5)(b)),
30 Burglary 1 (~~offense~~) (RCW 9A.52.020), ((a ~~domestic violence~~)
31 Kidnapping 1 (~~offense~~) (RCW 9A.40.020), ((a ~~domestic violence~~)
32 Kidnapping 2 (~~offense~~) (RCW 9A.40.030), ((a ~~domestic violence~~)
33 Unlawful imprisonment (~~offense~~) (RCW 9A.40.040), ((a ~~domestic~~
34 ~~violence~~) Robbery 1 (~~offense~~) (RCW 9A.56.200), ((a ~~domestic~~
35 ~~violence~~) Robbery 2 (~~offense~~) (RCW 9A.56.210), ((a ~~domestic~~
36 ~~violence~~) Assault 1 (~~offense~~) (RCW 9A.36.011), ((a ~~domestic~~
37 ~~violence~~) Assault 2 (~~offense~~) (RCW 9A.36.021), ((a ~~domestic~~
38 ~~violence~~) Assault 3 (~~offense~~) (RCW 9A.36.031), ((a ~~domestic~~
39 ~~violence~~) Arson 1 (~~offense~~) (RCW 9A.48.020), or ((a ~~domestic~~
40 ~~violence~~) Arson 2 (~~offense~~) (RCW 9A.48.030);

1 (b) Count two points for each adult prior conviction where
2 domestic violence as defined in RCW 9.94A.030 was plead and proven
3 after the effective date of this section, for any of the following
4 offenses: Assault of a child in the first degree, RCW 9A.36.120;
5 Assault of a child in the second degree, RCW 9A.36.130; Assault of a
6 child in the third degree, RCW 9A.36.140; Criminal Mistreatment in
7 the first degree, RCW 9A.42.020; or Criminal Mistreatment in the
8 second degree, RCW 9A.42.030;

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

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

17 (22) The fact that a prior conviction was not included in an
18 offender's offender score or criminal history at a previous
19 sentencing shall have no bearing on whether it is included in the
20 criminal history or offender score for the current offense. Prior
21 convictions that were not counted in the offender score or included
22 in criminal history under repealed or previous versions of the
23 sentencing reform act shall be included in criminal history and shall
24 count in the offender score if the current version of the sentencing
25 reform act requires including or counting those convictions. Prior
26 convictions that were not included in criminal history or in the
27 offender score shall be included upon any resentencing to ensure
28 imposition of an accurate sentence.

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

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

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

36 (3) Assault in the fourth degree, where domestic violence was
37 plead and proven after August 1, 2011, is a class C felony if the
38 person has two or more prior adult convictions within ten years for

1 any of the following offenses where domestic violence as defined in
2 RCW 9.94A.030 was plead and proven after August 1, 2011:

3 (a) Assault in the fourth degree;

4 (b) Assault in the third degree;

5 (c) Assault in the second degree;

6 (d) Assault in the first degree; or

7 (e) An out-of-state comparable offense.

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

16 **Sec. 3.** RCW 9.94A.411 and 2006 c 271 s 1 and 2006 c 73 s 13 are
17 each reenacted and amended to read as follows:

18 (1) Decision not to prosecute.

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

24 GUIDELINE/COMMENTARY:

25 Examples

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

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

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

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

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

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

1 (iv) The statute has not been recently reconsidered by the
2 legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (i) Assault cases where the victim has suffered little or no
11 injury;

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

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

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

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

20 Notification

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

24 (2) Decision to prosecute.

25 (a) STANDARD:

26 Crimes against persons will be filed if sufficient admissible
27 evidence exists, which, when considered with the most plausible,
28 reasonably foreseeable defense that could be raised under the
29 evidence, would justify conviction by a reasonable and objective fact
30 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
34 of treatment or counseling, so that treatment, if determined to be
35 beneficial, can be provided pursuant to RCW 9.94A.670.

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

1 See table below for the crimes within these categories.

2 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

3 CRIMES AGAINST PERSONS

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

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

1 Forgery
2 2nd Degree Promoting Prostitution
3 Tampering with a Witness
4 Trading in Public Office
5 Trading in Special Influence
6 Receiving/Granting Unlawful Compensation
7 Bigamy
8 Eluding a Pursuing Police Vehicle
9 Willful Failure to Return from Furlough
10 Escape from Community Custody
11 Riot (if against property)
12 1st Degree Theft of Livestock
13 2nd Degree Theft of Livestock

14 ALL OTHER UNCLASSIFIED FELONIES

15 Selection of Charges/Degree of Charge

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

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

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

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

24 (A) Charging a higher degree;

25 (B) Charging additional counts.

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

32 (b) GUIDELINES/COMMENTARY:

33 (i) Police Investigation

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

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

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

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

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

10 (ii) Exceptions

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

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

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

17 (C) The arrest of the suspect is necessary to complete the
18 investigation of the crime.

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

25 (iii) Investigation Techniques

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

28 (A) Polygraph testing;

29 (B) Hypnosis;

30 (C) Electronic surveillance;

31 (D) Use of informants.

32 (iv) Pre-Filing Discussions with Defendant

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

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

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

1 considered before reaching any agreement with the defendant regarding
2 these decisions.

3 **Sec. 4.** RCW 43.43.830 and 2012 c 44 s 1 are each amended to read
4 as follows:

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

7 (1) "Agency" means any person, firm, partnership, association,
8 corporation, or facility which receives, provides services to, houses
9 or otherwise cares for vulnerable adults, juveniles, or children, or
10 which provides child day care, early learning, or early childhood
11 education services.

12 (2) "Applicant" means:

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

17 (b) Any prospective volunteer who will have regularly scheduled
18 unsupervised access to children under sixteen years of age,
19 developmentally disabled persons, or vulnerable adults during the
20 course of his or her employment or involvement with the business or
21 organization under circumstances where such access will or may
22 involve groups of (i) five or fewer children under twelve years of
23 age, (ii) three or fewer children between twelve and sixteen years of
24 age, (iii) developmentally disabled persons, or (iv) vulnerable
25 adults;

26 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
27 or

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

30 (3) "Business or organization" means a person, business, or
31 organization licensed in this state, any agency of the state, or
32 other governmental entity, that educates, trains, treats, supervises,
33 houses, or provides recreation to developmentally disabled persons,
34 vulnerable adults, or children under sixteen years of age, or that
35 provides child day care, early learning, or early learning childhood
36 education services, including but not limited to public housing
37 authorities, school districts, and educational service districts.

38 (4) "Civil adjudication proceeding" is a judicial or
39 administrative adjudicative proceeding that results in a finding of,

1 or upholds an agency finding of, domestic violence, abuse, sexual
2 abuse, neglect, abandonment, violation of a professional licensing
3 standard regarding a child or vulnerable adult, or exploitation or
4 financial exploitation of a child or vulnerable adult under any
5 provision of law, including but not limited to chapter 13.34, 26.44,
6 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.
7 "Civil adjudication proceeding" also includes judicial or
8 administrative findings that become final due to the failure of the
9 alleged perpetrator to timely exercise a legal right to
10 administratively challenge such findings.

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

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

25 (7) "Crime against children or other persons" means a conviction
26 of any of the following offenses: Aggravated murder; first or second
27 degree murder; first or second degree kidnapping; first, second, or
28 third degree assault; fourth degree assault (if a violation of RCW
29 9A.36.041(3)); first, second, or third degree assault of a child;
30 first, second, or third degree rape; first, second, or third degree
31 rape of a child; first or second degree robbery; first degree arson;
32 first degree burglary; first or second degree manslaughter; first or
33 second degree extortion; indecent liberties; incest; vehicular
34 homicide; first degree promoting prostitution; communication with a
35 minor; unlawful imprisonment; simple assault; sexual exploitation of
36 minors; first or second degree criminal mistreatment; endangerment
37 with a controlled substance; child abuse or neglect as defined in RCW
38 26.44.020; first or second degree custodial interference; first or
39 second degree custodial sexual misconduct; malicious harassment;
40 first, second, or third degree child molestation; first or second

1 degree sexual misconduct with a minor; commercial sexual abuse of a
2 minor; child abandonment; promoting pornography; selling or
3 distributing erotic material to a minor; custodial assault; violation
4 of child abuse restraining order; child buying or selling;
5 prostitution; felony indecent exposure; criminal abandonment; or any
6 of these crimes as they may be renamed in the future.

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

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

14 (10) "Financial exploitation" means "financial exploitation" as
15 defined in RCW 74.34.020.

16 (11) "Health care facility" means a nursing home licensed under
17 chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW,
18 or an adult family home licensed under chapter 70.128 RCW.

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

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

26 (a) Another employee or volunteer from the same business or
27 organization as the applicant; or

28 (b) Any relative or guardian of any of the children or
29 developmentally disabled persons or vulnerable adults to which the
30 applicant has access during the course of his or her employment or
31 involvement with the business or organization.

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

39 (14) "Vulnerable adult" means "vulnerable adult" as defined in
40 chapter 74.34 RCW, except that for the purposes of requesting and

1 receiving background checks pursuant to RCW 43.43.832, it shall also
2 include adults of any age who lack the functional, mental, or
3 physical ability to care for themselves.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 7.36 RCW
5 to read as follows:

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

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