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HOUSE BILL 2970

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State of Washington

64th Legislature

2016 Regular Session

By Representatives McCabe and Appleton

Read first time 02/03/16. Referred to Committee on Public Safety.

1 AN ACT Relating to voyeurism; amending RCW 9A.44.115, 9.94A.515,  
2 and 13.40.070; and prescribing penalties.

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

4 **Sec. 1.** RCW 9A.44.115 and 2003 c 213 s 1 are each amended to  
5 read as follows:

6 (1) As used in this section:

7 (a) "Intimate areas" means any portion of a person's body or  
8 undergarments that is covered by clothing and intended to be  
9 protected from public view;

10 (b) "Photographs" or "films" means the making of a photograph,  
11 motion picture film, videotape, digital image, or any other recording  
12 or transmission of the image of a person;

13 (c) "Place where he or she would have a reasonable expectation of  
14 privacy" means:

15 (i) A place where a reasonable person would believe that he or  
16 she could disrobe in privacy, without being concerned that his or her  
17 undressing was being photographed or filmed by another; or

18 (ii) A place where one may reasonably expect to be safe from  
19 casual or hostile intrusion or surveillance;

1 (d) "Surveillance" means secret observation of the activities of  
2 another person for the purpose of spying upon and invading the  
3 privacy of the person;

4 (e) "Views" means the intentional looking upon of another person  
5 for more than a brief period of time, in other than a casual or  
6 cursory manner, with the unaided eye or with a device designed or  
7 intended to improve visual acuity.

8 (2)(a) A person commits the crime of voyeurism in the first  
9 degree if, for the purpose of arousing or gratifying the sexual  
10 desire of any person, he or she knowingly views, photographs, or  
11 films:

12 (~~(a)~~) (i) Another person without that person's knowledge and  
13 consent while the person being viewed, photographed, or filmed is in  
14 a place where he or she would have a reasonable expectation of  
15 privacy; or

16 (~~(b)~~) (ii) The intimate areas of another person without that  
17 person's knowledge and consent and under circumstances where the  
18 person has a reasonable expectation of privacy, whether in a public  
19 or private place.

20 (~~(3)~~) (b) Voyeurism in the first degree is a class C felony.

21 (3)(a) A person commits the crime of voyeurism in the second  
22 degree if he or she knowingly views, photographs, or films:

23 (i) Another person without that person's knowledge and consent  
24 while the person being viewed, photographed, or filmed is in a place  
25 where he or she would have a reasonable expectation of privacy; or

26 (ii) The intimate areas of another person without that person's  
27 knowledge and consent and under circumstances where the person has a  
28 reasonable expectation of privacy, whether in a public or private  
29 place.

30 (b) Voyeurism in the second degree is a gross misdemeanor.

31 (4) This section does not apply to viewing, photographing, or  
32 filming by personnel of the department of corrections or of a local  
33 jail or correctional facility for security purposes or during  
34 investigation of alleged misconduct by a person in the custody of the  
35 department of corrections or the local jail or correctional facility.

36 (5) It shall be a defense to the crime of voyeurism that the  
37 defendant is a licensed private investigator acting within the  
38 capacity of his or her license as provided by chapter 18.165 RCW.

39 (6) If a person is convicted of a violation of this section, the  
40 court may order the destruction of any photograph, motion picture

1 film, digital image, videotape, or any other recording of an image  
2 that was made by the person in violation of this section.

3 **Sec. 2.** RCW 9.94A.515 and 2015 c 261 s 11 are each amended to  
4 read as follows:

5 TABLE 2

6 CRIMES INCLUDED WITHIN  
7 EACH SERIOUSNESS LEVEL

- 8 XVI Aggravated Murder 1 (RCW  
9 10.95.020)
- 10 XV Homicide by abuse (RCW 9A.32.055)  
11 Malicious explosion 1 (RCW  
12 70.74.280(1))  
13 Murder 1 (RCW 9A.32.030)
- 14 XIV Murder 2 (RCW 9A.32.050)  
15 Trafficking 1 (RCW 9A.40.100(1))
- 16 XIII Malicious explosion 2 (RCW  
17 70.74.280(2))  
18 Malicious placement of an explosive 1  
19 (RCW 70.74.270(1))
- 20 XII Assault 1 (RCW 9A.36.011)  
21 Assault of a Child 1 (RCW 9A.36.120)  
22 Malicious placement of an imitation  
23 device 1 (RCW 70.74.272(1)(a))  
24 Promoting Commercial Sexual Abuse  
25 of a Minor (RCW 9.68A.101)  
26 Rape 1 (RCW 9A.44.040)  
27 Rape of a Child 1 (RCW 9A.44.073)  
28 Trafficking 2 (RCW 9A.40.100(3))
- 29 XI Manslaughter 1 (RCW 9A.32.060)  
30 Rape 2 (RCW 9A.44.050)  
31 Rape of a Child 2 (RCW 9A.44.076)  
32 Vehicular Homicide, by being under  
33 the influence of intoxicating liquor  
34 or any drug (RCW 46.61.520)

1 X Child Molestation 1 (RCW 9A.44.083)  
2 Criminal Mistreatment 1 (RCW  
3 9A.42.020)  
4 Indecent Liberties (with forcible  
5 compulsion) (RCW  
6 9A.44.100(1)(a))  
7 Kidnapping 1 (RCW 9A.40.020)  
8 Leading Organized Crime (RCW  
9 9A.82.060(1)(a))  
10 Malicious explosion 3 (RCW  
11 70.74.280(3))  
12 Sexually Violent Predator Escape  
13 (RCW 9A.76.115)  
14 IX Abandonment of Dependent Person 1  
15 (RCW 9A.42.060)  
16 Assault of a Child 2 (RCW 9A.36.130)  
17 Explosive devices prohibited (RCW  
18 70.74.180)  
19 Hit and Run—Death (RCW  
20 46.52.020(4)(a))  
21 Homicide by Watercraft, by being  
22 under the influence of intoxicating  
23 liquor or any drug (RCW  
24 79A.60.050)  
25 Inciting Criminal Profiteering (RCW  
26 9A.82.060(1)(b))  
27 Malicious placement of an explosive 2  
28 (RCW 70.74.270(2))  
29 Robbery 1 (RCW 9A.56.200)  
30 Sexual Exploitation (RCW 9.68A.040)  
31 VIII Arson 1 (RCW 9A.48.020)  
32 Commercial Sexual Abuse of a Minor  
33 (RCW 9.68A.100)

1 Homicide by Watercraft, by the  
2 operation of any vessel in a  
3 reckless manner (RCW  
4 79A.60.050)  
5 Manslaughter 2 (RCW 9A.32.070)  
6 Promoting Prostitution 1 (RCW  
7 9A.88.070)  
8 Theft of Ammonia (RCW 69.55.010)  
9 Vehicular Homicide, by the operation  
10 of any vehicle in a reckless  
11 manner (RCW 46.61.520)  
12 VII Burglary 1 (RCW 9A.52.020)  
13 Child Molestation 2 (RCW 9A.44.086)  
14 Civil Disorder Training (RCW  
15 9A.48.120)  
16 Dealing in depictions of minor engaged  
17 in sexually explicit conduct 1  
18 (RCW 9.68A.050(1))  
19 Drive-by Shooting (RCW 9A.36.045)  
20 Homicide by Watercraft, by disregard  
21 for the safety of others (RCW  
22 79A.60.050)  
23 Indecent Liberties (without forcible  
24 compulsion) (RCW 9A.44.100(1)  
25 (b) and (c))  
26 Introducing Contraband 1 (RCW  
27 9A.76.140)  
28 Malicious placement of an explosive 3  
29 (RCW 70.74.270(3))  
30 Negligently Causing Death By Use of a  
31 Signal Preemption Device (RCW  
32 46.37.675)  
33 Sending, bringing into state depictions  
34 of minor engaged in sexually  
35 explicit conduct 1 (RCW  
36 9.68A.060(1))

1 Unlawful Possession of a Firearm in  
2 the first degree (RCW  
3 9.41.040(1))  
4 Use of a Machine Gun in Commission  
5 of a Felony (RCW 9.41.225)  
6 Vehicular Homicide, by disregard for  
7 the safety of others (RCW  
8 46.61.520)  
9 VI Bail Jumping with Murder 1 (RCW  
10 9A.76.170(3)(a))  
11 Bribery (RCW 9A.68.010)  
12 Incest 1 (RCW 9A.64.020(1))  
13 Intimidating a Judge (RCW 9A.72.160)  
14 Intimidating a Juror/Witness (RCW  
15 9A.72.110, 9A.72.130)  
16 Malicious placement of an imitation  
17 device 2 (RCW 70.74.272(1)(b))  
18 Possession of Depictions of a Minor  
19 Engaged in Sexually Explicit  
20 Conduct 1 (RCW 9.68A.070(1))  
21 Rape of a Child 3 (RCW 9A.44.079)  
22 Theft of a Firearm (RCW 9A.56.300)  
23 Unlawful Storage of Ammonia (RCW  
24 69.55.020)  
25 V Abandonment of Dependent Person 2  
26 (RCW 9A.42.070)  
27 Advancing money or property for  
28 extortionate extension of credit  
29 (RCW 9A.82.030)  
30 Bail Jumping with class A Felony  
31 (RCW 9A.76.170(3)(b))  
32 Child Molestation 3 (RCW 9A.44.089)  
33 Criminal Mistreatment 2 (RCW  
34 9A.42.030)

1 Custodial Sexual Misconduct 1 (RCW  
2 9A.44.160)  
3 Dealing in Depictions of Minor  
4 Engaged in Sexually Explicit  
5 Conduct 2 (RCW 9.68A.050(2))  
6 Domestic Violence Court Order  
7 Violation (RCW 10.99.040,  
8 10.99.050, 26.09.300, 26.10.220,  
9 26.26.138, 26.50.110, 26.52.070,  
10 or 74.34.145)  
11 Driving While Under the Influence  
12 (RCW 46.61.502(6))  
13 Extortion 1 (RCW 9A.56.120)  
14 Extortionate Extension of Credit (RCW  
15 9A.82.020)  
16 Extortionate Means to Collect  
17 Extensions of Credit (RCW  
18 9A.82.040)  
19 Incest 2 (RCW 9A.64.020(2))  
20 Kidnapping 2 (RCW 9A.40.030)  
21 Perjury 1 (RCW 9A.72.020)  
22 Persistent prison misbehavior (RCW  
23 9.94.070)  
24 Physical Control of a Vehicle While  
25 Under the Influence (RCW  
26 46.61.504(6))  
27 Possession of a Stolen Firearm (RCW  
28 9A.56.310)  
29 Rape 3 (RCW 9A.44.060)  
30 Rendering Criminal Assistance 1  
31 (RCW 9A.76.070)  
32 Sending, Bringing into State  
33 Depictions of Minor Engaged in  
34 Sexually Explicit Conduct 2  
35 (RCW 9.68A.060(2))

1 Sexual Misconduct with a Minor 1  
2 (RCW 9A.44.093)  
3 Sexually Violating Human Remains  
4 (RCW 9A.44.105)  
5 Stalking (RCW 9A.46.110)  
6 Taking Motor Vehicle Without  
7 Permission 1 (RCW 9A.56.070)  
8 IV Arson 2 (RCW 9A.48.030)  
9 Assault 2 (RCW 9A.36.021)  
10 Assault 3 (of a Peace Officer with a  
11 Projectile Stun Gun) (RCW  
12 9A.36.031(1)(h))  
13 Assault by Watercraft (RCW  
14 79A.60.060)  
15 Bribing a Witness/Bribe Received by  
16 Witness (RCW 9A.72.090,  
17 9A.72.100)  
18 Cheating 1 (RCW 9.46.1961)  
19 Commercial Bribery (RCW  
20 9A.68.060)  
21 Counterfeiting (RCW 9.16.035(4))  
22 Endangerment with a Controlled  
23 Substance (RCW 9A.42.100)  
24 Escape 1 (RCW 9A.76.110)  
25 Hit and Run—Injury (RCW  
26 46.52.020(4)(b))  
27 Hit and Run with Vessel—Injury  
28 Accident (RCW 79A.60.200(3))  
29 Identity Theft 1 (RCW 9.35.020(2))  
30 Indecent Exposure to Person Under  
31 Age Fourteen (subsequent sex  
32 offense) (RCW 9A.88.010)  
33 Influencing Outcome of Sporting Event  
34 (RCW 9A.82.070)



1 Malicious Harassment (RCW  
2 9A.36.080)  
3 Possession of Depictions of a Minor  
4 Engaged in Sexually Explicit  
5 Conduct 2 (RCW 9.68A.070(2))  
6 Residential Burglary (RCW  
7 9A.52.025)  
8 Robbery 2 (RCW 9A.56.210)  
9 Theft of Livestock 1 (RCW 9A.56.080)  
10 Threats to Bomb (RCW 9.61.160)  
11 Trafficking in Stolen Property 1 (RCW  
12 9A.82.050)  
13 Unlawful factoring of a credit card or  
14 payment card transaction (RCW  
15 9A.56.290(4)(b))  
16 Unlawful transaction of health  
17 coverage as a health care service  
18 contractor (RCW 48.44.016(3))  
19 Unlawful transaction of health  
20 coverage as a health maintenance  
21 organization (RCW 48.46.033(3))  
22 Unlawful transaction of insurance  
23 business (RCW 48.15.023(3))  
24 Unlicensed practice as an insurance  
25 professional (RCW 48.17.063(2))  
26 Use of Proceeds of Criminal  
27 Profiteering (RCW 9A.82.080 (1)  
28 and (2))  
29 Vehicle Prowling 2 (third or  
30 subsequent offense) (RCW  
31 9A.52.100(3))  
32 Vehicular Assault, by being under the  
33 influence of intoxicating liquor or  
34 any drug, or by the operation or  
35 driving of a vehicle in a reckless  
36 manner (RCW 46.61.522)

1 Viewing of Depictions of a Minor  
2 Engaged in Sexually Explicit  
3 Conduct 1 (RCW 9.68A.075(1))  
4 Willful Failure to Return from  
5 Furlough (RCW 72.66.060)  
6 III Animal Cruelty 1 (Sexual Conduct or  
7 Contact) (RCW 16.52.205(3))  
8 Assault 3 (Except Assault 3 of a Peace  
9 Officer With a Projectile Stun  
10 Gun) (RCW 9A.36.031 except  
11 subsection (1)(h))  
12 Assault of a Child 3 (RCW 9A.36.140)  
13 Bail Jumping with class B or C Felony  
14 (RCW 9A.76.170(3)(c))  
15 Burglary 2 (RCW 9A.52.030)  
16 Communication with a Minor for  
17 Immoral Purposes (RCW  
18 9.68A.090)  
19 Criminal Gang Intimidation (RCW  
20 9A.46.120)  
21 Custodial Assault (RCW 9A.36.100)  
22 Cyberstalking (subsequent conviction  
23 or threat of death) (RCW  
24 9.61.260(3))  
25 Escape 2 (RCW 9A.76.120)  
26 Extortion 2 (RCW 9A.56.130)  
27 Harassment (RCW 9A.46.020)  
28 Intimidating a Public Servant (RCW  
29 9A.76.180)  
30 Introducing Contraband 2 (RCW  
31 9A.76.150)  
32 Malicious Injury to Railroad Property  
33 (RCW 81.60.070)  
34 Mortgage Fraud (RCW 19.144.080)

1 Negligently Causing Substantial  
2 Bodily Harm By Use of a Signal  
3 Preemption Device (RCW  
4 46.37.674)  
5 Organized Retail Theft 1 (RCW  
6 9A.56.350(2))  
7 Perjury 2 (RCW 9A.72.030)  
8 Possession of Incendiary Device (RCW  
9 9.40.120)  
10 Possession of Machine Gun or Short-  
11 Barreled Shotgun or Rifle (RCW  
12 9.41.190)  
13 Promoting Prostitution 2 (RCW  
14 9A.88.080)  
15 Retail Theft with Special  
16 Circumstances 1 (RCW  
17 9A.56.360(2))  
18 Securities Act violation (RCW  
19 21.20.400)  
20 Tampering with a Witness (RCW  
21 9A.72.120)  
22 Telephone Harassment (subsequent  
23 conviction or threat of death)  
24 (RCW 9.61.230(2))  
25 Theft of Livestock 2 (RCW 9A.56.083)  
26 Theft with the Intent to Resell 1 (RCW  
27 9A.56.340(2))  
28 Trafficking in Stolen Property 2 (RCW  
29 9A.82.055)  
30 Unlawful Hunting of Big Game 1  
31 (RCW 77.15.410(3)(b))  
32 Unlawful Imprisonment (RCW  
33 9A.40.040)  
34 Unlawful Misbranding of Food Fish or  
35 Shellfish 1 (RCW 69.04.938(3))

1 Unlawful possession of firearm in the  
2 second degree (RCW 9A.04.040(2))  
3 Unlawful Taking of Endangered Fish  
4 or Wildlife 1 (RCW  
5 77.15.120(3)(b))  
6 Unlawful Trafficking in Fish, Shellfish,  
7 or Wildlife 1 (RCW  
8 77.15.260(3)(b))  
9 Unlawful Use of a Nondesignated  
10 Vessel (RCW 77.15.530(4))  
11 Vehicular Assault, by the operation or  
12 driving of a vehicle with disregard  
13 for the safety of others (RCW  
14 46.61.522)  
15 Willful Failure to Return from Work  
16 Release (RCW 72.65.070)  
17 II Commercial Fishing Without a License  
18 1 (RCW 77.15.500(3)(b))  
19 Computer Trespass 1 (RCW  
20 9A.52.110)  
21 Counterfeiting (RCW 9.16.035(3))  
22 Engaging in Fish Dealing Activity  
23 Unlicensed 1 (RCW 77.15.620(3))  
24 Escape from Community Custody  
25 (RCW 72.09.310)  
26 Failure to Register as a Sex Offender  
27 (second or subsequent offense)  
28 (RCW 9A.44.130 prior to June 10,  
29 2010, and RCW 9A.44.132)  
30 Health Care False Claims (RCW  
31 48.80.030)  
32 Identity Theft 2 (RCW 9.35.020(3))  
33 Improperly Obtaining Financial  
34 Information (RCW 9.35.010)  
35 Malicious Mischief 1 (RCW  
36 9A.48.070)

1 Organized Retail Theft 2 (RCW  
2 9A.56.350(3))  
3 Possession of Stolen Property 1 (RCW  
4 9A.56.150)  
5 Possession of a Stolen Vehicle (RCW  
6 9A.56.068)  
7 Retail Theft with Special  
8 Circumstances 2 (RCW  
9 9A.56.360(3))  
10 Scrap Processing, Recycling, or  
11 Supplying Without a License  
12 (second or subsequent offense)  
13 (RCW 19.290.100)  
14 Theft 1 (RCW 9A.56.030)  
15 Theft of a Motor Vehicle (RCW  
16 9A.56.065)  
17 Theft of Rental, Leased, ~~((or))~~ Lease-  
18 purchased, or Loaned Property  
19 (valued at ~~((one))~~ five thousand  
20 ~~((five hundred))~~ dollars or more)  
21 (RCW 9A.56.096(5)(a))  
22 Theft with the Intent to Resell 2 (RCW  
23 9A.56.340(3))  
24 Trafficking in Insurance Claims (RCW  
25 48.30A.015)  
26 Unlawful factoring of a credit card or  
27 payment card transaction (RCW  
28 9A.56.290(4)(a))  
29 Unlawful Participation of Non-Indians  
30 in Indian Fishery (RCW  
31 77.15.570(2))  
32 Unlawful Practice of Law (RCW  
33 2.48.180)  
34 Unlawful Purchase or Use of a License  
35 (RCW 77.15.650(3)(b))

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

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

1       **Sec. 3.** RCW 13.40.070 and 2013 c 179 s 3 are each amended to  
2 read as follows:

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

7       (a) The alleged facts bring the case within the jurisdiction of  
8 the court; and

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

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

15       (3) If the requirements of subsections (1)(a) and (b) of this  
16 section are met, the prosecutor shall either file an information in  
17 juvenile court or divert the case, as set forth in subsections (5),  
18 (6), and (8) of this section. If the prosecutor finds that the  
19 requirements of subsection (1)(a) and (b) of this section are not  
20 met, the prosecutor shall maintain a record, for one year, of such  
21 decision and the reasons therefor. In lieu of filing an information  
22 or diverting an offense a prosecutor may file a motion to modify  
23 community supervision where such offense constitutes a violation of  
24 community supervision.

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

29       (5) Except as provided in RCW 13.40.213 and subsection (7) of  
30 this section, where a case is legally sufficient, the prosecutor  
31 shall file an information with the juvenile court if:

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

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



1 (c) An alleged offender has previously been committed to the  
2 department; or

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

5 (e) An alleged offender has three or more diversion agreements on  
6 the alleged offender's criminal history; or

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

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

15 (7) Where a case is legally sufficient to charge an alleged  
16 offender with:

17 (a) Either prostitution or prostitution loitering and the alleged  
18 offense is the offender's first prostitution or prostitution  
19 loitering offense, the prosecutor shall divert the case; or

20 (b) Voyeurism in the second degree and the alleged offense is the  
21 offender's first offense or violation, the prosecutor shall divert  
22 the case unless the juvenile has prior adjudications or diversions.

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

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

37 (10) The responsibilities of the prosecutor under subsections (1)  
38 through (9) of this section may be performed by a juvenile court  
39 probation counselor for any complaint referred to the court alleging  
40 the commission of an offense which would not be a felony if committed

1 by an adult, if the prosecutor has given sufficient written notice to  
2 the juvenile court that the prosecutor will not review such  
3 complaints.

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

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