

Title 9

CRIMES AND PUNISHMENTS

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Chapter 9.01 RCW GENERAL PROVISIONS

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9.01.055 Citizen immunity if aiding officer, scope—When. Private citizens aiding a police officer, or other officers of the law in the performance of their duties as police officers or officers of the law, shall have the same civil and criminal immunity as such officer, as a result of any act or commission for aiding or attempting to aid a police officer or other officer of the law, when such officer is in imminent danger of loss of life or grave bodily injury or when such officer requests such assistance and when such action was taken under emergency conditions and in good faith. [1969 c 37 § 1.]

Immunity from liability for certain types of medical care: RCW 4.24.300.

9.01.110 Omission, when not punishable. No person shall be punished for an omission to perform an act when such act has been performed by another acting in his or her behalf, and competent to perform it. [2011 c 336 § 285; 1909 c 249 § 23; RRS § 2275.]

9.01.120 Civil remedies preserved. The omission to specify or affirm in this act any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, shall not affect any right to recover or enforce the same. [1909 c 249 § 44; RRS § 2296.]

Additional notes found at www.leg.wa.gov

9.01.130 Sending letter, when complete. Whenever any statute makes the sending of a letter criminal, the offense shall be deemed complete from the time it is deposited in any post office or other place, or delivered to any person, with intent that it shall be forwarded; and the sender may be proceeded against in the county wherein it was so deposited or delivered, or in which it was received by the person to whom it was addressed. [1909 c 249 § 22; RRS § 2274.]

9.01.160 Application to existing civil rights. Nothing in this act shall be deemed to affect any civil right or remedy existing at the time when it shall take effect, by virtue of the common law or of the provision of any statute. [1909 c 249 § 43; RRS § 2295.]

Reviser's note: For "this act," see note following RCW 9.01.120.

9.01.210 Financial, accounting services to marijuana industry. (1) A person or entity that receives deposits, extends credit, conducts funds transfers, transports cash or financial instruments on behalf of a financial institution, or provides other financial services for a marijuana producer, marijuana processor, or marijuana retailer authorized under chapter 69.50 RCW or for a qualifying patient, health care professional, or designated provider authorized under chapter 69.51A RCW, does not commit a crime under any Washington law solely by virtue of receiving deposits, extending credit, conducting funds transfers, transporting cash or other financial instruments, or providing other financial services for the person.

(2) For the purposes of this section, "person or entity" means a financial institution as defined in RCW 30A.22.040, an armored car service operating under a permit issued by the utilities and transportation commission that has been contracted by a financial institution, or a person providing financial services pursuant to a license issued under chapter 18.44, 19.230, or 31.04 RCW.

(3) A certified public accountant or certified public accounting firm, which practices public accounting as defined in RCW 18.04.025, does not commit a crime solely for providing professional accounting services as specified in RCW 18.04.025 for a marijuana producer, marijuana processor, or marijuana retailer authorized under chapter 69.50 RCW. [2018 c 68 § 1.]

Chapter 9.02 RCW ABORTION

Sections

9.02.005	Transfer of duties to the department of health.
9.02.050	Concealing birth.
9.02.100	Reproductive privacy—Public policy.
9.02.110	Right to have and provide.
9.02.120	Unauthorized abortions—Penalty.
9.02.130	Defenses to prosecution.
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9.02.170	Definitions.
9.02.900	Construction—1992 c 1 (Initiative Measure No. 120).
9.02.902	Short title—1992 c 1 (Initiative Measure No. 120).

Advertising or selling means of abortion: RCW 9.68.030.

Health care facilities, interference with: Chapter 9A.50 RCW.

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Right to medical treatment of infant born alive in the course of an abortion procedure: RCW 18.71.240.

9.02.005 Transfer of duties to the department of health. The powers and duties of the state board of health under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 202; 1985 c 213 § 3.]

Additional notes found at www.leg.wa.gov

9.02.050 Concealing birth. Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a gross misdemeanor. [1909 c 249 § 200; RRS § 2452.]

9.02.100 Reproductive privacy—Public policy. The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions.

Accordingly, it is the public policy of the state of Washington that:

(1) Every individual has the fundamental right to choose or refuse birth control;

(2) Every woman has the fundamental right to choose or refuse to have an abortion, except as specifically limited by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902;

(3) Except as specifically permitted by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902, the state shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion; and

(4) The state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information. [1992 c 1 § 1 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.110 Right to have and provide. The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health.

A physician may terminate and a health care provider may assist a physician in terminating a pregnancy as permitted by this section. [1992 c 1 § 2 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.120 Unauthorized abortions—Penalty. Unless authorized by RCW 9.02.110, any person who performs an abortion on another person shall be guilty of a class C felony punishable under chapter 9A.20 RCW. [1992 c 1 § 3 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.130 Defenses to prosecution. The good faith judgment of a physician as to viability of the fetus or as to the risk to life or health of a woman and the good faith judgment of a health care provider as to the duration of pregnancy shall be a defense in any proceeding in which a violation of this chapter is an issue. [1992 c 1 § 4 (Initiative Measure No. 120, approved November 5, 1991).]

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9.02.140 State regulation. Any regulation promulgated by the state relating to abortion shall be valid only if:

(1) The regulation is medically necessary to protect the life or health of the woman terminating her pregnancy,

(2) The regulation is consistent with established medical practice, and

(3) Of the available alternatives, the regulation imposes the least restrictions on the woman's right to have an abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902. [1992 c 1 § 5 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.150 Refusing to perform. No person or private medical facility may be required by law or contract in any circumstances to participate in the performance of an abortion if such person or private medical facility objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the termination of a pregnancy. [1992 c 1 § 6 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.160 State-provided benefits. If the state provides, directly or by contract, maternity care benefits, services, or information to women through any program administered or funded in whole or in part by the state, the state shall also provide women otherwise eligible for any such program with substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies. [1992 c 1 § 7 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.170 Definitions. For purposes of this chapter:

(1) "Viability" means the point in the pregnancy when, in the judgment of the physician on the particular facts of the case before such physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

(2) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

(3) "Pregnancy" means the reproductive process beginning with the implantation of an embryo.

(4) "Physician" means a physician licensed to practice under chapter 18.57 or 18.71 RCW in the state of Washington.

(5) "Health care provider" means a physician or a person acting under the general direction of a physician.

(6) "State" means the state of Washington and counties, cities, towns, municipal corporations, and quasi-municipal corporations in the state of Washington.

(7) "Private medical facility" means any medical facility that is not owned or operated by the state. [1992 c 1 § 8 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.900 Construction—1992 c 1 (Initiative Measure No. 120). RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 shall not be construed to define the state's interest in the fetus for any purpose other than the specific provisions of RCW 9.02.100 through 9.02.170 and 9.02.900

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through 9.02.902. [1992 c 1 § 10 (Initiative Measure No. 120, approved November 5, 1991).]

9.02.902 Short title—1992 c 1 (Initiative Measure No. 120). RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902 shall be known and may be cited as the Reproductive Privacy Act. [1992 c 1 § 12 (Initiative Measure No. 120, approved November 5, 1991).]

Chapter 9.03 RCW

ABANDONED REFRIGERATION EQUIPMENT

Sections

9.03.010	Abandoning, discarding refrigeration equipment.
9.03.020	Permitting unused equipment to remain on premises.
9.03.030	Violation of RCW 9.03.010 or 9.03.020.
9.03.040	Keeping or storing equipment for sale.

9.03.010 Abandoning, discarding refrigeration equipment. Any person who discards or abandons or leaves in any place accessible to children any refrigerator, icebox, or deep freeze locker having a capacity of one and one-half cubic feet or more, which is no longer in use, and which has not had the door removed or a portion of the latch mechanism removed to prevent latching or locking of the door, is guilty of a misdemeanor. [1955 c 298 § 1.]

9.03.020 Permitting unused equipment to remain on premises. Any owner, lessee, or manager who knowingly permits such an unused refrigerator, icebox, or deep freeze locker to remain on the premises under his or her control without having the door removed or a portion of the latch mechanism removed to prevent latching or locking of the door is guilty of a misdemeanor. [2011 c 336 § 286; 1955 c 298 § 2.]

9.03.030 Violation of RCW 9.03.010 or 9.03.020. Guilt of a violation of RCW 9.03.010 or 9.03.020 shall not, in itself, render one guilty of manslaughter, battery, or other crime against a person who may suffer death or injury from entrapment in such refrigerator, icebox, or deep freeze locker. [1955 c 298 § 3.]

9.03.040 Keeping or storing equipment for sale. Any person who keeps or stores refrigerators, iceboxes, or deep freeze lockers for the purpose of selling or offering them for sale shall not be guilty of a violation of this chapter if he or she takes reasonable precautions to effectively secure the door of any refrigerator, icebox, or deep freeze locker held for purpose of sale so as to prevent entrance of children small enough to fit into such articles. [2011 c 336 § 287; 1955 c 298 § 4.]

Chapter 9.04 RCW

ADVERTISING, CRIMES RELATING TO

Sections

9.04.010	False advertising.
9.04.050	False, misleading, deceptive advertising.
9.04.060	False, misleading, deceptive advertising—Action to restrain and prevent.
9.04.070	False, misleading, deceptive advertising—Penalty.

9.04.080 False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice.

9.04.090 Advertising fuel prices by service stations.

Apple advertising: Chapter 15.24 RCW.

Attaching advertisements to utility poles—Penalty: RCW 70.54.090.

Attorneys-at-law, advertising: Rules of court: RPC 7.2.

Banks and trust companies:

advertising legal services: RCW 30A.04.260.

using words indicating: RCW 30A.04.020.

Buildings, placing advertising matter on: Chapter 9A.48 RCW.

Charitable solicitations, regulation, application of chapter 9.04 RCW: RCW 19.09.340.

Contraceptives or means of abortion, advertising: RCW 9.68.030.

Dentistry, advertising restrictions: RCW 18.32.665, 18.32.755.

Egg law, advertising violations: Chapter 69.25 RCW.

Elections, advertising violations:

initiative or referendum petition signers: RCW 29A.84.250.

recall petition signers: RCW 29A.84.220.

Employment agencies, false advertising: Chapter 19.31 RCW.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Hearing instrument dispensing, advertising, etc.—Application: RCW 18.35.180.

Indecent articles: RCW 9.68.030.

Insurance, unlawful advertising practices: Chapter 48.30 RCW.

Optometry advertising: RCW 18.53.140, 18.53.150.

State parks, advertising prohibited: RCW 79A.05.165.

9.04.010 False advertising. Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor: PROVIDED, That the provisions of this section shall not apply to any owner, publisher, agent, or employee of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof. [1913 c 34 § 1; RRS § 2622-1.]

9.04.050 False, misleading, deceptive advertising. It shall be unlawful for any person to publish, disseminate or display, or cause directly or indirectly, to be published, disseminated or displayed in any manner or by any means, including solicitation or dissemination by mail, telephone, electronic communication, or door-to-door contacts, any false, deceptive or misleading advertising, with knowledge of the facts which render the advertising false, deceptive or misleading, for any business, trade or commercial purpose or for the purpose of inducing, or which is likely to induce, directly or indirectly, the public to purchase, consume, lease, dispose

of, utilize or sell any property or service, or to enter into any obligation or transaction relating thereto: PROVIDED, That nothing in this section shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, such advertising in good faith without knowledge of its false, deceptive or misleading character. [2000 c 33 § 1; 1961 c 189 § 1.]

Blind made products, false advertising: RCW 19.06.030, 19.06.040.

Highway advertising control act of 1961, Scenic Vistas Act of 1971: Chapter 47.42 RCW.

Additional notes found at www.leg.wa.gov

9.04.060 False, misleading, deceptive advertising—Action to restrain and prevent. The attorney general or the prosecuting attorneys of the several counties may bring an action in the superior court to restrain and prevent any person from violating any provision of RCW 9.04.050 through 9.04.080. [1961 c 189 § 2.]

9.04.070 False, misleading, deceptive advertising—Penalty. Any person who violates any order or injunction issued pursuant to RCW 9.04.050 through 9.04.080 shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both. [1999 c 143 § 1; 1961 c 189 § 3.]

9.04.080 False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice. In the enforcement of RCW 9.04.050 through 9.04.080 the official enforcing RCW 9.04.050 through 9.04.080 may accept an assurance of discontinuance of any act or practice deemed in violation of RCW 9.04.050 through 9.04.080, from any person engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. A violation of such assurance shall constitute prima facie proof of a violation of RCW 9.04.050 through 9.04.080: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [2011 c 336 § 288; 1961 c 189 § 4.]

9.04.090 Advertising fuel prices by service stations. It is unlawful for any dealer or service station, as both are defined in *RCW 82.36.010, to advertise by publication, dissemination, display, or whatever means:

(1) A price per unit of fuel that is expressed in a unit of measurement different from that employed by the pump or other device used to dispense the fuel, unless the price is advertised for both units of measurement in the same fashion; or

(2) A price per unit of fuel that is conditioned upon the purchase of another product, unless the conditional language, name, and price of the other product are clearly expressed in the advertisement in characters at least one-half the height of the characters used to advertise the fuel price.

Violation of this section is a misdemeanor and is subject to the provisions of RCW 9.04.060 through 9.04.080. [1983 c 114 § 1.]

***Reviser's note:** RCW 82.36.010 was amended by 1998 c 176 § 6, deleting the definition of "service station." RCW 82.36.010 was subsequently amended by 2007 c 515 § 1, deleting the definition of "dealer." Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2016.

Chapter 9.05 RCW SABOTAGE

Sections

- 9.05.030 Assemblages of saboteurs.
9.05.060 Criminal sabotage defined—Penalty.
9.05.090 Provisions cumulative.

Freedom of speech: State Constitution Art. 1 § 5.

Subversive activities: Chapter 9.81 RCW.

Treason: State Constitution Art. 1 § 27; chapter 9.82 RCW.

9.05.030 Assemblages of saboteurs. Whenever two or more persons assemble for the purpose of committing criminal sabotage, as defined in RCW 9.05.060, such an assembly is unlawful, and every person voluntarily and knowingly participating therein by his or her presence, aid, or instigation, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 6; 1999 c 191 § 1; 1992 c 7 § 2; 1909 c 249 § 314; 1903 c 45 § 4; RRS § 2566.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.05.060 Criminal sabotage defined—Penalty. (1) Whoever, with intent that his or her act shall, or with reason to believe that it may, injure, interfere with, interrupt, supplant, nullify, impair, or obstruct the owner's or operator's management, operation, or control of any agricultural, stock-raising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile, or building enterprise, or any other public or private business or commercial enterprise, wherein any person is employed for wage, shall willfully damage or destroy, or attempt or threaten to damage or destroy, any property whatsoever, or shall unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property, instrumentality, machine, mechanism, or appliance used in such business or enterprise, shall be guilty of criminal sabotage.

(2) Criminal sabotage is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 7; 1999 c 191 § 2; 1919 c 173 § 1; RRS § 2563-3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Endangering life by breach of labor contract: RCW 49.44.080.

Excessive steam in boilers: RCW 70.54.080.

Malicious injury to railroad property: RCW 81.60.070.

Malicious mischief—Injury to property: Chapter 9A.48 RCW.

Sabotaging rolling stock: RCW 81.60.080.

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9.05.090 Provisions cumulative. RCW 9.05.030 and 9.05.060 shall not be construed to repeal or amend any existing penal statute. [1999 c 191 § 3; 1919 c 173 § 4; RRS § 2563-6.]

Chapter 9.08 RCW ANIMALS, CRIMES RELATING TO

Sections

- 9.08.030 False certificate of registration of animals—False representation as to breed.
9.08.065 Definitions.
9.08.070 Pet animals—Taking, concealing, injuring, killing, etc.—Penalty.
9.08.072 Transferring stolen pet animal to a research institution—Penalty.
9.08.074 Transferring stolen pet animal to a person who has previously sold a stolen pet animal to a research institution—Penalty.
9.08.076 Transferring stolen pet animal to a research institution by a U.S.D.A. licensed dealer—Penalty.
9.08.078 Illegal sale, receipt, or transfer of pet animals—Separate offenses.
9.08.080 Acts against animal facilities—Intent.
9.08.090 Acts against animal facilities.

Accelerant detection dogs

harming: RCW 9A.76.200.

immunity of handler: RCW 4.24.410.

Animals and livestock: Title 16 RCW.

Bees: Chapter 15.60 RCW.

Brands and marks, generally: Chapter 9.16 RCW.

Bulls running at large: RCW 16.24.180 through 16.24.210.

Carrier or racing pigeons—Injury to: RCW 9.61.190 and 9.61.200.

"Coyote getters," use permitted: RCW 9.41.185.

Cruelty to

animals, generally: Chapter 16.52 RCW.

stock in transit: RCW 81.48.070.

Destroying animals in state parks: RCW 79A.05.165.

Disposal of dead animals: Chapter 16.68 RCW.

Dog law: Chapters 16.08, 16.10 RCW.

Dog licensing

control zones: Chapter 16.10 RCW.

counties: Chapter 36.49 RCW.

unclassified cities: RCW 35.30.010.

Game code: Title 77 RCW.

Guard animals, registration: RCW 43.44.120.

Guide dogs: Chapter 70.84 RCW.

Horses, mules, and asses running at large: Chapter 16.24 RCW.

Indictment or information in crimes involving animals: RCW 10.37.070.

Ladybugs, beneficial insects: Chapter 15.61 RCW.

Police dogs

harming: RCW 9A.76.200.

immunity of handler: RCW 4.24.410.

Police horses, harming: RCW 9A.76.200.

Quarantine of diseased domestic animals: Chapter 16.36 RCW.

Racehorses: Chapter 67.16 RCW.

Service dogs: Chapter 70.84 RCW.

Stealing horses or cattle: Chapter 9A.56 RCW.

Transporting in unsafe manner: RCW 16.52.080.

9.08.030 False certificate of registration of animals—False representation as to breed. Every person who, by color or aid of any false pretense, representation, token or writing shall obtain from any club, association, society or company for the improvement of the breed of cattle, horses, sheep, swine, fowls or other domestic animals or birds, a cer-

tificate of registration of any animal or bird in a herdbook, or other register of any such association, society or company, or a transfer of any such registration, and every person who shall knowingly represent an animal or bird for breeding purposes to be of a greater degree of any particular strain of blood than such animal actually possesses, shall be guilty of a gross misdemeanor. [1909 c 249 § 341; RRS § 2593.]

9.08.065 Definitions. As used in RCW 9.08.070 through 9.08.078:

(1) "Pet animal" means a tamed or domesticated animal legally retained by a person and kept as a companion. "Pet animal" does not include livestock raised for commercial purposes.

(2) "Research institution" means a facility licensed by the United States department of agriculture to use animals in biomedical or product research.

(3) "U.S.D.A. licensed dealer" means a person who is licensed or required to be licensed by the United States department of agriculture to commercially buy, receive, sell, negotiate for sale, or transport animals. [2003 c 53 § 8; 1989 c 359 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.070 Pet animals—Taking, concealing, injuring, killing, etc.—Penalty. (1) Any person who, with intent to deprive or defraud the owner thereof, does any of the following shall be guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW and, for adult offenders, a mandatory fine of not less than five hundred dollars per pet animal shall be imposed, except as provided by subsection (2) of this section:

(a) Takes, leads away, confines, secretes or converts any pet animal, except in cases in which the value of the pet animal exceeds seven hundred fifty dollars;

(b) Conceals the identity of any pet animal or its owner by obscuring, altering, or removing from the pet animal any collar, tag, license, tattoo, or other identifying device or mark;

(c) Willfully or recklessly kills or injures any pet animal, unless excused by law.

(2) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft, under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property, or under chapter 16.52 RCW for animal cruelty. [2015 c 265 § 10; 2015 c 235 § 5; 2003 c 53 § 9; 1989 c 359 § 2; 1982 c 114 § 1.]

Reviser's note: This section was amended by 2015 c 235 § 5 and by 2015 c 265 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application of Consumer Protection Act: RCW 19.86.145.

9.08.072 Transferring stolen pet animal to a research institution—Penalty. (1) It is unlawful for any person to receive with intent to sell to a research institution in the state

of Washington, or sell or otherwise directly transfer to a research institution in the state of Washington, a pet animal that the person knows or has reason to know has been stolen or fraudulently obtained. This section does not apply to U.S.D.A. licensed dealers.

(2) The first conviction under this section is a gross misdemeanor punishable according to chapter 9A.20 RCW and, for adult offenders, a mandatory fine of not less than five hundred dollars per pet animal shall be imposed.

(3) A second or subsequent conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and, for adult offenders, a mandatory fine of not less than one thousand dollars per pet animal shall be imposed.

(4) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property. [2015 c 265 § 11; 2003 c 53 § 10.]

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.074 Transferring stolen pet animal to a person who has previously sold a stolen pet animal to a research institution—Penalty. (1) It is unlawful for any person, who knows or has reason to know that a pet animal has been stolen or fraudulently obtained, to sell or otherwise transfer the pet animal to another who the person knows or has reason to know has previously sold a stolen or fraudulently obtained pet animal to a research institution in the state of Washington.

(2) A conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal. [2003 c 53 § 11.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.076 Transferring stolen pet animal to a research institution by a U.S.D.A. licensed dealer—Penalty. (1) It is unlawful for a U.S.D.A. licensed dealer to receive with intent to sell, or sell or transfer directly or through a third party, to a research institution in the state of Washington, a pet animal that the dealer knows or has reason to know has been stolen or fraudulently obtained.

(2) A conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal. [2003 c 53 § 12.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.078 Illegal sale, receipt, or transfer of pet animals—Separate offenses. (1) The sale, receipt, or transfer of each individual pet animal in violation of RCW 9.08.070 through 9.08.078 constitutes a separate offense.

(2) The provisions of RCW 9.08.070 through 9.08.078 shall not apply to the lawful acts of any employee, agent, or director of any humane society, animal control agency, or animal shelter operated by or on behalf of any government agency, operating under law. [2003 c 53 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.080 Acts against animal facilities—Intent. There has been an increasing number of illegal acts committed against animal production and research facilities involving injury or loss of life to animals or humans, criminal trespass, and damage to property. These actions not only abridge the property rights of the owners, operators, and employees of the facility, they may also damage the public interest by jeopardizing crucial animal production or agricultural, scientific, or biomedical research. These actions may also threaten the public safety by exposing communities to public health concerns and creating traffic hazards. These actions substantially disrupt or damage research and result in the potential loss of physical and intellectual property. While the criminal code, particularly the malicious mischief crimes, adequately covers those who intentionally and without authority damage or destroy farm animals, the code does not adequately cover similar misconduct directed against research and educational facilities. Therefore, it is in the interest of the people of the state of Washington to protect the welfare of humans and animals, as well as the productive use of private or public funds, to promote and protect scientific and medical research, foster education, and preserve and enhance agricultural production.

It is the intent of the legislature that the courts in deciding applications for injunctive relief under RCW 4.24.580 give full consideration to the constitutional rights of persons to speak freely, to picket, and to conduct other lawful activities. [1991 c 325 § 1.]

Civil liability for acts against animal facilities: RCW 4.24.570 through 4.24.580.

Additional notes found at www.leg.wa.gov

9.08.090 Acts against animal facilities. A person is guilty of a class C felony: If he or she, without authorization, knowingly takes, releases, destroys, contaminates, or damages any animal or animals kept in a research or educational facility where the animal or animals are used or to be used for medical research purposes or other research purposes or for educational purposes; or if he or she, without authorization, knowingly destroys or damages any records, equipment, research product, or other thing pertaining to such animal or animals. [1991 c 325 § 2.]

Civil liability for acts against animal facilities: RCW 4.24.570 through 4.24.580.

Additional notes found at www.leg.wa.gov

Chapter 9.12 RCW BARRATRY

Sections

9.12.010	Barratry.
9.12.020	Buying, demanding, or promising reward by district judge or deputy.

9.12.010 Barratry. Every person who brings on his or her own behalf, or instigates, incites, or encourages another to bring, any false suit at law or in equity in any court of this state, with intent thereby to distress or harass a defendant in the suit, or who serves or sends any paper or document purporting to be or resembling a judicial process, that is not in

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fact a judicial process, is guilty of a misdemeanor; and in case the person offending is an attorney, he or she may, in addition thereto be disbarred from practicing law within this state. [2001 c 310 § 3. Prior: 1995 c 285 § 27; 1915 c 165 § 1; 1909 c 249 § 118; Code 1881 § 901; 1873 p 204 § 100; 1854 p 92 § 91; RRS § 2370.]

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Attorneys-at-law: Chapter 2.44 RCW.

State bar act: Chapter 2.48 RCW.

Additional notes found at www.leg.wa.gov

9.12.020 Buying, demanding, or promising reward by district judge or deputy. Every district judge or deputy who shall, directly or indirectly, buy or be interested in buying anything in action for the purpose of commencing a suit thereon before a district judge, or who shall give or promise any valuable consideration to any person as an inducement to bring, or as a consideration for having brought, a suit before a district judge, shall be guilty of a misdemeanor. [1987 c 202 § 138; 1909 c 249 § 119; RRS § 2371.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 9.16 RCW BRANDS AND MARKS, CRIMES RELATING TO

Sections

9.16.005	Definitions.
9.16.010	Removing lawful brands.
9.16.020	Imitating lawful brand.
9.16.030	Counterfeit mark—Intellectual property.
9.16.035	Counterfeiting—Penalties.
9.16.041	Counterfeit items—Seizure and forfeiture.
9.16.050	When deemed affixed.
9.16.060	Fraudulent registration of trademark.
9.16.070	Form and similitude defined.
9.16.080	Petroleum products improperly labeled or graded—Penalty.
9.16.100	Use of the words "sterling silver," etc.
9.16.110	Use of words "coin silver," etc.
9.16.120	Use of the word "sterling" on mounting.
9.16.130	Use of the words "coin silver" on mounting.
9.16.140	Unlawfully marking article made of gold.
9.16.150	"Marked, stamped or branded" defined.

Animals and livestock: Title 16 RCW.

Defacement of motor serial numbers: RCW 9A.56.180.

Egg law: Chapter 69.25 RCW.

Fertilizers, minerals, and limes, brand alteration, etc.: Chapter 15.54 RCW.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Forest products, marks and brands: Chapter 76.36 RCW.

Honey act, misbranding, etc.: Chapter 69.28 RCW.

Poisons, misbranding: Chapters 69.36, 69.40 RCW.

Trademark registration: Chapters 19.76, 19.77 RCW.

Watches, removal of serial number: Chapter 19.60 RCW.

9.16.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Counterfeit mark" means:

(a) Any unauthorized reproduction or copy of intellectual property; or

(b) Intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) "Intellectual property" means any trademark, service mark, trade name, label, term, device, design, or work adopted or used by a person to identify such person's goods or services. Intellectual property does not have exclusive use rights to trade names registered under chapter 19.80 RCW.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized. [1999 c 322 § 1.]

9.16.010 Removing lawful brands. Every person who shall willfully deface, obliterate, remove, or alter any mark or brand placed by or with the authority of the owner thereof on any shingle bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished by imprisonment in a state correctional facility for not more than five years, or by imprisonment in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [2011 c 96 § 4; 1992 c 7 § 3; 1909 c 249 § 342; Code 1881 § 839; 1873 p 191 § 54; RRS § 2594.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Forest product brands and marks, falsifying, etc.: RCW 76.36.110, 76.36.120.

9.16.020 Imitating lawful brand. Every person who, in any county, places upon any property, any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof as a brand or mark for the designation or identification of a like kind of property, is:

(1) If done with intent to confuse or commingle such property with, or to appropriate to his or her own use, the property of such other owner, guilty of a felony, punishable by imprisonment in a state correctional facility for not more than five years, or by imprisonment in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment; or

(2) If done without such intent, guilty of a misdemeanor. [2011 c 96 § 5; 1992 c 7 § 4; 1909 c 249 § 343; RRS § 2595.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

9.16.030 Counterfeit mark—Intellectual property. Any person who willfully and knowingly, and for financial gain, manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses with intent to sell or distribute any item, or offers any services, bearing or identified by a counterfeit mark, is guilty of the crime of counterfeiting.

Any state or federal certificate of registration of any intellectual property is prima facie evidence of the facts stated in the certificate. [1999 c 322 § 2; 1909 c 249 § 344; Code 1881 § 854; 1873 p 194 § 63; 1854 p 85 § 87; RRS § 2596.]

9.16.035 Counterfeiting—Penalties. (1) Counterfeiting is a misdemeanor, except as provided in subsections (2), (3) and (4) of this section.

(2) Counterfeiting is a gross misdemeanor if:

(a) The defendant has previously been convicted under RCW 9.16.030; or

(b) The violation involves more than one hundred but fewer than one thousand items bearing a counterfeit mark or the total retail value of all items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than one thousand dollars but less than ten thousand dollars.

(3) Counterfeiting is a class C felony if:

(a) The defendant has been previously convicted of two or more offenses under RCW 9.16.030;

(b) The violation involves the manufacture or production of items bearing counterfeit marks; or

(c) The violation involves one thousand or more items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is ten thousand dollars or more.

(4) Counterfeiting is a class C felony if:

(a) The violation involves the manufacture, production, or distribution of items bearing counterfeit marks; and

(b) The defendant knew or should have known that the counterfeit items, by their intended use, endangered the health or safety of others.

(5) For purposes of this section, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, possesses, or possesses with intent to sell.

(6) A person guilty of counterfeiting shall be fined an amount up to three times the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant.

(7) The penalties provided for in this section are cumulative and do not affect any other civil and criminal penalties provided by law. [1999 c 322 § 3.]

9.16.041 Counterfeit items—Seizure and forfeiture.

(1) Any items bearing a counterfeit mark, and all personal property employed or used in connection with counterfeiting, including but not limited to, any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, shall be seized by any law enforcement officer.

All seized personal property referenced in this subsection shall be forfeited in accordance with RCW 10.105.010.

(2) Upon request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition.

(3) If the intellectual property owner does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the intellectual property owner consents to another disposition. [1999 c 322 § 4.]

9.16.050 When deemed affixed. A label, trademark, term, design, device or form of advertisement shall be deemed to be affixed to any goods, wares, merchandise, mixture, preparation or compound whenever it is in any manner placed in or upon either the article itself, or the box, bale, barrel, bottle, case, cask or other vessel or package, or the cover, wrapper, stopper, brand, label or other thing in, by or with

which the goods are packed, enclosed or otherwise prepared for sale or distribution. [1909 c 249 § 346; RRS § 2598.]

9.16.060 Fraudulent registration of trademark.

Every person who shall for himself or herself, or on behalf of any other person, corporation, association, or union, procure the filing of any label, trademark, term, design, device, or form of advertisement, with the secretary of state by any fraudulent means, shall be guilty of a misdemeanor. [2011 c 336 § 289; 1909 c 249 § 347; RRS § 2599.]

Trademark registration: Chapter 19.77 RCW.

9.16.070 Form and similitude defined. A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. [1909 c 249 § 348; RRS § 2600.]

9.16.080 Petroleum products improperly labeled or graded—Penalty. (1) It shall be unlawful for any person, firm, or corporation:

(a) To use, adopt, place upon, or permit to be used, adopted or placed upon, any barrel, tank, drum or other container of gasoline or lubricating oil for internal combustion engines, sold or offered for sale, or upon any pump or other device used in delivering the same, any trade name, trademark, designation or other descriptive matter, which is not the true and correct trade name, trademark, designation or other descriptive matter of the gasoline or lubricating oil so sold or offered for sale;

(b) To sell, or offer for sale, or have in his or her or its possession with intent to sell, any gasoline or lubricating oil, contained in, or taken from, or through any barrel, tank, drum, or other container or pump or other device, so unlawfully labeled or marked, as hereinabove provided;

(c) To sell, or offer for sale, or have in his or her or its possession with intent to sell any gasoline or lubricating oil for internal combustion engines and to represent to the purchaser, or prospective purchaser, that such gasoline or lubricating oil so sold or offered for sale, is of a quality, grade or standard, or the product of a particular gasoline or lubricating oil manufacturing, refining or distributing company or association, other than the true quality, grade, standard, or the product of a particular gasoline or oil manufacturing, refining or distributing company or association, of the gasoline or oil so offered for sale or sold.

(2)(a) Except as provided in (b) of this subsection, any person, firm, or corporation violating this section is guilty of a misdemeanor.

(b) A second and each subsequent violation of this section is a gross misdemeanor. [2003 c 53 § 14; 1927 c 222 § 1; RRS § 2637-1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.16.100 Use of the words "sterling silver," etc. Every person who shall make, sell or offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of any metal article marked, stamped or branded with the words "sterling," "sterling silver," or "solid silver," unless

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nine hundred twenty-five one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 290; 1909 c 249 § 428; RRS § 2680.]

9.16.110 Use of words "coin silver," etc. Every person who shall make, sell or offer to sell or dispose of, or have in his or her possession with intent to dispose of any metal article marked, stamped or branded with the words "coin," or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured, is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 291; 1909 c 249 § 429; RRS § 2681.]

9.16.120 Use of the word "sterling" on mounting. Every person who shall make, sell, offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling," or "sterling silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 292; 1909 c 249 § 430; RRS § 2682.]

9.16.130 Use of the words "coin silver" on mounting. Every person who shall make, sell, offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 293; 1909 c 249 § 431; RRS § 2683.]

9.16.140 Unlawfully marking article made of gold. Every person who shall make, sell, offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of, any article constructed wholly or in part of gold, or of an alloy of gold, and marked, stamped or branded in such manner as to indicate that the gold or alloy of gold in such article is of a greater degree or carat of fineness, by more than one carat, than the actual carat or fineness of such gold or alloy of gold, shall be guilty of a gross misdemeanor. [2011 c 336 § 294; 1909 c 249 § 432; RRS § 2684.]

9.16.150 "Marked, stamped or branded" defined. An article shall be deemed to be "marked, stamped or branded" whenever such article, or any box, package, cover or wrapper in which the same is enclosed, encased or prepared for sale or delivery, or any card, label or placard with which the same may be exhibited or displayed, is so marked, stamped or branded. [1909 c 249 § 433; RRS § 2685.]

Chapter 9.18 RCW BIDDING OFFENSES

Sections

9.18.080	Offender a competent witness.
9.18.120	Suppression of competitive bidding.
9.18.130	Collusion to prevent competitive bidding—Penalty.
9.18.150	Agreements outside state.

9.18.080 Offender a competent witness. Every person offending against any of the provisions of law relating to bribery or corruption shall be a competent witness against another so offending and shall not be excused from giving testimony tending to criminate himself or herself. [2011 c 336 § 295; 1909 c 249 § 78; RRS § 2330. Cf. 1907 c 60 §§ 1, 2; RRS §§ 2149, 2150.]

Bribery and corruption: Chapter 9A.68 RCW.

Incriminating testimony not to be used: RCW 10.52.090.

Rights of accused persons: State Constitution Art. 1 § 9.

9.18.120 Suppression of competitive bidding. (1) When any competitive bid or bids are to be or have been solicited, requested, or advertised for by the state of Washington, or any county, city, town or other municipal corporation therein, or any department of either thereof, for any work or improvement to be done or constructed for or by such state, county, city, town, or other municipal corporation, or any department of either thereof, it shall be unlawful for any person acting for himself or herself or as agent of another, or as agent for or as a member of any partnership, unincorporated firm or association, or as an officer or agent of any corporation, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another or to any firm, association, or corporation for the purpose of inducing such other person, firm, association, or corporation, either to refrain from submitting any bids upon such public work or improvement, or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept, or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he or she individually or as an agent or officer of another person, persons, or corporation, will refrain from bidding upon such public work or improvement, or that he or she will on behalf of himself or herself or such others submit or permit another to submit for him or her any bid upon such public work or improvement in such sum as to eliminate full and unrestricted competition thereon.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 15; 1921 c 12 § 1; RRS § 2333-1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.18.130 Collusion to prevent competitive bidding—Penalty. (1) It shall be unlawful for any person for himself or herself or as an agent or officer of any other person, persons, or corporation to in any manner enter into collusion or an understanding with any other person, persons, or corporation to prevent or eliminate full and unrestricted competition

upon any public work or improvement mentioned in RCW 9.18.120.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 16; 1921 c 12 § 2; RRS § 2333-2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.18.150 Agreements outside state. It shall be no defense to a prosecution under RCW 9.18.120 through 9.18.150 that a payment or promise of payment of any money, check, draft, or anything of value, or any other understanding or arrangement to eliminate unrestricted competitive bids was had or made outside of the state of Washington, if such work or improvement for which bids are called is to be done or performed within the state. [1921 c 12 § 4; RRS § 2333-4.]

Chapter 9.24 RCW CORPORATIONS, CRIMES RELATING TO

Sections

9.24.010	Fraud in stock subscription.
9.24.020	Fraudulent issue of stock, scrip, etc.
9.24.030	Insolvent bank receiving deposit.
9.24.040	Corporation doing business without license.
9.24.050	False report of corporation.

Banks and trust companies, penalties: RCW 30A.04.020, 30A.04.050, 30A.04.060, 30A.04.230, 30A.04.240, 30A.04.260, 30A.12.090 through 30A.12.120, 30A.12.190, 30A.16.010, 30A.44.110, 30A.44.120.

Business corporations: Title 23B RCW.

Child labor: RCW 26.28.060, 26.28.070, chapter 49.12 RCW.

Common carriers: Chapter 22.32 RCW.

Conspiracy, forfeiture of right to do business: RCW 9A.08.030, 9A.28.040.

Corporations, criminal process against: Chapter 10.01 RCW.

Credit unions, penalties: Chapter 31.12 RCW.

Discrimination in employment: Chapter 49.60 RCW.

False statements in filings with secretary of state: RCW 43.07.210.

Fraud: Chapter 9A.60 RCW.

Hours of labor: Chapter 49.28 RCW.

Industrial welfare: Chapter 49.12 RCW.

Insurance companies, penalties: RCW 48.01.080, 48.06.190, 48.07.060, 48.08.040, 48.08.050, 48.09.340, 48.17.480, 48.18.180, 48.30.110, 48.30.190, 48.30.210 through 48.30.230, 48.44.060.

Labor

conditions of: Chapter 49.12 RCW.

prohibited practices: Chapter 49.44 RCW.

Legal services, advertising of—Penalty: RCW 30A.04.260.

Minors, wages, working conditions, permits: RCW 49.12.121, 49.12.123.

Mutual savings banks, penalties: RCW 32.04.100 through 32.04.130, 32.24.080.

Public service companies: Title 80 RCW.

Railroad rolling stock, penalties: RCW 81.60.080.

Savings and loan associations, prohibited acts: Chapter 33.36 RCW.

Trading stamps, penalties: RCW 19.84.040.

Transportation companies: Title 81 RCW.

Unemployment compensation, penalties: Chapter 50.36 RCW.

Uniform Variable Transactions Act: Chapter 19.40 RCW.

Wages—Payment—Collection: Chapter 49.48 RCW.

Warehouse operators: Chapter 22.32 RCW.

Workers' compensation, penalties: RCW 51.16.140, chapter 51.48 RCW.

9.24.010 Fraud in stock subscription. Every person who shall sign the name of a fictitious person to any subscription for or any agreement to take stock in any corporation existing or proposed, and every person who shall sign to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or upon any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, shall be guilty of a gross misdemeanor. [1909 c 249 § 386; RRS § 2638. Formerly RCW 9.44.090.]

9.24.020 Fraudulent issue of stock, scrip, etc. Every officer, agent or other person in the service of a joint stock company or corporation, domestic or foreign, who, willfully and knowingly with intent to defraud:

(1) Sells, pledges, or issues, or causes to be sold, pledged, or issued, or signs or executes, or causes to be signed or executed, with intent to sell, pledge, or issue, or cause to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate or evidence of ownership of any share or shares of such company or corporation, or any conveyance or encumbrance of real or personal property, contract, bond, or evidence of debt, or writing purporting to be a conveyance or encumbrance of real or personal property, contract, bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which such company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

(2) Reissues, sells, pledges, disposes of, or causes to be reissued, sold, pledged, or disposed of, any surrendered or canceled certificate or other evidence of the transfer of ownership of any such share or shares is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 17; 1992 c 7 § 5; 1909 c 249 § 387; RRS § 2639. Formerly RCW 9.37.070.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.24.030 Insolvent bank receiving deposit. Every owner, officer, stockholder, agent or employee of any person, firm, corporation or association engaged, wholly or in part, in the business of banking or receiving money or negotiable paper or securities on deposit or in trust, who shall accept or receive, with or without interest, any deposit, or who shall consent thereto or connive thereat, when he or she knows or has good reason to believe that such person, firm, corporation or association is unsafe or insolvent, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than ten thousand dollars. [2003 c 53 § 18; 1992 c 7 § 6; 1909 c 249 § 388; 1893 c 111 § 1; RRS § 2640. Formerly RCW 9.45.140.]

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Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application to mutual savings banks: RCW 32.04.120.

Receiving deposits by bank after insolvency: State Constitution Art. 12 § 12, RCW 30A.44.120.

9.24.040 Corporation doing business without license. Every corporation, whether domestic or foreign, and every person representing or pretending to represent such corporation as an officer, agent or employee thereof, who shall transact, solicit or advertise for any business in this state, before such corporation shall have obtained from the officer lawfully authorized to issue the same, a certificate that such corporation is authorized to transact business in this state, shall be guilty of a gross misdemeanor. [1909 c 249 § 389; RRS § 2641. Formerly RCW 9.45.130.]

Application to mutual savings banks: RCW 32.04.120.

9.24.050 False report of corporation. Every director, officer or agent of any corporation or joint stock association, and every person engaged in organizing or promoting any enterprise, who shall knowingly make or publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars. [2003 c 53 § 19; 1992 c 7 § 7; 1909 c 249 § 390; RRS § 2642. Formerly RCW 9.38.040.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application to mutual savings banks: RCW 32.04.120.

Chapter 9.26A RCW

TELECOMMUNICATIONS CRIME

Sections

9.26A.090	Telephone company credit cards—Prohibited acts.
9.26A.100	Definitions.
9.26A.110	Fraud in obtaining telecommunications service—Penalty.
9.26A.115	Fraud in obtaining telecommunications service—Use of telecommunications device—Penalty.
9.26A.120	Fraud in operating coin-box telephone or other receptacle.
9.26A.130	Penalty for manufacture or sale of slugs to be used for coin.
9.26A.140	Unauthorized sale or procurement of telephone records—Penalties—Definitions.

Civil cause of action: RCW 9A.56.268.

Telecommunications crimes: RCW 9A.56.262 through 9A.56.266.

9.26A.090 Telephone company credit cards—Prohibited acts. Every person who sells, rents, lends, gives, advertises for sale or rental, or publishes the credit card number of an existing, canceled, revoked, expired, or nonexistent telephone company credit card, or the numbering or coding that is employed in the issuance of telephone company credit cards or access devices, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful charge, shall be guilty of a gross misdemeanor. [1990 c 11 § 3; 1974 ex.s. c 160 § 1.]

9.26A.100 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Access device" shall have the same meaning as that contained in RCW 9A.56.010.

(2) "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but does not mean an automated typewriter or type-setter, portable handheld calculator, or other similar device.

(3) "Computer trespass" shall have the same meaning as that contained in chapter 9A.52 RCW.

(4) "Credit card number" means the card number or coding appearing on a credit card or other form of authorization, including an identification card or plate issued to a person by any telecommunications provider that permits the person to whom it has been issued to obtain telecommunications service on credit. The term includes the number or description of the card or plate, even if the card or plate itself is not produced at the time the telecommunications service is obtained.

(5) "Publish" means the communication or dissemination of information to any one or more persons: (a) Orally, in person, or by telephone, radio, or television; (b) in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book; or (c) electronically, including by the use of recordings, computer networks, bulletin boards, or other means of electronic storage and retrieval.

(6) "Telecommunications" shall have the same meaning as that contained in RCW 80.04.010 and includes telecommunications service that originates, terminates, or both originates and terminates in this state.

(7) "Telecommunications company" shall have the same meaning as that contained in RCW 80.04.010.

(8) "Telecommunications device" means any operating procedure or code, instrument, apparatus, or equipment designed or adapted for a particular use, and which is intended or can be used in violation of this chapter, and includes, but is not limited to, computer hardware, software, and programs; electronic mail system; voice mail system; private branch exchange; or any other means of facilitating telecommunications service.

(9) "Telephone company" means any local exchange company, as defined in RCW 80.04.010. [1990 c 11 § 1.]

9.26A.110 Fraud in obtaining telecommunications service—Penalty. (1) Every person who, with intent to evade the provisions of any order or rule of the Washington utilities and transportation commission or of any tariff, price list, contract, or any other filing lawfully submitted to the commission by any telephone, telegraph, or telecommunications company, or with intent to defraud, obtains telephone, telegraph, or telecommunications service from any telephone, telegraph, or telecommunications company through: (a) The use of a false or fictitious name or telephone number; (b) the unauthorized use of the name or telephone number of another; (c) the physical or electronic installation of, rearrangement of, or tampering with any equipment, or use of a telecommunications device; (d) the commission of computer

trespass; or (e) any other trick, deceit, or fraudulent device, is guilty of a misdemeanor.

(2) If the value of the telephone, telegraph, or telecommunications service that any person obtains in violation of this section during a period of ninety days exceeds fifty dollars in the aggregate, then such person is guilty of a gross misdemeanor.

(3) If the value of the telephone, telegraph, or telecommunications service that any person obtains in violation of this section during a period of ninety days exceeds two hundred fifty dollars in the aggregate, then such person is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(4) For any act that constitutes a violation of both this section and RCW 9.26A.115 the provisions of RCW 9.26A.115 shall be exclusive. [2003 c 53 § 20; 1990 c 11 § 2; 1981 c 252 § 1; 1977 ex.s. c 42 § 1; 1974 ex.s. c 160 § 2; 1972 ex.s. c 75 § 1; 1955 c 114 § 1. Formerly RCW 9.45.240.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Injunctive relief for violations: RCW 7.40.230.

9.26A.115 Fraud in obtaining telecommunications service—Use of telecommunications device—Penalty. Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who:

(1) Makes, possesses, sells, gives, or otherwise transfers to another a telecommunications device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message; or

(2) Sells, gives, or otherwise transfers to another plans or instructions for making or assembling a telecommunications device described in subsection (1) of this section with knowledge or reason to believe that the plans may be used to make or assemble such device. [2003 c 53 § 21.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.26A.120 Fraud in operating coin-box telephone or other receptacle. Any person who shall knowingly and wilfully operate, or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated, [any] coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of such machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service without depositing in and surrendering to such machine, coin-box telephone or receptacle lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such machine, coin-box telephone or receptacle, shall be guilty of

a misdemeanor. [1929 c 184 § 1; RRS § 5842-1. Formerly RCW 9.45.180.]

9.26A.130 Penalty for manufacture or sale of slugs to be used for coin. Any person who, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any coin-box telephone or other receptacle, depository or contrivance, designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, or who, knowing or having cause to believe, that the same is intended for unlawful use, shall manufacture for sale, or sell or give away any slug, device, or substance whatsoever intended or calculated to be placed or deposited in any coin-box telephone or other such receptacle, depository or contrivance, shall be guilty of a misdemeanor. [1929 c 184 § 2; RRS § 5842-2. Formerly RCW 9.45.190.]

9.26A.140 Unauthorized sale or procurement of telephone records—Penalties—Definitions. (1) A person is guilty of the unauthorized sale or procurement of telephone records if the person:

(a) Intentionally sells the telephone record of any resident of this state without the authorization of the customer to whom the record pertains;

(b) By fraudulent, deceptive, or false means obtains the telephone record of any resident of this state to whom the record pertains;

(c) Knowingly purchases the telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or

(d) Knowingly receives the telephone record of any resident of this state without the authorization of the customer to whom the record pertains.

(2) This section does not apply to:

(a) Any action by a government agency, or any officer, employee, or agent of such agency, to obtain telephone records in connection with the performance of the official duties of the agency;

(b) A telecommunications company that obtains, uses, discloses, or permits access to any telephone record, either directly or indirectly through its agents, that is:

(i) With the lawful consent of the customer or subscriber;

(ii) Authorized by law;

(iii) Necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

(iv) In connection with the sale or transfer of all or part of its business, or the purchase or acquisition of a portion or all of a business, or the migration of a customer from one carrier to another.

(3) A violation of subsection (1)(a), (b), or (c) of this section is a class C felony. A violation of subsection (1)(d) of this section is a gross misdemeanor.

(4) A person who violates this section is subject to legal action for injunctive relief and either actual damages, including mental pain and suffering, or liquidated damages of five thousand dollars per violation, whichever is greater. Reason-

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able attorneys' fees and other costs of litigation are also recoverable.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Telecommunications company" has the meaning provided in RCW 9.26A.100 and includes "radio communications service companies" as defined in RCW 80.04.010.

(b) "Telephone record" means information retained by a telecommunications company that relates to the telephone number dialed by the customer or the incoming number or call directed to a customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied. "Telephone record" does not include any information collected and retained by customers using caller identification or other similar technologies.

(c) "Procure" means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration. [2006 c 193 § 1.]

Chapter 9.27 RCW

INTERFERENCE WITH COURT

Sections

9.27.015 Interference, obstruction of any court, building, or residence—Violations.

Disturbing school or school meeting: RCW 28A.635.030.

9.27.015 Interference, obstruction of any court, building, or residence—Violations. Whoever, interfering with, obstructing, or impeding the administration of justice, pickets or parades in or near a building housing a court of the state of Washington or any political subdivision thereof, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be guilty of a gross misdemeanor.

Nothing in this section shall interfere with or prevent the exercise by any court of the state of Washington or any political subdivision thereof of its power to punish for contempt. [1971 ex.s. c 302 § 16.]

Additional notes found at www.leg.wa.gov

Chapter 9.31 RCW

ESCAPED PRISONER RECAPTURED

Sections

9.31.090 Escaped prisoner recaptured.

Escape: RCW 9A.76.110 through 9A.76.130.

Limitation of action against officer for permitting escape: RCW 4.16.110.

Parole-revoked offender as escapee: RCW 9.95.130.

Prisoners—Correctional institutions: Chapter 9.94 RCW.

9.31.090 Escaped prisoner recaptured. Every person in custody, under sentence of imprisonment for any crime, who shall escape from custody, may be recaptured and imprisoned for a term equal to the unexpired portion of the original term. [1909 c 249 § 89; RRS § 2341.]

Indeterminate sentences: Chapter 9.95 RCW.

Chapter 9.35 RCW IDENTITY CRIMES

Sections

9.35.001	Findings—Intent.
9.35.005	Definitions.
9.35.010	Improperly obtaining financial information.
9.35.020	Identity theft.
9.35.030	Soliciting undesired mail.
9.35.040	Information available to victim.
9.35.050	Incident reports.
9.35.060	Consumer fraud targeting seniors, vulnerable individuals.
9.35.800	Application of Consumer Protection Act.
9.35.900	Effective date—1999 c 368.

Block of information appearing as result of identity theft: RCW 19.182.160.

9.35.001 Findings—Intent. (1) The legislature finds that means of identification and financial information are personal and sensitive information such that if unlawfully obtained, possessed, used, or transferred by others may result in significant harm to a person's privacy, financial security, and other interests. The legislature finds that unscrupulous persons find ever more clever ways, including identity theft, to improperly obtain, possess, use, and transfer another person's means of identification or financial information. The legislature intends to penalize for each unlawful act of improperly obtaining, possessing, using, or transferring means of identification or financial information of an individual person. The unit of prosecution for identity theft by use of a means of identification or financial information is each individual unlawful use of any one person's means of identification or financial information. Unlawfully obtaining, possessing, or transferring each means of identification or financial information of any individual person, with the requisite intent, is a separate unit of prosecution for each victim and for each act of obtaining, possessing, or transferring of the individual person's means of identification or financial information.

(2) The people find that additional measures are needed to protect seniors and vulnerable individuals from identity theft because such individuals often have less ability to protect themselves and such individuals can be targeted using information available through public sources, including publicly available information that identifies such individuals or their in-home caregivers. [2017 c 4 § 4 (Initiative Measure No. 1501, approved November 8, 2016); 2008 c 207 § 3; 1999 c 368 § 1.]

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

Finding—Intent—2008 c 207 §§ 3 and 4: "The legislature enacts sections 3 and 4 of this act to expressly reject the interpretation of *State v. Leyda*, 157 Wn.2d 335, 138 P.3d 610 (2006), which holds that the unit of prosecution in identity theft is any one act of either knowingly obtaining, possessing, using, or transferring a single piece of another's identification or financial information, including all subsequent proscribed conduct with that single piece of identification or financial information, when the acts are taken with the requisite intent. The legislature finds that proportionality of punishment requires the need for charging and punishing for obtaining, using, possessing, or transferring any individual person's identification or financial information, with the requisite intent. The legislature specifically intends that each individual who obtains, possesses, uses, or transfers any individual person's identification or financial information, with the requisite intent, be classified separately and punished separately as provided in chapter 9.94A RCW." [2008 c 207 § 1.]

9.35.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Financial information" means any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:

- (a) Account numbers and balances;
- (b) Transactional information concerning an account; and

(c) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicaid numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(2) "Financial information repository" means a person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.

(3) "Means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) "Person" means a person as defined in RCW 9A.04.110.

(5) "Senior" means a person over the age of sixty-five.

(6) "Victim" means a person whose means of identification or financial information has been used or transferred with the intent to commit, or to aid or abet, any unlawful activity.

(7) "Vulnerable individual" means a person:

(i) [(a)] Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(ii) [(b)] Found incapacitated under *chapter 11.88 RCW;

(iii) [(c)] Who has a developmental disability as defined under RCW 71A.10.020;

(iv) [(d)] Admitted to any facility;

(v) [(e)] Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(vi) [(f)] Receiving services from an individual provider as defined in RCW 74.39A.240; or

(vii) [(g)] Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW. [2017 c 4 § 3 (Initiative Measure No. 1501, approved November 8, 2016); 2001 c 217 § 1.]

*Reviser's note: Chapter 11.88 RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

Short title—2017 c 4 (Initiative Measure No. 1501): "This act may be known and cited as the seniors and vulnerable individuals' safety and finan-

cial crimes prevention act." [2017 c 4 § 1 (Initiative Measure No. 1501, approved November 8, 2016).]

Intent—2017 c 4 (Initiative Measure No. 1501): "It is the intent of this initiative to protect the safety and security of seniors and vulnerable individuals by (1) increasing criminal penalties for identity theft targeting seniors and vulnerable individuals; (2) increasing penalties for consumer fraud targeting seniors and vulnerable individuals; and (3) prohibiting the release of certain public records that could facilitate identity theft and other financial crimes against seniors and vulnerable individuals." [2017 c 4 § 2 (Initiative Measure No. 1501, approved November 8, 2016).]

Construction—2017 c 4 (Initiative Measure No. 1501): "This act shall be liberally construed to promote the public policy of protecting seniors and vulnerable individuals from identity theft, consumer fraud, and other forms of victimization." [2017 c 4 § 12 (Initiative Measure No. 1501, approved November 8, 2016).]

Additional notes found at www.leg.wa.gov

9.35.010 Improperly obtaining financial information. (1) No person may obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, financial information from a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association:

(a) By knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial information repository with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the financial information;

(b) By knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association with the intent to deceive the customer into releasing financial information or authorizing the release of such information;

(c) By knowingly providing any document to an officer, employee, or agent of a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association, knowing that the document is forged, counterfeit, lost, or stolen; was fraudulently obtained; or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent to release the financial information.

(2) No person may request another person to obtain financial information from a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association and knows or should have known that the person will obtain or attempt to obtain the information from the financial institution repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association in any manner described in subsection (1) of this section.

(3) No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, or any action of an agent of the financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association when working in conjunction with a law enforcement agency.

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(4) This section does not apply to:

(a) Efforts by the financial information repository to test security procedures or systems of the financial institution repository for maintaining the confidentiality of customer information;

(b) Investigation of alleged employee misconduct or negligence; or

(c) Efforts to recover financial or personal information of the financial institution obtained or received by another person in any manner described in subsection (1) or (2) of this section.

(5) Violation of this section is a class C felony.

(6) A person who violates this section is liable for five hundred dollars or actual damages, whichever is greater, and reasonable attorneys' fees. [2001 c 217 § 8; 1999 c 368 § 2.]

Additional notes found at www.leg.wa.gov

9.35.020 Identity theft. (1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2) Violation of this section when the accused or an accomplice violates subsection (1) of this section and obtains credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value, or when the accused knowingly targets a senior or vulnerable individual in carrying out a violation of subsection (1) of this section, shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(3) A person is guilty of identity theft in the second degree when he or she violates subsection (1) of this section under circumstances not amounting to identity theft in the first degree. Identity theft in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(4) Each crime prosecuted under this section shall be punished separately under chapter 9.94A RCW, unless it is the same criminal conduct as any other crime, under RCW 9.94A.589.

(5) Whenever any series of transactions involving a single person's means of identification or financial information which constitute identity theft would, when considered separately, constitute identity theft in the second degree because of value, and the series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining the degree of identity theft involved.

(6) Every person who, in the commission of identity theft, shall commit any other crime may be punished therefor as well as for the identity theft, and may be prosecuted for each crime separately.

(7) A person who violates this section is liable for civil damages of one thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court.

(8) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the

offense took place, regardless of whether the defendant was ever actually in that locality.

(9) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

(10) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section. [2017 c 4 § 5 (Initiative Measure No. 1501, approved November 8, 2016); 2008 c 207 § 4; 2004 c 273 § 2; 2003 c 53 § 22; 2001 c 217 § 9; 1999 c 368 § 3.]

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

Finding—Intent—2008 c 207 §§ 3 and 4: See note following RCW 9.35.001.

Finding—Purpose—2004 c 273: "The legislature finds that identity theft and the other types of fraud is a significant problem in the state of Washington, costing our citizens and businesses millions each year. The most common method of accomplishing identity theft and other fraudulent activity is by securing a fraudulently issued driver's license. It is the purpose of this act to significantly reduce identity theft and other fraud by preventing the fraudulent issuance of driver's licenses and identicards." [2004 c 273 § 1.]

Additional notes found at www.leg.wa.gov

9.35.030 Soliciting undesired mail. (1) It is unlawful for any person to knowingly use a means of identification or financial information of another person to solicit undesired mail with the intent to annoy, harass, intimidate, torment, or embarrass that person.

(2) Violation of this section is a misdemeanor.

(3) Additionally, a person who violates this section is liable for civil damages of five hundred dollars or actual damages, including costs to repair the person's credit record, whichever is greater, and reasonable attorneys' fees as determined by the court. [2001 c 217 § 10; 2000 c 77 § 1.]

Additional notes found at www.leg.wa.gov

9.35.040 Information available to victim. (1) A person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association possessing information relating to an actual or potential violation of this chapter, and who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person who has used the victim's means of identification, must, upon written request of the victim, provide copies of all relevant application and transaction information related to the transaction being alleged as a potential or actual violation of this chapter. Nothing in this section requires the information provider to disclose information that it is otherwise prohibited from disclosing by law, except that a law that prohibits disclosing a person's information to third parties shall not be used to deny disclosure of such information to the victim under this section.

(2) Unless the information provider is otherwise willing to verify the victim's identification, the victim shall provide the following as proof of positive identification:

(a) The showing of a government-issued photo identification card or, if providing proof by mail, a copy of a government-issued photo identification card;

(b) A copy of a filed police report evidencing the victim's claim; and

(c) A written statement from the state patrol showing that the state patrol has on file documentation of the victim's identity pursuant to the personal identification procedures in RCW 43.43.760.

(3) The provider may require compensation for the reasonable cost of providing the information requested.

(4) No person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association may be held liable for an action taken in good faith to provide information regarding potential or actual violations of this chapter to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any persons alleging to be a victim who comply with subsection (2) of this section which evidences the alleged victim's claim for the purpose of identification and prosecution of violators of this chapter, or to assist a victim in recovery of fines, restitution, rehabilitation of the victim's credit, or such other relief as may be appropriate.

(5) A person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association may decline to provide information pursuant to this section when, in the exercise of good faith and reasonable judgment, it believes this section does not require disclosure of the information.

(6) Nothing in this section creates an obligation on the part of a person, financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association to retain or maintain information or records that they are not otherwise required to retain or maintain in the ordinary course of its business.

(7) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. It is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. The burden of proof in an action alleging a violation of this section shall be by a preponderance of the evidence, and the applicable statute of limitation shall be as set forth in RCW 19.182.120. For purposes of a judgment awarded pursuant to an action by a consumer under chapter 19.86 RCW, the consumer shall be awarded actual damages. However, where there has been willful failure to comply with any requirement imposed under this section, the consumer shall be awarded actual damages, a monetary penalty of one thousand dollars, and the costs of the action together with reasonable attorneys' fees as determined by the court. [2001 c 217 § 2.]

Additional notes found at www.leg.wa.gov

9.35.050 Incident reports. (1) A person who has learned or reasonably suspects that his or her financial information or means of identification has been unlawfully obtained, used by, or disclosed to another, as described in this

chapter, may file an incident report with a law enforcement agency, by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, place of business, or place where the crime occurred. The law enforcement agency shall create a police incident report of the matter and provide the complainant with a copy of that report, and may refer the incident report to another law enforcement agency.

(2) Nothing in this section shall be construed to require a law enforcement agency to investigate reports claiming identity theft. An incident report filed under this section is not required to be counted as an open case for purposes of compiling open case statistics. [2008 c 207 § 2.]

9.35.060 Consumer fraud targeting seniors, vulnerable individuals. (1) It is the intent of this section to increase civil penalties for consumer fraud targeting a senior or a vulnerable individual.

(2) Any consumer fraud that targets a senior or a vulnerable individual, as defined in RCW 9.35.005, is subject to civil penalties of three times the amount of actual damages.

(3) This section creates no new cause of action. This section increases penalties where a plaintiff proceeds under any existing cause of action under statute or common law and successfully proves that he or she was victim to consumer fraud that targeted him or her as a senior or vulnerable individual. [2017 c 4 § 6 (Initiative Measure No. 1501, approved November 8, 2016).]

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

9.35.800 Application of Consumer Protection Act. The legislature finds that the practices covered by RCW 9.35.010 and 9.35.020 are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. Violations of RCW 9.35.010 or 9.35.020 are not reasonable in relation to the development and preservation of business. A violation of RCW 9.35.010 or 9.35.020 is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

Nothing in RCW 9.35.010 or 9.35.020 limits a victim's ability to receive treble damages under RCW 19.86.090. [2001 c 217 § 7.]

Additional notes found at www.leg.wa.gov

9.35.900 Effective date—1999 c 368. This act takes effect January 1, 2000. [1999 c 368 § 4.]

Chapter 9.38 RCW FALSE REPRESENTATIONS

Sections

9.38.010	False representation concerning credit.
9.38.015	False statement by deposit account applicant.
9.38.020	False representation concerning title.
9.38.060	Digital signature violations.

Domestic insurers, corrupt practices: RCW 48.06.190.

Elections

*falsification by voters: Chapter 29A.84 RCW.
initiative and referendum petitions: RCW 29A.84.230.
recall petitions: Chapter 29A.56 RCW.*

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Employment, obtaining by false recommendation: RCW 49.44.040.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Fraud: Chapter 9A.60 RCW.

Honey act, falsification: RCW 69.28.180.

Insurance, unfair practices: Chapter 48.30 RCW.

Liquor permit falsification: RCW 66.20.200.

Marriage affidavit: RCW 26.04.210.

Motor vehicles, certificates of title: RCW 46.12.750.

Pharmacy licensing: RCW 18.64.250.

Public assistance falsification: RCW 74.08.055.

Warehouse receipts and documents, falsifying: Chapter 22.32 RCW.

9.38.010 False representation concerning credit.

Every person who, with intent thereby to obtain credit or financial rating, shall willfully make any false statement in writing of his or her assets or liabilities to any person with whom he or she may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall be guilty of a misdemeanor. [2011 c 336 § 296; 1909 c 249 § 368; RRS § 2620.]

9.38.015 False statement by deposit account applicant. (1) It is a gross misdemeanor for a deposit account applicant to knowingly make any false statement to a financial institution regarding:

- The applicant's identity;
- Past convictions for crimes involving fraud or deception; or
- Outstanding judgments on checks or drafts issued by the applicant.

(2) Each violation of subsection (1) of this section after the third violation is a class C felony punishable as provided in chapter 9A.20 RCW. [1995 c 186 § 4.]

9.38.020 False representation concerning title. Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor. [2000 c 250 § 9A-821; 1909 c 249 § 369; RRS § 2621.]

Additional notes found at www.leg.wa.gov

9.38.060 Digital signature violations. (1) A person shall not knowingly misrepresent the person's identity or authorization to obtain a public key certificate used to reference a private key for creating a digital signature.

(2) A person shall not knowingly forge a digital signature.

(3) A person shall not knowingly present a public key certificate for which the person is not the owner of the corresponding private key in order to obtain unauthorized access to information or engage in an unauthorized transaction.

(4) A person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(5) "Digital signature" means an electronic signature that is a transformation of a message using an asymmetric crypto-

system such that a person who has the initial message and the signer's public key can accurately determine whether the:

- (a) Transformation was created using the private key that corresponds to the signer's public key; and
- (b) Initial message has been altered since the transformation was made. [2019 c 132 § 1; 2001 c 39 § 1.]

Chapter 9.40 RCW FIRE, CRIMES RELATING TO

Sections

9.40.040	Operating engine or boiler without spark arrester.
9.40.100	Tampering with fire alarm or firefighting equipment—False alarm—Penalties.
9.40.105	Tampering with fire alarm or firefighting equipment—Intent to commit arson—Penalty.
9.40.110	Incendiary devices—Definitions.
9.40.120	Incendiary devices—Penalty.
9.40.130	Incendiary devices—Exceptions.

Arson: Chapter 9A.48 RCW.

Burning without permit in fire protection district—Penalty: RCW 52.12.101, 52.12.105.

County fire regulations: RCW 36.43.040.

Doors of buildings used by public: RCW 70.54.070.

Explosives, crimes relating to: Chapter 70.74 RCW.

Forest fire protection: Chapter 76.04 RCW.

Fraudulent destruction of insured property: RCW 48.30.220.

Special rights of action: Chapter 4.24 RCW.

State parks, fire violations: RCW 79A.05.165.

9.40.040 Operating engine or boiler without spark arrester. Every person who shall operate or permit to be operated in dangerous proximity to any brush, grass or other inflammable material, any spark-emitting engine or boiler which is not equipped with a modern spark-arrester, in good condition, shall be guilty of a misdemeanor. [1929 c 172 § 1; 1909 c 249 § 272; RRS § 2524.]

9.40.100 Tampering with fire alarm or firefighting equipment—False alarm—Penalties. Any person who willfully and without cause tampers with, molests, injures or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any firefighting equipment, or who willfully and without having reasonable grounds for believing a fire exists, sends, gives, transmits, or sounds any false alarm of fire, by shouting in a public place or by means of any public or private fire alarm system or signal, or by telephone, is guilty of a misdemeanor. This provision shall not prohibit the testing of fire alarm systems by persons authorized to do so, by a fire department or the chief of the Washington state patrol, through the director of fire protection. [2003 c 53 § 23; 1995 c 369 § 3; 1990 c 177 § 1; 1986 c 266 § 80; 1967 c 204 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.40.105 Tampering with fire alarm or firefighting equipment—Intent to commit arson—Penalty. Any person who willfully and without cause tampers with, molests, injures, or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any fire-

fighting equipment with the intent to commit arson, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 24.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.40.110 Incendiary devices—Definitions. For the purposes of RCW 9.40.110 through 9.40.130, as now or hereafter amended, unless the context indicates otherwise:

(1) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(2) "Incendiary device" means any material, substance, device, or combination thereof which is capable of supplying the initial ignition and/or fuel for a fire and is designed to be used as an instrument of wilful destruction. However, no device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for purposes of this section. [1971 ex.s. c 302 § 3; 1969 ex.s. c 79 § 2.]

Additional notes found at www.leg.wa.gov

9.40.120 Incendiary devices—Penalty. Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a class B felony punishable according to chapter 9A.20 RCW, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than ten years. [2003 c 53 § 25; 1999 c 352 § 5; 1971 ex.s. c 302 § 4; 1969 ex.s. c 79 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.40.130 Incendiary devices—Exceptions. RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firefighters, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section. [2007 c 218 § 62; 1971 ex.s. c 302 § 5; 1969 ex.s. c 79 § 4.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

Chapter 9.41 RCW FIREARMS AND DANGEROUS WEAPONS

Sections

9.41.010	Terms defined.
9.41.040	Unlawful possession of firearms—Ownership, possession by certain persons—Restoration of right to possess—Penalties.
9.41.042	Children—Permissible firearm possession.
9.41.045	Offenders under supervision of the department—Possession prohibited—Penalties.
9.41.047	Persons found not guilty by reason of insanity and others—Possession rights.
9.41.049	Persons who present likelihood of serious harm—Possession rights.
9.41.050	Carrying firearms.
9.41.060	Exceptions to restrictions on carrying firearms.

9.41.065 Correctional employees—Effect of exemption from firearms restrictions—Liability limited.

9.41.070 Concealed pistol license—Application—Fee—Renewal.

9.41.073 Concealed pistol license—Reciprocity.

9.41.075 Concealed pistol license—Revocation.

9.41.080 Delivery to ineligible persons.

9.41.090 Dealer deliveries regulated—Hold on delivery—Fees authorized.

9.41.092 Licensed dealer deliveries—Background checks.

9.41.094 Waiver of confidentiality.

9.41.097 Supplying information on the eligibility of persons to possess firearms, purchase a pistol or semiautomatic assault rifle, or be issued a concealed pistol license.

9.41.0975 Officials and agencies—Immunity, writ of mandamus.

9.41.098 Forfeiture of firearms—Disposition—Confiscation.

9.41.100 Dealer licensing and registration required.

9.41.110 Dealer's licenses, by whom granted, conditions, fees—Employees, fingerprinting and background checks—Wholesale sales excepted—Permits prohibited.

9.41.113 Firearm sales or transfers—Background checks—Requirements—Exceptions.

9.41.114 Firearm sales or transfers—Denial of application report—Dealer's duties.

9.41.115 Penalties—Violations of RCW 9.41.113.

9.41.120 Firearms as loan security.

9.41.122 Out-of-state purchasing.

9.41.124 Purchasing of rifles and shotguns by nonresidents.

9.41.129 Recordkeeping requirements.

9.41.135 Verification of licenses and registration—Notice to federal government.

9.41.137 Department of licensing, authority to adopt rules—Reporting of violations—Authority to revoke licenses.

9.41.139 Department of licensing—Eligibility to possess firearms.

9.41.140 Alteration of identifying marks—Exceptions.

9.41.171 Alien possession of firearms—Requirements—Penalty.

9.41.173 Alien possession of firearms—Alien firearm license—Political subdivisions may not modify requirements—Penalty for false statement.

9.41.175 Alien possession of firearms—Possession without license—Conditions.

9.41.185 Coyote getters.

9.41.190 Unlawful firearms—Exceptions.

9.41.220 Unlawful firearms and parts contraband.

9.41.225 Use of machine gun or bump-fire stock in felony—Penalty.

9.41.230 Aiming or discharging firearms, dangerous weapons.

9.41.240 Possession of pistol or semiautomatic assault rifle by person from eighteen to twenty-one.

9.41.250 Dangerous weapons—Penalty.

9.41.251 Dangerous weapons—Application of restrictions to law enforcement, firefighting, rescue, and military personnel.

9.41.260 Dangerous exhibitions.

9.41.270 Weapons apparently capable of producing bodily harm—Unlawful carrying or handling—Penalty—Exceptions.

9.41.280 Possessing dangerous weapons on school facilities—Penalty—Exceptions.

9.41.290 State preemption.

9.41.300 Weapons prohibited in certain places—Local laws and ordinances—Exceptions—Penalty.

9.41.310 Information pamphlet.

9.41.320 Fireworks.

9.41.325 Undetectable or untraceable firearms—Penalties.

9.41.330 Felony firearm offenders—Determination of registration.

9.41.333 Duty to register—Requirements.

9.41.335 Failure to register as felony firearm offender.

9.41.340 Return of privately owned firearm by law enforcement agency—Notification to family or household member—Exception—Exemption from public disclosure—Civil liability—Liability for request based on false information.

9.41.345 Return of privately owned firearm or concealed pistol license by law enforcement agency—Duties—Notice—Exception.

9.41.350 Voluntary waiver of firearm rights—Procedure—Penalty—Exemption from public disclosure.

9.41.352 Voluntary waiver of firearm rights—Form—Availability.

9.41.360 Unsafe storage of a firearm.

9.41.365 Firearm security and storage—Requirements for dealers.

9.41.800 Surrender of weapons or licenses—Prohibition on future possession or licensing.

9.41.801 Surrender of weapons or licenses—Ensuring compliance.

9.41.802 Proof of surrender and receipt pattern form—Declaration of nonsurrender pattern form—Administrative office of the courts to develop.

9.41.804 Proof of surrender and receipt form, declaration of nonsurrender form—Requirement to file with clerk of the court.

9.41.810 Penalty.

Carrying loaded rifle or shotgun in vehicle: RCW 77.15.460.

Explosives: Chapter 70.74 RCW.

Possessing a stolen firearm: RCW 9A.56.310.

Shooting firearm from, across, or along public highway: RCW 77.15.460.

Theft of a firearm: RCW 9A.56.300.

9.41.010 Terms defined. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Bump-fire stock" means a butt stock designed to be attached to a semiautomatic firearm with the effect of increasing the rate of fire achievable with the semiautomatic firearm to that of a fully automatic firearm by using the energy from the recoil of the firearm to generate reciprocating action that facilitates repeated activation of the trigger.

(4) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(5) "Curio or relic" has the same meaning as provided in 27 C.F.R. Sec. 478.11.

(6) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(7) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

(8) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(9) "Felony firearm offender" means a person who has previously been convicted or found not guilty by reason of insanity in this state of any felony firearm offense. A person is not a felony firearm offender under this chapter if any and all qualifying offenses have been the subject of an expungement, pardon, annulment, certificate, or rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(10) "Felony firearm offense" means:

- (a) Any felony offense that is a violation of this chapter;
- (b) A violation of RCW 9A.36.045;
- (c) A violation of RCW 9A.56.300;
- (d) A violation of RCW 9A.56.310;

(e) Any felony offense if the offender was armed with a firearm in the commission of the offense.

(11) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes.

(12) "Gun" has the same meaning as firearm.

(13) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(14) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

(15) "Licensed collector" means a person who is federally licensed under 18 U.S.C. Sec. 923(b).

(16) "Licensed dealer" means a person who is federally licensed under 18 U.S.C. Sec. 923(a).

(17) "Loaded" means:

- (a) There is a cartridge in the chamber of the firearm;
- (b) Cartridges are in a clip that is locked in place in the firearm;
- (c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;
- (d) There is a cartridge in the tube or magazine that is inserted in the action; or
- (e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(18) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(19) "Manufacture" means, with respect to a firearm, the fabrication or construction of a firearm.

(20) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

(21) "Person" means any individual, corporation, company, association, firm, partnership, club, organization, society, joint stock company, or other legal entity.

(22) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

(23) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(24) "Sale" and "sell" mean the actual approval of the delivery of a firearm in consideration of payment or promise of payment.

(25) "Secure gun storage" means:

- (a) A locked box, gun safe, or other secure locked storage space that is designed to prevent unauthorized use or discharge of a firearm; and
- (b) The act of keeping an unloaded firearm stored by such means.

(26) "Semiautomatic assault rifle" means any rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

"Semiautomatic assault rifle" does not include antique firearms, any firearm that has been made permanently inoperable, or any firearm that is manually operated by bolt, pump, lever, or slide action.

(27) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

- (a) Any crime of violence;
- (b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;
- (c) Child molestation in the second degree;
- (d) Incest when committed against a child under age fourteen;
- (e) Indecent liberties;
- (f) Leading organized crime;
- (g) Promoting prostitution in the first degree;
- (h) Rape in the third degree;
- (i) Drive-by shooting;
- (j) Sexual exploitation;
- (k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense; or

(p) Any felony conviction under RCW 9.41.115.

(28) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(29) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(30) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(31) "Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment including, but not limited to, gifts and loans. "Transfer" does not include the delivery of a firearm owned or leased by an entity licensed or qualified to do business in the state of Washington to, or return of such a firearm by, any of that entity's employees or agents, defined to include volunteers participating in an honor guard, for lawful purposes in the ordinary course of business.

(32) "Undetectable firearm" means any firearm that is not as detectable as 3.7 ounces of 17-4 PH stainless steel by walk-through metal detectors or magnetometers commonly used at airports or any firearm where the barrel, the slide or cylinder, or the frame or receiver of the firearm would not generate an image that accurately depicts the shape of the part when examined by the types of X-ray machines commonly used at airports.

(33) "Unlicensed person" means any person who is not a licensed dealer under this chapter.

(34) "Untraceable firearm" means any firearm manufactured after July 1, 2019, that is not an antique firearm and that cannot be traced by law enforcement by means of a serial number affixed to the firearm by a federally licensed manufacturer or importer. [2019 c 243 § 1; 2019 c 3 § 16 (Initiative Measure No. 1639, approved November 6, 2018); 2018 c 7 § 1. Prior: 2017 c 264 § 1; 2015 c 1 § 2 (Initiative Measure No. 594, approved November 4, 2014); 2013 c 183 § 2; prior: 2009 c 216 § 1; 2001 c 300 § 2; 1997 c 338 § 46; 1996 c 295 § 1; prior: 1994 sp.s. c 7 § 401; 1994 c 121 § 1; prior: 1992 c 205 § 117; 1992 c 145 § 5; 1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2019 c 243: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 243 § 6.]

ment and its existing public institutions, and takes effect July 1, 2019." [2019 c 243 § 6.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Effective dates—2018 c 7: "(1) Sections 1 and 2 of this act take effect July 1, 2018.

(2) Sections 3 through 9 of this act take effect July 1, 2019." [2018 c 7 § 11.]

Finding—2015 c 1 (Initiative Measure No. 594): "There is broad consensus that felons, persons convicted of domestic violence crimes, and persons dangerously mentally ill as determined by a court should not be eligible to possess guns for public safety reasons. Criminal and public safety background checks are an effective and easy mechanism to ensure that guns are not purchased by or transferred to those who are prohibited from possessing them. Criminal and public safety background checks also reduce illegal gun trafficking. Because Washington's current background check requirements apply only to sales or transfers by licensed firearms dealers, many guns are sold or transferred without a criminal and public safety background check, allowing criminals and dangerously mentally ill individuals to gain access to guns.

Conducting criminal and public safety background checks will help ensure that all persons buying guns are legally eligible to do so. The people find that it is in the public interest to strengthen our background check system by extending the requirement for a background check to apply to all gun sales and transfers in the state, except as permitted herein. To encourage compliance with background check requirements, the sales tax imposed by RCW 82.08.020 would not apply to the sale or transfer of any firearms between two unlicensed persons if the unlicensed persons have complied with all background check requirements.

This measure would extend criminal and public safety background checks to all gun sales or transfers. Background checks would not be required for gifts between immediate family members or for antiques." [2015 c 1 § 1 (Initiative Measure No. 594, approved November 4, 2014).]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Restoration of right to possess—Penalties. (1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a

residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of harassment when committed by one family or household member against another, committed on or after June 7, 2018;

(iii) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, *26.10, 26.26A, 26.26B, or 26.50 RCW that:

(A) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(B) Restrains the person from harassing, stalking, or threatening the person protected under the order or child of the person or protected person, or engaging in other conduct that would place the protected person in reasonable fear of bodily injury to the protected person or child; and

(C)(I) Includes a finding that the person represents a credible threat to the physical safety of the protected person or child and by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the protected person or child that would reasonably be expected to cause bodily injury; or

(II) Includes an order under RCW 9.41.800 requiring the person to surrender all firearms and prohibiting the person from accessing, obtaining, or possessing firearms;

(iv) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(v) After dismissal of criminal charges based on incompetency to stand trial under RCW 10.77.088 when the court has made a finding indicating that the defendant has a history of one or more violent acts, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(vi) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(vii) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) (a)(iii) of this subsection does not apply to a sexual assault protection order under chapter 7.90 RCW if the order has been modified pursuant to RCW 7.90.170 to remove any restrictions on firearm purchase, transfer, or possession.

(c) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has

been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under

RCW 46.20.265, unless the offense is the juvenile's first offense in violation of this section and has not committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense. [2019 c 248 § 2; 2019 c 245 § 3; 2019 c 46 § 5003; 2018 c 234 § 1; 2017 c 233 § 4; 2016 c 136 § 7; 2014 c 111 § 1; 2011 c 193 § 1; 2009 c 293 § 1; 2005 c 453 § 1; 2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Reviser's note: *(1) Chapter 26.10 RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

(2) This section was amended by 2019 c 46 § 5003, 2019 c 245 § 3, and by 2019 c 248 § 2, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.042 Children—Permissible firearm possession.

*RCW 9.41.040(2)(a)(iii) shall not apply to any person under the age of eighteen years who is:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;

(4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;

(5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is

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under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;

(6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;

(7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;

(8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty. [2003 c 53 § 27; 1999 c 143 § 2; 1994 sp.s. c 7 § 403.]

***Reviser's note:** RCW 9.41.040 was amended by 2014 c 111 § 1, changing subsection (2)(a)(iii) to subsection (2)(a)(iv). RCW 9.41.040 was subsequently amended by 2018 c 234 § 1, changing subsection (2)(a)(iv) to subsection (2)(a)(v). RCW 9.41.040 was subsequently amended by 2019 c 248 § 2, changing subsection (2)(a)(v) to subsection (2)(a)(vi).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.045 Offenders under supervision of the department—Possession prohibited—Penalties.

As a sentence condition and requirement, offenders under the supervision of the department of corrections pursuant to chapter 9.94A RCW shall not own, use, or possess firearms or ammunition. In addition to any penalty imposed pursuant to RCW 9.41.040 when applicable, offenders found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions as provided for in RCW 9.94A.633, 9.94A.716, or 9.94A.737. Firearms or ammunition owned, used, or possessed by offenders may be confiscated by community corrections officers and turned over to the Washington state patrol for disposal as provided in RCW 9.41.098. [2009 c 28 § 2; 1991 c 221 § 1.]

Effective date—2009 c 28: See note following RCW 2.24.040.

9.41.047 Persons found not guilty by reason of insanity and others—Possession rights.

(1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, or at the time that charges are dismissed based on incompetency to stand trial under RCW 10.77.088 and the court makes a finding that the person has a history of one or more violent acts, the convicting or committing court, or court that dismisses charges, shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The court shall forward within three judicial days after conviction, entry of the commitment order, or dismissal

of charges, a copy of the person's driver's license or identification, or comparable information, along with the date of conviction or commitment, or date charges are dismissed, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, or when a person's charges are dismissed based on incompetency to stand trial under RCW 10.77.088 and the court makes a finding that the person has a history of one or more violent acts, the court also shall forward, within three judicial days after entry of the commitment order, or dismissal of charges, a copy of the person's driver's license, or comparable information, along with the date of commitment or date charges are dismissed, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159). The petitioning party shall provide the court with the information required. If more than one commitment order is entered under one cause number, only one notification to the department of licensing and the national instant criminal background check system is required.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person, or the person whose charges are dismissed based on incompetency to stand trial, has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or by reason of having been detained under RCW 71.05.150 or 71.05.153, or because the person's charges were dismissed based on incompetency to stand trial under RCW 10.77.088 and the court made a finding that the person has a history of one or more violent acts, may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or dismissed the charges based on incompetency to stand trial or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) and (e) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment or detention or incompetency;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment or detention or incompetency are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess

a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) If the petitioner seeks restoration after having been detained under RCW 71.05.150 or 71.05.153, the state shall bear the burden of proof to show, by a preponderance of the evidence, that the petitioner does not meet the restoration criteria in (c) of this subsection.

(f) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the health care authority, and the national instant criminal background check system index, denied persons file. In the case of a person whose right to possess a firearm has been suspended for six months as provided in RCW 71.05.182, the department of licensing shall forward notification of the restoration order to the licensing authority, which, upon receipt of such notification, shall immediately lift the suspension, restoring the license.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4). [2019 c 248 § 3; 2019 c 247 § 3; 2018 c 201 § 6001; 2016 c 93 § 1; 2011 c 193 § 2; 2009 c 293 § 2; 2005 c 453 § 2; 1996 c 295 § 3. Prior: 1994 sp.s. c 7 § 404.]

Reviser's note: This section was amended by 2019 c 247 § 3 and by 2019 c 248 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.049 Persons who present likelihood of serious harm—Possession rights. (1) When a designated crisis responder files a petition for initial detention under RCW 71.05.150 or 71.05.153 on the grounds that the person presents a likelihood of serious harm, the petition shall include a copy of the person's driver's license or identification or comparable information. If the person is not subsequently committed for involuntary treatment under RCW 71.05.240, the court shall forward within three business days of the probable cause hearing a copy of the person's driver's license or identification, or comparable information, along with the date of release from the facility, to the department of licensing and to the state patrol, who shall forward the information to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159). Upon expiration of the six-month period during which the person's right to possess a firearm is suspended as provided in RCW 71.05.182, the Washington state patrol shall forward to the national instant criminal background check system index, denied persons file, notice that the person's right to possess a firearm has been restored.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the detained person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority, which, upon receipt of such notification, shall immediately suspend the license for a period of six months from the date of the person's release from the facility.

(3) A person who is prohibited from possessing a firearm by reason of having been detained under RCW 71.05.150 or 71.05.153 may, upon discharge, petition the superior court to have his or her right to possess a firearm restored before the six-month suspension period has elapsed by following the procedures provided in RCW 9.41.047(3). [2019 c 247 § 2.]

9.41.050 Carrying firearms. (1)(a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (1)(b) shall be a class 1 civil infraction under chapter 7.80 RCW and shall be punished accordingly pursuant to chapter 7.80 RCW and the infraction rules for courts of limited jurisdiction.

(2)(a) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (i) The pistol is on the licensee's person, (ii) the licensee is within the vehicle at all times that the pistol is there, or (iii) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(3)(a) A person at least eighteen years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(4) Nothing in this section permits the possession of firearms illegal to possess under state or federal law. [2003 c 53 § 28; 1997 c 200 § 1; 1996 c 295 § 4; 1994 sp.s. c 7 § 405; 1982 1st ex.s. c 47 § 3; 1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.060 Exceptions to restrictions on carrying firearms. The provisions of RCW 9.41.050 shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens or their deputies, correctional personnel and community corrections officers as long as they are employed as such who have completed government-sponsored law enforcement firearms training and have been subject to a background check within

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the past five years, or other law enforcement officers of this state or another state;

(2) Members of the armed forces of the United States or of the national guard or organized reserves, when on duty;

(3) Officers or employees of the United States duly authorized to carry a concealed pistol;

(4) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of the person, if possessing, using, or carrying a pistol in the usual or ordinary course of the business;

(5) Regularly enrolled members of any organization duly authorized to purchase or receive pistols from the United States or from this state;

(6) Regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;

(7) Regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;

(8) Any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;

(9) Any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; or

(10) Law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection applies only to a retired officer who has: (a) Obtained documentation from a law enforcement agency within Washington state from which he or she retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical disability; and (b) not been convicted or found not guilty by reason of insanity of a crime making him or her ineligible for a concealed pistol license. [2019 c 231 § 1; 2011 c 221 § 1; 2005 c 453 § 3; 1998 c 253 § 2; 1996 c 295 § 5; 1995 c 392 § 1; 1994 sp.s. c 7 § 406; 1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.065 Correctional employees—Effect of exemption from firearms restrictions—Liability limited. The exemptions from firearms restrictions in RCW 9.41.060 and 9.41.300 for correctional personnel and community corrections officers who complete government-sponsored law enforcement firearms training do not create a duty on the part of the state or local governmental entities with respect to the off-duty conduct of correctional personnel and community corrections officers involving the use or misuse of a firearm.

The state of Washington, local governmental entities, and their officers, employees, and agents are not liable for any civil damages caused by the use or misuse of a firearm by off-duty correctional personnel or community corrections officers based on any act or omission in the provision of gov-

ernment-sponsored firearms training to the correctional personnel or community corrections officers. [2011 c 221 § 3.]

9.41.070 Concealed pistol license—Application—Fee—Renewal. (1) The chief of police of a municipality or the sheriff of a county shall within thirty days after the filing of an application of any person, issue a license to such person to carry a pistol concealed on his or her person within this state for five years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. The issuing authority shall not refuse to accept completed applications for concealed pistol licenses during regular business hours.

The applicant's constitutional right to bear arms shall not be denied, unless:

(a) He or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045, or is prohibited from possessing a firearm under federal law;

(b) The applicant's concealed pistol license is in a revoked status;

(c) He or she is under twenty-one years of age;

(d) He or she is subject to a court order or injunction regarding firearms pursuant to chapter 7.90, 7.92, or 7.94 RCW, or RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, *26.10.040, *26.10.115, 26.26B.020, 26.50.060, 26.50.070, or 26.26A.470;

(e) He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;

(f) He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or

(g) He or she has been ordered to forfeit a firearm under RCW 9.41.098(1)(c) within one year before filing an application to carry a pistol concealed on his or her person.

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2)(a) The issuing authority shall conduct a check through the national instant criminal background check system, the Washington state patrol electronic database, the health care authority electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm, or is prohibited from possessing a firearm under federal law, and therefore ineligible for a concealed pistol license.

(b) The issuing authority shall deny a permit to anyone who is found to be prohibited from possessing a firearm under federal or state law.

(c) (a) and (b) of this subsection apply whether the applicant is applying for a new concealed pistol license or to renew a concealed pistol license.

(d) A background check for an original license must be conducted through the Washington state patrol criminal iden-

tification section and shall include a national check from the federal bureau of investigation through the submission of fingerprints. The results will be returned to the issuing authority. The applicant may request and receive a copy of the results of the background check from the issuing authority. If the applicant seeks to amend or correct their record, the applicant must contact the Washington state patrol for a Washington state record or the federal bureau of investigation for records from other jurisdictions.

(3) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)(A) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored except as otherwise prohibited by this chapter.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, email address at the option of the applicant, date and place of birth, race, gender, description, a complete set of fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. A signed application for a concealed pistol license shall constitute a waiver of confidentiality and written request that the health care authority, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for a concealed pistol license to an inquiring court or law enforcement agency.

The application for an original license shall include a complete set of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law.

The application shall contain questions about the applicant's eligibility under RCW 9.41.040 and federal law to possess a pistol, the applicant's place of birth, and whether the applicant is a United States citizen. If the applicant is not a United States citizen, the applicant must provide the applicant's country of citizenship, United States issued alien number or admission number, and the basis on which the applicant claims to be exempt from federal prohibitions on firearm possession by aliens. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. A person who is not a citizen of the United States shall, if applicable, meet the additional requirements of RCW 9.41.173 and produce proof of compliance with RCW 9.41.173 upon application. The license may be in triplicate or in a form to be prescribed by the department of licensing.

A photograph of the applicant may be required as part of the application and printed on the face of the license.

The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an online format, all information received under this subsection.

(5) The nonrefundable fee, paid upon application, for the original five-year license shall be thirty-six dollars plus additional charges imposed by the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license.

The fee shall be distributed as follows:

- (a) Fifteen dollars shall be paid to the state general fund;
- (b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;
- (c) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter;
- (d) Two dollars and sixteen cents to the firearms range account in the general fund; and
- (e) Eighty-four cents to the concealed pistol license renewal notification account created in RCW 43.79.540.

(6) The nonrefundable fee for the renewal of such license shall be thirty-two dollars. No other branch or unit of government may impose any additional charges on the applicant for the renewal of the license.

The renewal fee shall be distributed as follows:

- (a) Fifteen dollars shall be paid to the state general fund;
- (b) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter;
- (c) Two dollars and sixteen cents to the firearms range account in the general fund; and
- (d) Eighty-four cents to the concealed pistol license renewal notification account created in RCW 43.79.540.

(7) The nonrefundable fee for replacement of lost or damaged licenses is ten dollars to be paid to the issuing authority.

(8) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the issuing authority.

(9)(a) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (6) of this section. The fee shall be distributed as follows:

- (i) Three dollars shall be deposited in the state wildlife account and used exclusively first for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law, and subsequently the support of volunteer instructors in the basic firearms safety training program conducted by the department of fish and wildlife. The pamphlet shall be given to each applicant for a license; and
- (ii) Seven dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(b) Beginning with concealed pistol licenses that expire on or after August 1, 2018, the department of licensing shall

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mail a renewal notice approximately ninety days before the license expiration date to the licensee at the address listed on the concealed pistol license application, or to the licensee's new address if the licensee has notified the department of licensing of a change of address. Alternatively, if the licensee provides an email address at the time of license application, the department of licensing may send the renewal notice to the licensee's email address. The notice must contain the date the concealed pistol license will expire, the amount of renewal fee, the penalty for late renewal, and instructions on how to renew the license.

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section. However, a temporary emergency license issued under this subsection shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A person who knowingly makes a false statement regarding citizenship or identity on an application for a concealed pistol license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the concealed pistol license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for a concealed pistol license.

(13) A person may apply for a concealed pistol license:

- (a) To the municipality or to the county in which the applicant resides if the applicant resides in a municipality;
- (b) To the county in which the applicant resides if the applicant resides in an unincorporated area; or
- (c) Anywhere in the state if the applicant is a nonresident.

(14) Any person who, as a member of the armed forces, including the national guard and armed forces reserves, is unable to renew his or her license under subsections (6) and (9) of this section because of the person's assignment, reassignment, or deployment for out-of-state military service may renew his or her license within ninety days after the person returns to this state from out-of-state military service, if the person provides the following to the issuing authority no later than ninety days after the person's date of discharge or assignment, reassignment, or deployment back to this state: (a) A copy of the person's original order designating the specific period of assignment, reassignment, or deployment for out-of-state military service, and (b) if appropriate, a copy of the person's discharge or amended or subsequent assignment, reassignment, or deployment order back to this state. A license so renewed under this subsection (14) shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license under this subsection (14) shall pay only the renewal fee specified in subsection (6) of this section and shall not be required to pay a late renewal penalty in addition to the renewal fee.

(15)(a) By October 1, 2019, law enforcement agencies that issue concealed pistol licenses shall develop and imple-

ment a procedure for the renewal of concealed pistol licenses through a mail application process, and may develop an online renewal application process, for any person who, as a member of the armed forces, including the national guard and armed forces reserves, is unable to renew his or her license under subsections (6) and (9) of this section because of the person's assignment, reassignment, or deployment for out-of-state military service.

(b) A person applying for a license renewal under this subsection shall:

(i) Provide a copy of the person's original order designating the specific period of assignment, reassignment, or deployment for out-of-state military service;

(ii) Apply for renewal within ninety days before or after the expiration date of the license; and

(iii) Pay the renewal licensing fee under subsection (6) of this section, and, if applicable, the late renewal penalty under subsection (9) of this section.

(c) A license renewed under this subsection takes effect on the expiration date of the prior license and is valid for a period of one year. [2019 c 249 § 1; 2019 c 135 § 1; 2019 c 46 § 5004. Prior: 2018 c 226 § 2; 2018 c 201 § 6002; prior: 2017 c 282 § 1; 2017 c 174 § 1; 2017 c 74 § 1; 2011 c 294 § 1; prior: 2009 c 216 § 5; 2009 c 59 § 1; 2002 c 302 § 703; 1999 c 222 § 2; 1996 c 295 § 6; 1995 c 351 § 1; prior: 1994 sp.s. c 7 § 407; 1994 c 190 § 2; 1992 c 168 § 1; 1990 c 195 § 6; prior: 1988 c 263 § 10; 1988 c 223 § 1; 1988 c 219 § 1; 1988 c 36 § 1; 1985 c 428 § 3; 1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

Reviser's note: *(1) RCW 26.10.040 and 26.10.115 were repealed by 2019 c 437 § 801, effective January 1, 2021.

(2) This section was amended by 2019 c 46 § 5004, 2019 c 135 § 1, and by 2019 c 249 § 1, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2019 c 249: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2019]." [2019 c 249 § 2.]

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Finding—Hunter education program: "The legislature finds that the hunter education program offers classes that all new hunters in the state are legally required to complete, but that budget reductions have limited the assistance that may be provided to the volunteers who conduct these classes. A portion of the funds for this program is provided by statute exclusively for printing and distributing the hunter safety pamphlet. While this pamphlet should remain the highest spending priority for these funds, there is a surplus in the account which could assist with other activities by the volunteers conducting the hunter education program." [1999 c 222 § 1.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.073 Concealed pistol license—Reciprocity.

(1)(a) A person licensed to carry a pistol in a state the laws of which recognize and give effect in that state to a concealed pistol license issued under the laws of the state of Washington is authorized to carry a concealed pistol in this state if:

(i) The licensing state does not issue concealed pistol licenses to persons under twenty-one years of age; and

(ii) The licensing state requires mandatory fingerprint-based background checks of criminal and mental health history for all persons who apply for a concealed pistol license.

(b) This section applies to a license holder from another state only while the license holder is not a resident of this state. A license holder from another state must carry the handgun in compliance with the laws of this state.

(2) The attorney general shall periodically publish a list of states the laws of which recognize and give effect in that state to a concealed pistol license issued under the laws of the state of Washington and which meet the requirements of subsection (1)(a)(i) and (ii) of this section. [2004 c 148 § 1.]

9.41.075 Concealed pistol license—Revocation. (1)

The license shall be revoked by the license-issuing authority immediately upon:

(a) Discovery by the issuing authority that the person was ineligible under RCW 9.41.070 for a concealed pistol license when applying for the license or license renewal;

(b) Conviction of the licensee, or the licensee being found not guilty by reason of insanity, of an offense, or commitment of the licensee for mental health treatment, that makes a person ineligible under RCW 9.41.040 to possess a firearm;

(c) Conviction of the licensee for a third violation of this chapter within five calendar years; or

(d) An order that the licensee forfeit a firearm under RCW 9.41.098(1)(d).

(2)(a) Unless the person may lawfully possess a pistol without a concealed pistol license, an ineligible person to whom a concealed pistol license was issued shall, within fourteen days of license revocation, lawfully transfer ownership of any pistol acquired while the person was in possession of the license.

(b) Upon discovering a person issued a concealed pistol license was ineligible for the license, the issuing authority shall contact the department of licensing to determine whether the person purchased a pistol while in possession of the license. If the person did purchase a pistol while in possession of the concealed pistol license, if the person may not lawfully possess a pistol without a concealed pistol license, the issuing authority shall require the person to present satisfactory evidence of having lawfully transferred ownership of the pistol. The issuing authority shall require the person to produce the evidence within fifteen days of the revocation of the license.

(3) When a licensee is ordered to forfeit a firearm under RCW 9.41.098(1)(d), the issuing authority shall:

(a) On the first forfeiture, revoke the license for one year;

(b) On the second forfeiture, revoke the license for two years; or

(c) On the third or subsequent forfeiture, revoke the license for five years.

Any person whose license is revoked as a result of a forfeiture of a firearm under RCW 9.41.098(1)(d) may not reapply for a new license until the end of the revocation period.

(4) The issuing authority shall notify, in writing, the department of licensing of the revocation of a license. The department of licensing shall record the revocation. [2005 c 453 § 4; 1994 sp.s. c 7 § 408.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.080 Delivery to ineligible persons. No person may deliver a firearm to any person whom he or she has reasonable cause to believe: (1) Is ineligible under RCW 9.41.040 to possess a firearm or (2) has signed a valid voluntary waiver of firearm rights that has not been revoked under RCW 9.41.350. Any person violating this section is guilty of a class C felony, punishable under chapter 9A.20 RCW. [2018 c 145 § 3; 1994 sp.s. c 7 § 409; 1935 c 172 § 8; RRS § 2516-8.]

Effective date—2018 c 145 §§ 1, 3, and 4: See note following RCW 9.41.350.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.090 Dealer deliveries regulated—Hold on delivery—Fees authorized. (Contingent expiration date.) (1) In addition to the other requirements of this chapter, no dealer may deliver a pistol to the purchaser thereof until:

(a) The dealer is notified in writing by (i) the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a pistol under RCW 9.41.040 and that the application to purchase is approved by the chief of police or sheriff; or (ii) the state that the purchaser is eligible to possess a firearm under RCW 9.41.040, as provided in subsection (3)(b) of this section; or

(b) The requirements or time periods in RCW 9.41.092 have been satisfied.

(2) In addition to the other requirements of this chapter, no dealer may deliver a semiautomatic assault rifle to the purchaser thereof until:

(a) The purchaser provides proof that he or she has completed a recognized firearm safety training program within the last five years that, at a minimum, includes instruction on:

- (i) Basic firearms safety rules;
- (ii) Firearms and children, including secure gun storage and talking to children about gun safety;
- (iii) Firearms and suicide prevention;
- (iv) Secure gun storage to prevent unauthorized access and use;
- (v) Safe handling of firearms; and
- (vi) State and federal firearms laws, including prohibited firearms transfers.

The training must be sponsored by a federal, state, county, or municipal law enforcement agency, a college or university, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The proof of training shall be in the form of a certification that states under the penalty of perjury the training included the minimum requirements; and

(b) The dealer is notified in writing by (i) the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a firearm under RCW 9.41.040 and that the application to purchase is approved by the chief of police or sheriff; or (ii) the state that

the purchaser is eligible to possess a firearm under RCW 9.41.040, as provided in subsection (3)(b) of this section; or

(c) The requirements or time periods in RCW 9.41.092 have been satisfied.

(3)(a) Except as provided in (b) of this subsection, in determining whether the purchaser meets the requirements of RCW 9.41.040, the chief of police or sheriff, or the designee of either, shall check with the national instant criminal background check system, provided for by the Brady handgun violence prevention act (18 U.S.C. Sec. 921 et seq.), the Washington state patrol electronic database, the health care authority electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 to possess a firearm.

(b) The state, through the legislature or initiative process, may enact a statewide firearms background check system equivalent to, or more comprehensive than, the check required by (a) of this subsection to determine that a purchaser is eligible to possess a firearm under RCW 9.41.040. Once a state system is established, a dealer shall use the state system and national instant criminal background check system, provided for by the Brady handgun violence prevention act (18 U.S.C. Sec. 921 et seq.), to make criminal background checks of applicants to purchase firearms.

(4) In any case under this section where the applicant has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor, the dealer shall hold the delivery of the pistol or semiautomatic assault rifle until the warrant for arrest is served and satisfied by appropriate court appearance. The local jurisdiction for purposes of the sale, or the state pursuant to subsection (3)(b) of this section, shall confirm the existence of outstanding warrants within seventy-two hours after notification of the application to purchase a pistol or semiautomatic assault rifle is received. The local jurisdiction shall also immediately confirm the satisfaction of the warrant on request of the dealer so that the hold may be released if the warrant was for an offense other than an offense making a person ineligible under RCW 9.41.040 to possess a firearm.

(5) In any case where the chief or sheriff of the local jurisdiction, or the state pursuant to subsection (3)(b) of this section, has reasonable grounds based on the following circumstances: (a) Open criminal charges, (b) pending criminal proceedings, (c) pending commitment proceedings, (d) an outstanding warrant for an offense making a person ineligible under RCW 9.41.040 to possess a firearm, or (e) an arrest for an offense making a person ineligible under RCW 9.41.040 to possess a firearm, if the records of disposition have not yet been reported or entered sufficiently to determine eligibility to purchase a firearm, the local jurisdiction or the state may hold the sale and delivery of the pistol or semiautomatic assault rifle up to thirty days in order to confirm existing records in this state or elsewhere. After thirty days, the hold will be lifted unless an extension of the thirty days is approved by a local district court, superior court, or municipal court for good cause shown. A dealer shall be notified of each hold placed on the sale by local law enforcement or the state and of any application to the court for additional hold period to confirm records or confirm the identity of the applicant.

(6)(a) At the time of applying for the purchase of a pistol or semiautomatic assault rifle, the purchaser shall sign in triplicate and deliver to the dealer an application containing:

(i) His or her full name, residential address, date and place of birth, race, and gender;

(ii) The date and hour of the application;

(iii) The applicant's driver's license number or state identification card number;

(iv) A description of the pistol or semiautomatic assault rifle including the make, model, caliber and manufacturer's number if available at the time of applying for the purchase of a pistol or semiautomatic assault rifle. If the manufacturer's number is not available at the time of applying for the purchase of a pistol or semiautomatic assault rifle, the application may be processed, but delivery of the pistol or semiautomatic assault rifle to the purchaser may not occur unless the manufacturer's number is recorded on the application by the dealer and transmitted to the chief of police of the municipality or the sheriff of the county in which the purchaser resides, or the state pursuant to subsection (3)(b) of this section;

(v) A statement that the purchaser is eligible to purchase and possess a firearm under state and federal law; and

(vi) If purchasing a semiautomatic assault rifle, a statement by the applicant under penalty of perjury that the applicant has completed a recognized firearm safety training program within the last five years, as required by subsection (2) of this section.

(b) The application shall contain two warnings substantially stated as follows:

(i) CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. State permission to purchase a firearm is not a defense to a federal prosecution; and

(ii) CAUTION: The presence of a firearm in the home has been associated with an increased risk of death to self and others, including an increased risk of suicide, death during domestic violence incidents, and unintentional deaths to children and others.

The purchaser shall be given a copy of the department of fish and wildlife pamphlet on the legal limits of the use of firearms and firearms safety.

(c) The dealer shall, by the end of the business day, sign and attach his or her address and deliver a copy of the application and such other documentation as required under subsections (1) and (2) of this section to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident, or the state pursuant to subsection (3)(b) of this section. The triplicate shall be retained by the dealer for six years. The dealer shall deliver the pistol or semiautomatic assault rifle to the purchaser following the period of time specified in this chapter unless the dealer is notified of an investigative hold under subsection (5) of this section in writing by the chief of police of the municipality, the sheriff of the county, or the state, whichever is applicable, or of the denial of the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless

the purchaser is not eligible to purchase or possess the firearm under state or federal law.

(d) The chief of police of the municipality or the sheriff of the county, or the state pursuant to subsection (3)(b) of this section, shall retain or destroy applications to purchase a pistol or semiautomatic assault rifle in accordance with the requirements of 18 U.S.C. Sec. 922.

(7)(a) To help offset the administrative costs of implementing this section as it relates to new requirements for semiautomatic assault rifles, the department of licensing may require the dealer to charge each semiautomatic assault rifle purchaser or transferee a fee not to exceed twenty-five dollars, except that the fee may be adjusted at the beginning of each biennium to levels not to exceed the percentage increase in the consumer price index for all urban consumers, CPI-W, or a successor index, for the previous biennium as calculated by the United States department of labor.

(b) The fee under (a) of this subsection shall be no more than is necessary to fund the following:

(i) The state for the cost of meeting its obligations under this section;

(ii) The health care authority, mental health institutions, and other health care facilities for state-mandated costs resulting from the reporting requirements imposed by RCW 9.41.097(1); and

(iii) Local law enforcement agencies for state-mandated local costs resulting from the requirements set forth under RCW 9.41.090 and this section.

(8) A person who knowingly makes a false statement regarding identity or eligibility requirements on the application to purchase a firearm is guilty of false swearing under RCW 9A.72.040.

(9) This section does not apply to sales to licensed dealers for resale or to the sale of antique firearms. [2019 c 244 § 1; 2019 c 3 § 3 (Initiative Measure No. 1639, approved November 6, 2018); 2018 c 201 § 6003; 2015 c 1 § 5 (Initiative Measure No. 594, approved November 4, 2014); 1996 c 295 § 8. Prior: 1994 sp.s. c 7 § 410; 1994 c 264 § 1; 1988 c 36 § 2; 1985 c 428 § 4; 1983 c 232 § 4; 1969 ex.s. c 227 § 1; 1961 c 124 § 7; 1935 c 172 § 9; RRS § 2516-9.]

Contingent expiration date—2019 c 244: "(1) Section 1, chapter 244, Laws of 2019 expires June 30, 2022, if the contingency in subsection (2) of this section does not occur by December 31, 2021, as determined by the Washington state patrol.

(2) Section 1, chapter 244, Laws of 2019 expires six months after the date on which the Washington state patrol determines that a single point of contact firearm background check system, for purposes of the federal Brady handgun violence prevention act (18 U.S.C. Sec. 921 et seq.), is operational in the state.

(3) If section 1, chapter 244, Laws of 2019 expires pursuant to subsection (2) of this section, the Washington state patrol must provide written notice of the expiration to the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the Washington state patrol." [2019 c 244 § 2.]

Effective date—2019 c 244: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 244 § 3.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.090 Dealer deliveries regulated—Hold on delivery—Fees authorized. (Contingent effective date.) (1) In addition to the other requirements of this chapter, no dealer may deliver a pistol to the purchaser thereof until:

(a) The purchaser produces a valid concealed pistol license and the dealer has recorded the purchaser's name, license number, and issuing agency, such record to be made in triplicate and processed as provided in subsection (6) of this section. For purposes of this subsection (1)(a), a "valid concealed pistol license" does not include a temporary emergency license, and does not include any license issued before July 1, 1996, unless the issuing agency conducted a records search for disqualifying crimes under RCW 9.41.070 at the time of issuance;

(b) The dealer is notified in writing by (i) the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a pistol under RCW 9.41.040 and that the application to purchase is approved by the chief of police or sheriff; or (ii) the state that the purchaser is eligible to possess a firearm under RCW 9.41.040, as provided in subsection (3)(b) of this section; or

(c) The requirements or time periods in RCW 9.41.092 have been satisfied.

(2) In addition to the other requirements of this chapter, no dealer may deliver a semiautomatic assault rifle to the purchaser thereof until:

(a) The purchaser provides proof that he or she has completed a recognized firearm safety training program within the last five years that, at a minimum, includes instruction on:

- (i) Basic firearms safety rules;
- (ii) Firearms and children, including secure gun storage and talking to children about gun safety;
- (iii) Firearms and suicide prevention;
- (iv) Secure gun storage to prevent unauthorized access and use;
- (v) Safe handling of firearms; and
- (vi) State and federal firearms laws, including prohibited firearms transfers.

The training must be sponsored by a federal, state, county, or municipal law enforcement agency, a college or university, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The proof of training shall be in the form of a certification that states under the penalty of perjury the training included the minimum requirements; and

(b) The dealer is notified in writing by (i) the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a firearm under RCW 9.41.040 and that the application to purchase is approved by the chief of police or sheriff; or (ii) the state that the purchaser is eligible to possess a firearm under RCW 9.41.040, as provided in subsection (3)(b) of this section; or

(c) The requirements or time periods in RCW 9.41.092 have been satisfied.

(3)(a) Except as provided in (b) of this subsection, in determining whether the purchaser meets the requirements of RCW 9.41.040, the chief of police or sheriff, or the designee of either, shall check with the national crime information center, including the national instant criminal background check system, provided for by the Brady handgun violence prevention act (18 U.S.C. Sec. 921 et seq.), the Washington state patrol electronic database, the health care authority electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 to possess a firearm.

(b) The state, through the legislature or initiative process, may enact a statewide firearms background check system equivalent to, or more comprehensive than, the check required by (a) of this subsection to determine that a purchaser is eligible to possess a firearm under RCW 9.41.040. Once a state system is established, a dealer shall use the state system and national instant criminal background check system, provided for by the Brady handgun violence prevention act (18 U.S.C. Sec. 921 et seq.), to make criminal background checks of applicants to purchase firearms.

(4) In any case under this section where the applicant has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor, the dealer shall hold the delivery of the pistol or semiautomatic assault rifle until the warrant for arrest is served and satisfied by appropriate court appearance. The local jurisdiction for purposes of the sale, or the state pursuant to subsection (3)(b) of this section, shall confirm the existence of outstanding warrants within seventy-two hours after notification of the application to purchase a pistol or semiautomatic assault rifle is received. The local jurisdiction shall also immediately confirm the satisfaction of the warrant on request of the dealer so that the hold may be released if the warrant was for an offense other than an offense making a person ineligible under RCW 9.41.040 to possess a firearm.

(5) In any case where the chief or sheriff of the local jurisdiction, or the state pursuant to subsection (3)(b) of this section, has reasonable grounds based on the following circumstances: (a) Open criminal charges, (b) pending criminal proceedings, (c) pending commitment proceedings, (d) an outstanding warrant for an offense making a person ineligible under RCW 9.41.040 to possess a firearm, or (e) an arrest for an offense making a person ineligible under RCW 9.41.040 to possess a firearm, if the records of disposition have not yet been reported or entered sufficiently to determine eligibility to purchase a firearm, the local jurisdiction or the state may hold the sale and delivery of the pistol or semiautomatic assault rifle up to thirty days in order to confirm existing records in this state or elsewhere. After thirty days, the hold will be lifted unless an extension of the thirty days is approved by a local district court, superior court, or municipal court for good cause shown. A dealer shall be notified of each hold placed on the sale by local law enforcement or the state and of any application to the court for additional hold period to confirm records or confirm the identity of the applicant.

(6)(a) At the time of applying for the purchase of a pistol or semiautomatic assault rifle, the purchaser shall sign in triplicate and deliver to the dealer an application containing:

(i) His or her full name, residential address, date and place of birth, race, and gender;

(ii) The date and hour of the application;

(iii) The applicant's driver's license number or state identification card number;

(iv) A description of the pistol or semiautomatic assault rifle including the make, model, caliber and manufacturer's number if available at the time of applying for the purchase of a pistol or semiautomatic assault rifle. If the manufacturer's number is not available at the time of applying for the purchase of a pistol or semiautomatic assault rifle, the application may be processed, but delivery of the pistol or semiautomatic assault rifle to the purchaser may not occur unless the manufacturer's number is recorded on the application by the dealer and transmitted to the chief of police of the municipality or the sheriff of the county in which the purchaser resides, or the state pursuant to subsection (3)(b) of this section;

(v) A statement that the purchaser is eligible to purchase and possess a firearm under state and federal law; and

(vi) If purchasing a semiautomatic assault rifle, a statement by the applicant under penalty of perjury that the applicant has completed a recognized firearm safety training program within the last five years, as required by subsection (2) of this section.

(b) The application shall contain two warnings substantially stated as follows:

(i) CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. State permission to purchase a firearm is not a defense to a federal prosecution; and

(ii) CAUTION: The presence of a firearm in the home has been associated with an increased risk of death to self and others, including an increased risk of suicide, death during domestic violence incidents, and unintentional deaths to children and others.

The purchaser shall be given a copy of the department of fish and wildlife pamphlet on the legal limits of the use of firearms and firearms safety.

(c) The dealer shall, by the end of the business day, sign and attach his or her address and deliver a copy of the application and such other documentation as required under subsections (1) and (2) of this section to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident, or the state pursuant to subsection (3)(b) of this section. The triplicate shall be retained by the dealer for six years. The dealer shall deliver the pistol or semiautomatic assault rifle to the purchaser following the period of time specified in this chapter unless the dealer is notified of an investigative hold under subsection (5) of this section in writing by the chief of police of the municipality, the sheriff of the county, or the state, whichever is applicable, or of the denial of the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless the purchaser is not eligible to purchase or possess the firearm under state or federal law.

(d) The chief of police of the municipality or the sheriff of the county, or the state pursuant to subsection (3)(b) of this

section, shall retain or destroy applications to purchase a pistol or semiautomatic assault rifle in accordance with the requirements of 18 U.S.C. Sec. 922.

(7)(a) To help offset the administrative costs of implementing this section as it relates to new requirements for semiautomatic assault rifles, the department of licensing may require the dealer to charge each semiautomatic assault rifle purchaser or transferee a fee not to exceed twenty-five dollars, except that the fee may be adjusted at the beginning of each biennium to levels not to exceed the percentage increase in the consumer price index for all urban consumers, CPI-W, or a successor index, for the previous biennium as calculated by the United States department of labor.

(b) The fee under (a) of this subsection shall be no more than is necessary to fund the following:

(i) The state for the cost of meeting its obligations under this section;

(ii) The health care authority, mental health institutions, and other health care facilities for state-mandated costs resulting from the reporting requirements imposed by RCW 9.41.097(1); and

(iii) Local law enforcement agencies for state-mandated local costs resulting from the requirements set forth under RCW 9.41.090 and this section.

(8) A person who knowingly makes a false statement regarding identity or eligibility requirements on the application to purchase a firearm is guilty of false swearing under RCW 9A.72.040.

(9) This section does not apply to sales to licensed dealers for resale or to the sale of antique firearms. [2019 c 3 § 3 (Initiative Measure No. 1639, approved November 6, 2018); 2018 c 201 § 6003; 2015 c 1 § 5 (Initiative Measure No. 594, approved November 4, 2014); 1996 c 295 § 8. Prior: 1994 sp.s. c 7 § 410; 1994 c 264 § 1; 1988 c 36 § 2; 1985 c 428 § 4; 1983 c 232 § 4; 1969 ex.s. c 227 § 1; 1961 c 124 § 7; 1935 c 172 § 9; RRS § 2516-9.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.092 Licensed dealer deliveries—Background checks. (1) Except as otherwise provided in this chapter and except for semiautomatic assault rifles under subsection (2) of this section, a licensed dealer may not deliver any firearm to a purchaser or transferee until the earlier of:

(a) The results of all required background checks are known and the purchaser or transferee (i) is not prohibited from owning or possessing a firearm under federal or state law and (ii) does not have a voluntary waiver of firearm rights currently in effect; or

(b) Ten business days have elapsed from the date the licensed dealer requested the background check. However, for sales and transfers of pistols if the purchaser or transferee does not have a valid permanent Washington driver's license or state identification card or has not been a resident of the

state for the previous consecutive ninety days, then the time period in this subsection shall be extended from ten business days to sixty days.

(2) Except as otherwise provided in this chapter, a licensed dealer may not deliver a semiautomatic assault rifle to a purchaser or transferee until ten business days have elapsed from the date of the purchase application or, in the case of a transfer, ten business days have elapsed from the date a background check is initiated. [2019 c 3 § 4 (Initiative Measure No. 1639, approved November 6, 2018); 2018 c 145 § 4; 2015 c 1 § 4 (Initiative Measure No. 594, approved November 4, 2014).]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Effective date—2018 c 145 §§ 1, 3, and 4: See note following RCW 9.41.350.

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

9.41.094 Waiver of confidentiality. A signed application to purchase a pistol or semiautomatic assault rifle shall constitute a waiver of confidentiality and written request that the health care authority, mental health institutions, and other health care facilities release, to an inquiring court or law enforcement agency, information relevant to the applicant's eligibility to purchase a pistol or semiautomatic assault rifle to an inquiring court or law enforcement agency. [2019 c 3 § 7 (Initiative Measure No. 1639, approved November 6, 2018); 2018 c 201 § 6004; 1994 sp.s. c 7 § 411.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

9.41.097 Supplying information on the eligibility of persons to possess firearms, purchase a pistol or semiautomatic assault rifle, or be issued a concealed pistol license. (1) The health care authority, mental health institutions, and other health care facilities shall, upon request of a court, law enforcement agency, or the state, supply such relevant information as is necessary to determine the eligibility of a person to possess a firearm or to be issued a concealed pistol license under RCW 9.41.070 or to purchase a pistol or semiautomatic assault rifle under RCW 9.41.090.

(2) Mental health information received by: (a) The department of licensing pursuant to RCW 9.41.047 or 9.41.173; (b) an issuing authority pursuant to RCW 9.41.047 or 9.41.070; (c) a chief of police or sheriff pursuant to RCW 9.41.090 or 9.41.173; (d) a court or law enforcement agency pursuant to subsection (1) of this section; or (e) the state pursuant to RCW 9.41.090, shall not be disclosed except as provided in RCW 42.56.240(4). [2019 c 3 § 8 (Initiative Measure No. 1639, approved November 6, 2018); 2018 c 201 § 6005; 2009 c 216 § 6; 2005 c 274 § 202; 1994 sp.s. c 7 § 412; 1983 c 232 § 5.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

(2019 Ed.)

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.0975 Officials and agencies—Immunity, writ of mandamus. (1) The state, local governmental entities, any public or private agency, and the employees of any state or local governmental entity or public or private agency, acting in good faith, are immune from liability:

(a) For failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful;

(b) For preventing the sale or transfer of a firearm to a person who may lawfully receive or possess a firearm;

(c) For issuing a concealed pistol license or alien firearm license to a person ineligible for such a license;

(d) For failing to issue a concealed pistol license or alien firearm license to a person eligible for such a license;

(e) For revoking or failing to revoke an issued concealed pistol license or alien firearm license;

(f) For errors in preparing or transmitting information as part of determining a person's eligibility to receive or possess a firearm, or eligibility for a concealed pistol license or alien firearm license;

(g) For issuing a dealer's license to a person ineligible for such a license; or

(h) For failing to issue a dealer's license to a person eligible for such a license.

(2) An application may be made to a court of competent jurisdiction for a writ of mandamus:

(a) Directing an issuing agency to issue a concealed pistol license or alien firearm license wrongfully refused;

(b) Directing a law enforcement agency to approve an application to purchase a pistol or semiautomatic assault rifle wrongfully denied;

(c) Directing that erroneous information resulting either in the wrongful refusal to issue a concealed pistol license or alien firearm license or in the wrongful denial of a purchase application for a pistol or semiautomatic assault rifle be corrected; or

(d) Directing a law enforcement agency to approve a dealer's license wrongfully denied.

The application for the writ may be made in the county in which the application for a concealed pistol license or alien firearm license or to purchase a pistol or semiautomatic assault rifle was made, or in Thurston county, at the discretion of the petitioner. A court shall provide an expedited hearing for an application brought under this subsection (2) for a writ of mandamus. A person granted a writ of mandamus under this subsection (2) shall be awarded reasonable attorneys' fees and costs. [2019 c 3 § 9 (Initiative Measure No. 1639, approved November 6, 2018); 2009 c 216 § 7; 1996 c 295 § 9; 1994 sp.s. c 7 § 413.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.098 Forfeiture of firearms—Disposition—Confiscation. (1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) In the possession of a person prohibited from possessing the firearm under RCW 9.41.040 or 9.41.045;

(d) In the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a nonfelony crime in which a firearm was used or displayed;

(e) In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, as defined in chapter 46.61 RCW;

(f) In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a nonfelony crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) In the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 RCW or committed for mental health treatment under chapter 71.05 RCW;

(h) Used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Used in the commission of a felony or of a nonfelony crime in which a firearm was used or displayed.

(2) Upon order of forfeiture, the court in its discretion may order destruction of any forfeited firearm. A court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided in (b), (c), and (d) of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade may be retained by the legislative authority. This subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in RCW 9.41.098 that were in effect immediately preceding May 7, 1993; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW 79A.25.210. All trades or auctions of firearms under this subsection shall be to licensed dealers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW 79A.25.210.

(c) Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department bureau of alcohol, tobacco, firearms, and explosives are exempt from destruction and shall be disposed of by auction or trade to licensed dealers.

(d) Firearms in the possession of the Washington state patrol on or after May 7, 1993, that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to licensed dealers. The Washington state patrol may retain any proceeds of an auction or trade.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section. [2016 sp.s. c 29 § 281; 2003 c 39 § 5; 1996 c 295 § 10; 1994 sp.s. c 7 § 414; 1993 c 243 § 1; 1989 c 222 § 8; 1988 c 223 § 2. Prior: 1987 c 506 § 91; 1987 c 373 § 7; 1986 c 153 § 1; 1983 c 232 § 6.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Additional notes found at www.leg.wa.gov

9.41.100 Dealer licensing and registration required.

Every dealer shall be licensed as provided in RCW 9.41.110 and shall register with the department of revenue as provided in chapters 82.04 and 82.32 RCW. [1994 sp.s. c 7 § 415; 1935 c 172 § 10; RRS § 2516-10.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.110 Dealer's licenses, by whom granted, conditions, fees—Employees, fingerprinting and background checks—Wholesale sales excepted—Permits prohibited.

(1) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any pistol without being licensed as provided in this section.

(2) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any firearm other than a pistol without being licensed as provided in this section.

(3) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any ammunition without being licensed as provided in this section.

(4) The duly constituted licensing authorities of any city, town, or political subdivision of this state shall grant licenses in forms prescribed by the director of licensing effective for not more than one year from the date of issue permitting the licensee to sell firearms within this state subject to the following conditions, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in RCW 9.41.010 through 9.41.810. A licensing authority shall forward a copy of each license granted to the department of licensing. The department of licensing shall notify the department of revenue of the name and address of each dealer licensed under this section.

(5)(a) A licensing authority shall, within thirty days after the filing of an application of any person for a dealer's license, determine whether to grant the license. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card, or has not been a resident of the state for the previous consecutive ninety days, the licensing authority shall have up to sixty days to determine whether to issue a license. No person shall qualify for a license under this section without first receiving a federal firearms license and undergoing fingerprinting and a background check. In addition, no person ineligible to possess a firearm under RCW 9.41.040 or ineligible for a concealed pistol license under RCW 9.41.070 shall qualify for a dealer's license.

(b) A dealer shall require every employee who may sell a firearm in the course of his or her employment to undergo fingerprinting and a background check. An employee must be eligible to possess a firearm, and must not have been convicted of a crime that would make the person ineligible for a concealed pistol license, before being permitted to sell a firearm. Every employee shall comply with requirements concerning purchase applications and restrictions on delivery of

pistols or semiautomatic assault rifles that are applicable to dealers.

(6)(a) Except as otherwise provided in (b) of this subsection, the business shall be carried on only in the building designated in the license. For the purpose of this section, advertising firearms for sale shall not be considered the carrying on of business.

(b) A dealer may conduct business temporarily at a location other than the building designated in the license, if the temporary location is within Washington state and is the location of a gun show sponsored by a national, state, or local organization, or an affiliate of any such organization, devoted to the collection, competitive use, or other sporting use of firearms in the community. Nothing in this subsection (6)(b) authorizes a dealer to conduct business in or from a motorized or towed vehicle.

In conducting business temporarily at a location other than the building designated in the license, the dealer shall comply with all other requirements imposed on dealers by RCW 9.41.090, 9.41.100, and this section. The license of a dealer who fails to comply with the requirements of RCW 9.41.080 and 9.41.090 and subsection (8) of this section while conducting business at a temporary location shall be revoked, and the dealer shall be permanently ineligible for a dealer's license.

(7) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises in the area where firearms are sold, or at the temporary location, where it can easily be read.

(8)(a) No pistol or semiautomatic assault rifle may be sold: (i) In violation of any provisions of RCW 9.41.010 through 9.41.810; nor (ii) may a pistol or semiautomatic assault rifle be sold under any circumstances unless the purchaser is personally known to the dealer or shall present clear evidence of his or her identity.

(b) A dealer who sells or delivers any firearm in violation of RCW 9.41.080 is guilty of a class C felony. In addition to any other penalty provided for by law, the dealer is subject to mandatory permanent revocation of his or her dealer's license and permanent ineligibility for a dealer's license.

(c) The license fee for pistols shall be one hundred twenty-five dollars. The license fee for firearms other than pistols shall be one hundred twenty-five dollars. The license fee for ammunition shall be one hundred twenty-five dollars. Any dealer who obtains any license under subsection (1), (2), or (3) of this section may also obtain the remaining licenses without payment of any fee. The fees received under this section shall be deposited in the state general fund.

(9)(a) A true record in triplicate shall be made of every pistol or semiautomatic assault rifle sold, in a book kept for the purpose, the form of which may be prescribed by the director of licensing and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, and place of birth of the purchaser, and a statement signed by the purchaser that he or she is not ineligible under state or federal law to possess a firearm.

(b) One copy shall within six hours be sent by certified mail to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident, or the state pursuant to RCW 9.41.090; the duplicate the dealer shall within seven days send to the director of licensing; the triplicate the dealer shall retain for six years.

(10) Subsections (2) through (9) of this section shall not apply to sales at wholesale.

(11) The dealer's licenses authorized to be issued by this section are general licenses covering all sales by the licensee within the effective period of the licenses. The department shall provide a single application form for dealer's licenses and a single license form which shall indicate the type or types of licenses granted.

(12) Except as provided in RCW 9.41.090, every city, town, and political subdivision of this state is prohibited from requiring the purchaser to secure a permit to purchase or from requiring the dealer to secure an individual permit for each sale. [2019 c 3 § 10 (Initiative Measure No. 1639, approved November 6, 2018); 2009 c 479 § 10; 1994 sp.s. c 7 § 416; 1979 c 158 § 2; 1969 ex.s. c 227 § 4; 1963 c 163 § 1; 1961 c 124 § 8; 1935 c 172 § 11; RRS § 2516-11.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Effective date—2009 c 479: See note following RCW 2.56.030.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.113 Firearm sales or transfers—Background checks—Requirements—Exceptions. (1) All firearm sales or transfers, in whole or part in this state including without limitation a sale or transfer where either the purchaser or seller or transferee or transferor is in Washington, shall be subject to background checks unless specifically exempted by state or federal law. The background check requirement applies to all sales or transfers including, but not limited to, sales and transfers through a licensed dealer, at gun shows, online, and between unlicensed persons.

(2) No person shall sell or transfer a firearm unless:

- (a) The person is a licensed dealer;
- (b) The purchaser or transferee is a licensed dealer; or
- (c) The requirements of subsection (3) of this section are met.

(3) Where neither party to a prospective firearms transaction is a licensed dealer, the parties to the transaction shall complete the sale or transfer through a licensed dealer as follows:

(a) The seller or transferor shall deliver the firearm to a licensed dealer to process the sale or transfer as if it is selling or transferring the firearm from its inventory to the purchaser or transferee, except that the unlicensed seller or transferor may remove the firearm from the business premises of the licensed dealer while the background check is being conducted. If the seller or transferor removes the firearm from the business premises of the licensed dealer while the background check is being conducted, the purchaser or transferee and the seller or transferor shall return to the business premises of the licensed dealer and the seller or transferor shall again deliver the firearm to the licensed dealer prior to completing the sale or transfer.

(b) Except as provided in (a) of this subsection, the licensed dealer shall comply with all requirements of federal and state law that would apply if the licensed dealer were selling or transferring the firearm from its inventory to the purchaser or transferee, including but not limited to conducting a background check on the prospective purchaser or transferee in accordance with federal and state law requirements, fulfilling all federal and state recordkeeping requirements, and complying with the specific requirements and restrictions on semiautomatic assault rifles in chapter 3, Laws of 2019.

(c) The purchaser or transferee must complete, sign, and submit all federal, state, and local forms necessary to process the required background check to the licensed dealer conducting the background check.

(d) If the results of the background check indicate that the purchaser or transferee is ineligible to possess a firearm, then the licensed dealer shall return the firearm to the seller or transferor.

(e) The licensed dealer may charge a fee that reflects the fair market value of the administrative costs and efforts incurred by the licensed dealer for facilitating the sale or transfer of the firearm.

(4) This section does not apply to:

(a) A transfer between immediate family members, which for this subsection shall be limited to spouses, domestic partners, parents, parents-in-law, children, siblings, siblings-in-law, grandparents, grandchildren, nieces, nephews, first cousins, aunts, and uncles, that is a bona fide gift or loan;

(b) The sale or transfer of an antique firearm;

(c) A temporary transfer of possession of a firearm if such transfer is necessary to prevent imminent death or great bodily harm to the person to whom the firearm is transferred if:

(i) The temporary transfer only lasts as long as immediately necessary to prevent such imminent death or great bodily harm; and

(ii) The person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

(d) A temporary transfer of possession of a firearm if: (i) The transfer is intended to prevent suicide or self-inflicted great bodily harm; (ii) the transfer lasts only as long as reasonably necessary to prevent death or great bodily harm; and (iii) the firearm is not utilized by the transferee for any purpose for the duration of the temporary transfer;

(e) Any law enforcement or corrections agency and, to the extent the person is acting within the course and scope of his or her employment or official duties, any law enforcement or corrections officer, United States marshal, member of the armed forces of the United States or the national guard, or federal official;

(f) A federally licensed gunsmith who receives a firearm solely for the purposes of service or repair, or the return of the firearm to its owner by the federally licensed gunsmith;

(g) The temporary transfer of a firearm (i) between spouses or domestic partners; (ii) if the temporary transfer occurs, and the firearm is kept at all times, at an established shooting range authorized by the governing body of the jurisdiction in which such range is located; (iii) if the temporary transfer occurs and the transferee's possession of the firearm

is exclusively at a lawful organized competition involving the use of a firearm, or while participating in or practicing for a performance by an organized group that uses firearms as a part of the performance; (iv) to a person who is under eighteen years of age for lawful hunting, sporting, or educational purposes while under the direct supervision and control of a responsible adult who is not prohibited from possessing firearms; (v) under circumstances in which the transferee and the firearm remain in the presence of the transferor; or (vi) while hunting if the hunting is legal in all places where the person to whom the firearm is transferred possesses the firearm and the person to whom the firearm is transferred has completed all training and holds all licenses or permits required for such hunting, provided that any temporary transfer allowed by this subsection is permitted only if the person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

(h) A person who (i) acquired a firearm other than a pistol by operation of law upon the death of the former owner of the firearm or (ii) acquired a pistol by operation of law upon the death of the former owner of the pistol within the preceding sixty days. At the end of the sixty-day period, the person must either have lawfully transferred the pistol or must have contacted the department of licensing to notify the department that he or she has possession of the pistol and intends to retain possession of the pistol, in compliance with all federal and state laws; or

(i) A sale or transfer when the purchaser or transferee is a licensed collector and the firearm being sold or transferred is a curio or relic. [2019 c 3 § 11 (Initiative Measure No. 1639, approved November 6, 2018); 2017 c 264 § 2; 2015 c 1 § 3 (Initiative Measure No. 594, approved November 4, 2014).]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

9.41.114 Firearm sales or transfers—Denial of application report—Dealer's duties. (1) A dealer shall report to the Washington association of sheriffs and police chiefs information on each instance where the dealer denies an application for the purchase or transfer of a firearm, whether under RCW 9.41.090 or 9.41.113, or the requirements of federal law, as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law. The dealer shall report the denied application information to the Washington association of sheriffs and police chiefs within five days of the denial in a format as prescribed by the Washington association of sheriffs and police chiefs. The reported information must include the identifying information of the applicant, the date of the application and denial of the application, and other information or documents as prescribed by the Washington association of sheriffs and police chiefs. In any case where the purchase or transfer of a firearm is initially denied by the dealer as the result of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, the dealer shall report the subsequent

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approval to the Washington association of sheriffs and police chiefs within one day of the approval.

(2) Upon denying an application for the purchase or transfer of a firearm as a result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law, the dealer shall:

(a) Provide the applicant with a copy of a notice form generated and distributed by the Washington state patrol under RCW 43.43.823(5), informing denied applicants of their right to appeal the denial; and

(b) Retain the original records of the attempted purchase or transfer of a firearm for a period not less than six years. [2017 c 261 § 1.]

9.41.115 Penalties—Violations of RCW 9.41.113. Notwithstanding the penalty provisions in this chapter, any person knowingly violating RCW 9.41.113 is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. If a person previously has been found guilty under this section, then the person is guilty of a class C felony punishable under chapter 9A.20 RCW for each subsequent knowing violation of RCW 9.41.113. A person is guilty of a separate offense for each and every gun sold or transferred without complying with the background check requirements of RCW 9.41.113. It is an affirmative defense to any prosecution brought under this section that the sale or transfer satisfied one of the exceptions in RCW 9.41.113(4). [2015 c 1 § 9 (Initiative Measure No. 594, approved November 4, 2014).]

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

9.41.120 Firearms as loan security. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. [1961 c 124 § 9; 1935 c 172 § 12; RRS § 2516-12.]

Pawnbrokers and secondhand dealers: Chapter 19.60 RCW.

9.41.122 Out-of-state purchasing. Residents of Washington may purchase rifles and shotguns in a state other than Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such purchase is made: AND PROVIDED FURTHER, That when any part of the transaction takes place in Washington, including, but not limited to, internet sales, such residents are subject to the procedures and background checks required by this chapter. [2015 c 1 § 6 (Initiative Measure No. 594, approved November 4, 2014); 1970 ex.s. c 74 § 1. Formerly RCW 19.70.010.]

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

9.41.124 Purchasing of rifles and shotguns by non-residents. Residents of a state other than Washington may purchase rifles and shotguns, except those firearms defined as semiautomatic assault rifles, in Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such persons reside: AND PROVIDED FURTHER, That such residents are subject to the procedures and background checks required by this chapter. [2019 c 3 § 12 (Initiative Measure No. 1639, approved November 6, 2018); 2015 c 1 § 7 (Initiative Measure No. 594, approved November 4, 2014); 1970 ex.s. c 74 § 2. Formerly RCW 19.70.020.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

9.41.129 Recordkeeping requirements. The department of licensing shall keep copies or records of applications for concealed pistol licenses provided for in RCW 9.41.070, copies or records of applications for alien firearm licenses, copies or records of applications to purchase pistols or semiautomatic assault rifles provided for in RCW 9.41.090, and copies or records of pistol or semiautomatic assault rifle transfers provided for in RCW 9.41.110. The copies and records shall not be disclosed except as provided in RCW 42.56.240(4). [2019 c 3 § 14 (Initiative Measure No. 1639, approved November 6, 2018); 2005 c 274 § 203; 1994 sp.s. c 7 § 417.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

9.41.135 Verification of licenses and registration—Notice to federal government. (1) At least once every twelve months, the department of licensing shall obtain a list of dealers licensed under 18 U.S.C. Sec. 923(a) with business premises in the state of Washington from the United States bureau of alcohol, tobacco, and firearms. The department of licensing shall verify that all dealers on the list provided by the bureau of alcohol, tobacco, and firearms are licensed and registered as required by RCW 9.41.100.

(2) At least once every twelve months, the department of licensing shall obtain from the department of revenue and the department of revenue shall transmit to the department of licensing a list of dealers registered with the department of revenue, and a list of dealers whose names and addresses were forwarded to the department of revenue by the department of licensing under RCW 9.41.110, who failed to register with the department of revenue as required by RCW 9.41.100.

(3) At least once every twelve months, the department of licensing shall notify the bureau of alcohol, tobacco, and firearms of all dealers licensed under 18 U.S.C. Sec. 923(a) with business premises in the state of Washington who have not complied with the licensing or registration requirements of RCW 9.41.100. In notifying the bureau of alcohol, tobacco,

and firearms, the department of licensing shall not specify whether a particular dealer has failed to comply with licensing requirements or has failed to comply with registration requirements. [1995 c 318 § 6; 1994 sp.s. c 7 § 418.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.137 Department of licensing, authority to adopt rules—Reporting of violations—Authority to revoke licenses. The department of licensing shall have the authority to adopt rules for the implementation of this chapter as amended. In addition, the department of licensing shall report any violation of this chapter by a licensed dealer to the bureau of alcohol, tobacco, firearms and explosives within the United States department of justice and shall have the authority, after notice and a hearing, to revoke the license of any licensed dealer found to be in violation of this chapter. [2015 c 1 § 8 (Initiative Measure No. 594, approved November 4, 2014).]

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

9.41.139 Department of licensing—Eligibility to possess firearms. (1) Within twelve months of July 1, 2019, the department of licensing shall, in conjunction with the Washington state patrol and other state and local law enforcement agencies as necessary, develop a cost-effective and efficient process to:

(a) Verify, on an annual or more frequent basis, that persons who acquired pistols or semiautomatic assault rifles pursuant to this chapter remain eligible to possess a firearm under state and federal law; and

(b) If such persons are determined to be ineligible for any reason, (i) notify and provide the relevant information to the chief of police or the sheriff of the jurisdiction in which the purchaser resides and (ii) take steps to ensure such persons are not illegally in possession of firearms.

(2) The department of licensing, where appropriate, may consult with individuals from the public and private sector or ask the individuals to establish a temporary advisory committee to accomplish the purposes in subsection (1) of this section. Members of such an advisory committee are not entitled to expense reimbursement. [2019 c 3 § 15 (Initiative Measure No. 1639, approved November 6, 2018).]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

9.41.140 Alteration of identifying marks—Exceptions. No person may change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any firearm. Possession of any firearm upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same. This section shall not apply to replacement barrels in old firearms, which barrels are produced by current manufacturers and therefore do not have the markings on the barrels of the original manufacturers who are no longer in business. This section also shall not apply if the changes do not make the firearm illegal for the person to possess under

state or federal law. [1994 sp.s. c 7 § 419; 1961 c 124 § 10; 1935 c 172 § 14; RRS § 2516-14.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.171 Alien possession of firearms—Requirements—Penalty. It is a class C felony for any person who is not a citizen of the United States to carry or possess any firearm, unless the person: (1) Is a lawful permanent resident; (2) has obtained a valid alien firearm license pursuant to RCW 9.41.173; or (3) meets the requirements of RCW 9.41.175. [2009 c 216 § 2.]

9.41.173 Alien possession of firearms—Alien firearm license—Political subdivisions may not modify requirements—Penalty for false statement. (1) In order to obtain an alien firearm license, a nonimmigrant alien residing in Washington must apply to the sheriff of the county in which he or she resides.

(2) The sheriff of the county shall within sixty days after the filing of an application of a nonimmigrant alien residing in the state of Washington, issue an alien firearm license to such person to carry or possess a firearm for the purposes of hunting and sport shooting. The license shall be good for two years. The issuing authority shall not refuse to accept completed applications for alien firearm licenses during regular business hours. An application for a license may not be denied, unless the applicant's alien firearm license is in a revoked status, or the applicant:

(a) Is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045;

(b) Is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, *26.10.040, *26.10.115, 26.26B.020, 26.50.060, 26.50.070, or 26.26A.470;

(c) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense; or

(d) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor.

No license application shall be granted to a nonimmigrant alien convicted of a felony unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or unless RCW 9.41.040 (3) or (4) applies.

(3) The sheriff shall check with the national crime information center, the Washington state patrol electronic database, the health care authority electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, date and place of birth, race, gender, description, a complete set of fingerprints, and signature of the applicant, a copy of the applicant's passport and visa showing the applicant is in the country legally, and a valid Washington hunting license or documentation that the applicant is a member of a sport shooting club.

(2019 Ed.)

A signed application for an alien firearm license shall constitute a waiver of confidentiality and written request that the health care authority, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for an alien firearm license to an inquiring court or law enforcement agency.

The application for an original license shall include a complete set of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's eligibility under RCW 9.41.040 to possess a firearm. The nonimmigrant alien applicant shall be required to produce a passport and visa as evidence of being in the country legally.

The license may be in triplicate or in a form to be prescribed by the department of licensing. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an online format, all information received under this section.

(5) The sheriff has the authority to collect a nonrefundable fee, paid upon application, for the two-year license. The fee shall be fifty dollars plus additional charges imposed by the Washington state patrol and the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license. The fee shall be retained by the sheriff.

(6) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the sheriff.

(7) A political subdivision of the state shall not modify the requirements of this section, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(8) A person who knowingly makes a false statement regarding citizenship or identity on an application for an alien firearm license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the alien firearm license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for an alien firearm license. [2019 c 46 § 5005; 2018 c 201 § 6006; 2017 c 174 § 2; 2009 c 216 § 3.]

***Reviser's note:** RCW 26.10.040 and 26.10.115 were repealed by 2019 c 437 § 801, effective January 1, 2021.

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

9.41.175 Alien possession of firearms—Possession without license—Conditions. (1) A nonimmigrant alien, who is not a resident of Washington or a citizen of Canada, may carry or possess any firearm without having first obtained an alien firearm license if the nonimmigrant alien possesses:

(a) A valid passport and visa showing he or she is in the country legally;

(b) If required under federal law, an approved United States department of justice ATF-6 NIA application and permit for temporary importation of firearms and ammunition by nonimmigrant aliens; and

(c)(i) A valid hunting license issued by a state or territory of the United States; or

(ii) An invitation to participate in a trade show or sport shooting event being conducted in this state, another state, or another country that is contiguous with this state.

(2) A citizen of Canada may carry or possess any firearm so long as he or she possesses:

(a) Valid documentation as required for entry into the United States;

(b) If required under federal law, an approved United States department of justice ATF-6 NIA application and permit for temporary importation of firearms and ammunition by nonimmigrant aliens; and

(c)(i) A valid hunting license issued by a state or territory of the United States; or

(ii) An invitation to participate in a trade show or sport shooting event being conducted in this state, another state, or another country that is contiguous with this state.

(3) For purposes of subsections (1) and (2) of this section, the firearms may only be possessed for the purpose of using them in the hunting of game while such persons are in the act of hunting, or while on a hunting trip, or while such persons are competing in a bona fide trap or skeet shoot or any other organized contest where rifles, pistols, or shotguns are used. Nothing in this section shall be construed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. [2009 c 216 § 4.]

9.41.185 Coyote getters. The use of "coyote getters" or similar spring-triggered shell devices shall not constitute a violation of any of the laws of the state of Washington when the use of such "coyote getters" is authorized by the state department of agriculture and/or the state department of fish and wildlife in cooperative programs with the United States Fish and Wildlife Service, for the purpose of controlling or eliminating coyotes harmful to livestock and game animals on range land or forest areas. [1999 c 143 § 3; 1988 c 36 § 3; 1965 c 46 § 1.]

9.41.190 Unlawful firearms—Exceptions. (1) Except as otherwise provided in this section, it is unlawful for any person to:

(a) Manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, bump-fire stock, undetectable firearm, short-barreled shotgun, or short-barreled rifle;

(b) Manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any part designed and intended solely and exclusively for use in a machine gun, bump-fire stock, undetectable firearm, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle;

(c) Assemble or repair any machine gun, bump-fire stock, undetectable firearm, short-barreled shotgun, or short-barreled rifle; or

(d) Manufacture an untraceable firearm with the intent to sell the untraceable firearm.

(2) It is not unlawful for a person to manufacture, own, buy, sell, loan, furnish, transport, assemble, or repair, or have in possession or under control, a short-barreled rifle, or any part designed or intended solely and exclusively for use in a short-barreled rifle or in converting a weapon into a short-barreled rifle, if the person is in compliance with applicable federal law.

(3) Subsection (1) of this section shall not apply to:

(a) Any peace officer in the discharge of official duty or traveling to or from official duty, or to any officer or member of the armed forces of the United States or the state of Washington in the discharge of official duty or traveling to or from official duty; or

(b) A person, including an employee of such person if the employee has undergone fingerprinting and a background check, who or which is exempt from or licensed under federal law, and engaged in the production, manufacture, repair, or testing of machine guns, bump-fire stocks, short-barreled shotguns, or short-barreled rifles:

(i) To be used or purchased by the armed forces of the United States;

(ii) To be used or purchased by federal, state, county, or municipal law enforcement agencies; or

(iii) For exportation in compliance with all applicable federal laws and regulations.

(4) It shall be an affirmative defense to a prosecution brought under this section that the machine gun or short-barreled shotgun was acquired prior to July 1, 1994, and is possessed in compliance with federal law.

(5) Any person violating this section is guilty of a class C felony. [2019 c 243 § 3; 2018 c 7 § 3; (2018 c 7 § 2 expired July 1, 2019); 2016 c 214 § 1; 2014 c 201 § 1; 1994 sp.s. c 7 § 420; 1982 1st ex.s. c 47 § 2; 1933 c 64 § 1; RRS § 2518-1.]

Effective date—2019 c 243: See note following RCW 9.41.010.

Effective dates—2018 c 7: See note following RCW 9.41.010.

Expiration date—2018 c 7 § 2: "Section 2 of this act expires July 1, 2019." [2018 c 7 § 12.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.220 Unlawful firearms and parts contraband.

All machine guns, bump-fire stocks, undetectable firearms, short-barreled shotguns, or short-barreled rifles, or any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle, illegally held or illegally possessed are hereby declared to be contraband, and it shall be the duty of all peace officers, and/or any officer or member of

the armed forces of the United States or the state of Washington, to seize said machine gun, bump-fire stock, undetectable firearm, short-barreled shotgun, or short-barreled rifle, or parts thereof, wherever and whenever found. [2019 c 243 § 4; 2018 c 7 § 4; 1994 sp.s. c 7 § 421; 1933 c 64 § 4; RRS § 2518-4.]

Effective dates—2018 c 7: See note following RCW 9.41.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.225 Use of machine gun or bump-fire stock in felony—Penalty. (1) It is unlawful for a person, in the commission or furtherance of a felony other than a violation of RCW 9.41.190, to discharge a machine gun or to menace or threaten with a machine gun, another person.

(2) It is unlawful for a person, in the commission or furtherance of a felony other than a violation of RCW 9.41.190, to discharge a firearm containing a bump-fire stock or to menace or threaten another person with a firearm containing a bump-fire stock.

(3) A violation of this section shall be punished as a class A felony under chapter 9A.20 RCW. [2018 c 7 § 5; 1989 c 231 § 3.]

Effective dates—2018 c 7: See note following RCW 9.41.010.

Intent—1989 c 231: "The legislature is concerned about the increasing number of drug dealers, gang members, and other dangerous criminals who are increasingly being found in possession of machine guns. The legislature recognizes that possession of machine guns by dangerous criminals represents a serious threat to law enforcement officers and the general public. The use of a machine gun in furtherance of a felony is a particularly heinous crime because of the potential for great harm or death to a large number of people. It is the intent of the legislature to protect the public safety by deterring the illegal use of machine guns in the furtherance of a felony by creating a separate offense with severe penalties for such use of a machine gun." [1989 c 231 § 1.]

9.41.230 Aiming or discharging firearms, dangerous weapons. (1) For conduct not amounting to a violation of chapter 9A.36 RCW, any person who:

(a) Aims any firearm, whether loaded or not, at or towards any human being;

(b) Willfully discharges any firearm, air gun, or other weapon, or throws any deadly missile in a public place, or in any place where any person might be endangered thereby. A public place shall not include any location at which firearms are authorized to be lawfully discharged; or

(c) Except as provided in RCW 9.41.185, sets a so-called trap, spring pistol, rifle, or other dangerous weapon, although no injury results, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) If an injury results from a violation of subsection (1) of this section, the person violating subsection (1) of this section shall be subject to the applicable provisions of chapters 9A.32 and 9A.36 RCW. [1994 sp.s. c 7 § 422; 1909 c 249 § 307; 1888 p 100 §§ 2, 3; RRS § 2559.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Discharging firearm at railroad rolling stock: RCW 81.60.070.

Additional notes found at www.leg.wa.gov

(2019 Ed.)

9.41.240 Possession of pistol or semiautomatic assault rifle by person from eighteen to twenty-one. (1) A person under twenty-one years of age may not purchase a pistol or semiautomatic assault rifle, and except as otherwise provided in this chapter, no person may sell or transfer a semiautomatic assault rifle to a person under twenty-one years of age.

(2) Unless an exception under RCW 9.41.042, 9.41.050, or 9.41.060 applies, a person at least eighteen years of age, but less than twenty-one years of age, may possess a pistol only:

(a) In the person's place of abode;

(b) At the person's fixed place of business; or

(c) On real property under his or her control.

(3) Except in the places and situations identified in RCW 9.41.042 (1) through (9) and 9.41.060 (1) through (10), a person at least eighteen years of age, but less than twenty-one years of age, may possess a semiautomatic assault rifle only:

(a) In the person's place of abode;

(b) At the person's fixed place of business;

(c) On real property under his or her control; or

(d) For the specific purpose of (i) moving to a new place of abode; (ii) traveling between the person's place of abode and real property under his or her control; or (iii) selling or transferring the firearm in accordance with the requirements of this chapter; provided that in all of these situations the semiautomatic assault rifle is unloaded and either in secure gun storage or secured with a trigger lock or similar device that is designed to prevent the unauthorized use or discharge of the firearm. [2019 c 3 § 13 (Initiative Measure No. 1639, approved November 6, 2018); 1994 sp.s. c 7 § 423; 1971 c 34 § 1; 1909 c 249 § 308; 1883 p 67 § 1; RRS § 2560.]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.250 Dangerous weapons—Penalty. (1) Every person who:

(a) Manufactures, sells, or disposes of or possesses any instrument or weapon of the kind usually known as slung-shot, sand club, or metal knuckles, or spring blade knife;

(b) Furtively carries with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or

(c) Uses any contrivance or device for suppressing the noise of any firearm unless the suppressor is legally registered and possessed in accordance with federal law, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) "Spring blade knife" means any knife, including a prototype, model, or other sample, with a blade that is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement. A knife that contains a spring, detent, or other mechanism designed to create a bias toward closure of the blade and that requires physical exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure to assist in opening the knife is not a spring blade knife. [2012 c 179 § 1; 2011 c 13

§ 1; 2007 c 379 § 1; 1994 sp.s. c 7 § 424; 1959 c 143 § 1; 1957 c 93 § 1; 1909 c 249 § 265; 1886 p 81 § 1; Code 1881 § 929; RRS § 2517.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.251 Dangerous weapons—Application of restrictions to law enforcement, firefighting, rescue, and military personnel. (1) RCW 9.41.250 does not apply to:

(a) The possession or use of a spring blade knife by a general authority law enforcement officer, firefighter or rescue member, Washington state patrol officer, or military member, while the officer or member:

(i) Is on official duty; or

(ii) Is transporting a spring blade knife to or from the place where the knife is stored when the officer or member is not on official duty; or

(iii) Is storing a spring blade knife;

(b) The manufacture, sale, transportation, transfer, distribution, or possession of spring blade knives pursuant to contract with a general authority law enforcement agency, fire or rescue agency, Washington state patrol, or military service, or pursuant to a contract with another manufacturer or a commercial distributor of knives for use, sale, or other disposition by the manufacturer or commercial distributor;

(c) The manufacture, transportation, transfer, distribution, or possession of spring blade knives, with or without compensation and with or without a contract, solely for trial, test, or other provisional use for evaluation and assessment purposes, by a general authority law enforcement agency, fire or rescue agency, Washington state patrol, military service, or a manufacturer or commercial distributor of knives.

(2) For the purposes of this section:

(a) "Military member" means an active member of the United States military or naval forces, or a Washington national guard member called to active duty or during training.

(b) "General law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state or any other state, and any agency, department, or division of any state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general.

(c) "General law enforcement officer" means any person who is commissioned and employed by an employer on a full-time, fully compensated basis to enforce the criminal laws of the state of Washington generally. No person who is serving in a position that is basically clerical or secretarial in nature, or who is not commissioned shall be considered a law enforcement officer.

(d) "Fire or rescue agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state or any other state, and any agency, department, or division of any state government, having as its primary function the prevention, control, or extinguishment of fire or provision of emergency medical services or rescue actions for persons.

(e) "Firefighter or rescue member" means any person who is serving on a full-time, fully compensated basis as a

member of a fire or rescue agency to prevent, control, or extinguish fire or provide emergency medical services or rescue actions for persons. No person who is serving in a position that is basically clerical or secretarial in nature shall be considered a firefighter or rescue member.

(f) "Military service" means the active, reserve, or national guard components of the United States military, including the army, navy, air force, marines, and coast guard. [2012 c 179 § 2.]

9.41.260 Dangerous exhibitions. Every proprietor, lessee, or occupant of any place of amusement, or any plat of ground or building, who allows it to be used for the exhibition of skill in throwing any sharp instrument or in shooting any bow gun or firearm of any description, at or toward any human being, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [1994 sp.s. c 7 § 425; 1909 c 249 § 283; RRS § 2535.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Fireworks: Chapter 70.77 RCW.

Additional notes found at www.leg.wa.gov

9.41.270 Weapons apparently capable of producing bodily harm—Unlawful carrying or handling—Penalty—Exceptions. (1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his or her place of abode or fixed place of business;

(b) Any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments. [1994 sp.s. c 7 § 426; 1969 c 8 § 1.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.280 Possessing dangerous weapons on school facilities—Penalty—Exceptions. (Effective until January 1, 2020.) (1) It is unlawful for a person to carry onto, or to possess on, public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

- (a) Any firearm;
- (b) Any other dangerous weapon as defined in RCW 9.41.250;
- (c) Any device commonly known as "nun-chu-ka sticks," consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means;
- (d) Any device, commonly known as "throwing stars," which are multipointed, metal objects designed to embed upon impact from any aspect;
- (e) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas; or
- (f)(i) Any portable device manufactured to function as a weapon and which is commonly known as a stun gun, including a projectile stun gun which projects wired probes that are attached to the device that emit an electrical charge designed to administer to a person or an animal an electric shock, charge, or impulse; or
- (ii) Any device, object, or instrument which is used or intended to be used as a weapon with the intent to injure a person by an electric shock, charge, or impulse.

(2) Any such person violating subsection (1) of this section is guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1)(a) of this section, the person shall have his or her concealed pistol license, if any revoked for a period of three years. Anyone convicted under this subsection is prohibited from applying for a concealed pistol license for a period of three years. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

Any violation of subsection (1) of this section by elementary or secondary school students constitutes grounds for expulsion from the state's public schools in accordance with RCW 28A.600.010. An appropriate school authority shall promptly notify law enforcement and the student's parent or guardian regarding any allegation or indication of such violation.

Upon the arrest of a person at least twelve years of age and not more than twenty-one years of age for violating subsection (1)(a) of this section, the person shall be detained or confined in a juvenile or adult facility for up to seventy-two hours. The person shall not be released within the seventy-two hours until after the person has been examined and evaluated by the designated crisis responder unless the court in its discretion releases the person sooner after a determination regarding probable cause or on probation bond or bail.

Within twenty-four hours of the arrest, the arresting law enforcement agency shall refer the person to the designated crisis responder for examination and evaluation under chapter 71.05 or 71.34 RCW and inform a parent or guardian of the person of the arrest, detention, and examination. The designated crisis responder shall examine and evaluate the person subject to the provisions of chapter 71.05 or 71.34 RCW.

The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

Upon completion of any examination by the designated crisis responder, the results of the examination shall be sent to the court, and the court shall consider those results in making any determination about the person.

The designated crisis responder shall, to the extent permitted by law, notify a parent or guardian of the person that an examination and evaluation has taken place and the results of the examination. Nothing in this subsection prohibits the delivery of additional, appropriate mental health examinations to the person while the person is detained or confined.

If the designated crisis responder determines it is appropriate, the designated crisis responder may refer the person to the local behavioral health organization for follow-up services or the *department of social and health services or other community providers for other services to the family and individual.

(3) Subsection (1) of this section does not apply to:

- (a) Any student or employee of a private military academy when on the property of the academy;
- (b) Any person engaged in military, law enforcement, or school district security activities. However, a person who is not a commissioned law enforcement officer and who provides school security services under the direction of a school administrator may not possess a device listed in subsection (1)(f) of this section unless he or she has successfully completed training in the use of such devices that is equivalent to the training received by commissioned law enforcement officers;
- (c) Any person who is involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed;
- (d) Any person while the person is participating in a firearms or air gun competition approved by the school or school district;
- (e) Any person in possession of a pistol who has been issued a license under RCW 9.41.070, or is exempt from the licensing requirement by RCW 9.41.060, while picking up or dropping off a student;

(f) Any nonstudent at least eighteen years of age legally in possession of a firearm or dangerous weapon that is secured within an attended vehicle or concealed from view within a locked unattended vehicle while conducting legitimate business at the school;

(g) Any nonstudent at least eighteen years of age who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school; or

(h) Any law enforcement officer of the federal, state, or local government agency.

(4) Subsections (1)(c) and (d) of this section do not apply to any person who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises.

(5) Subsection (1)(f)(i) of this section does not apply to any person who possesses a device listed in subsection (1)(f)(i) of this section, if the device is possessed and used solely for the purpose approved by a school for use in a

school authorized event, lecture, or activity conducted on the school premises.

(6) Except as provided in subsection (3)(b), (c), (f), and (h) of this section, firearms are not permitted in a public or private school building.

(7) "GUN-FREE ZONE" signs shall be posted around school facilities giving warning of the prohibition of the possession of firearms on school grounds. [2016 sp.s. c 29 § 403; 2014 c 225 § 56; 2009 c 453 § 1; 1999 c 167 § 1; 1996 c 295 § 13; 1995 c 87 § 1; 1994 sp.s. c 7 § 427; 1993 c 347 § 1; 1989 c 219 § 1; 1982 1st ex.s. c 47 § 4.]

***Reviser's note:** The powers, duties, and functions of the department of social and health services pertaining to the behavioral health system and purchasing function of the behavioral health administration, except for oversight and management of state-run mental health institutions and licensing and certification activities, were transferred to the health care authority by chapter 201, Laws of 2018.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.280 Possessing dangerous weapons on school facilities—Penalty—Exceptions. (Effective January 1, 2020.) (1) It is unlawful for a person to carry onto, or to possess on, public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

- (a) Any firearm;
- (b) Any other dangerous weapon as defined in RCW 9.41.250;
- (c) Any device commonly known as "nun-chu-ka sticks," consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means;
- (d) Any device, commonly known as "throwing stars," which are multipointed, metal objects designed to embed upon impact from any aspect;
- (e) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas; or
- (f)(i) Any portable device manufactured to function as a weapon and which is commonly known as a stun gun, including a projectile stun gun which projects wired probes that are attached to the device that emit an electrical charge designed to administer to a person or an animal an electric shock, charge, or impulse; or
- (ii) Any device, object, or instrument which is used or intended to be used as a weapon with the intent to injure a person by an electric shock, charge, or impulse.

(2) Any such person violating subsection (1) of this section is guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1)(a) of this section, the person shall have his or her concealed pistol license, if any revoked for a period of three years. Anyone convicted under this subsection is prohibited from applying for a concealed pistol license for a period of three years. The court shall send

notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

Any violation of subsection (1) of this section by elementary or secondary school students constitutes grounds for expulsion from the state's public schools in accordance with RCW 28A.600.010. An appropriate school authority shall promptly notify law enforcement and the student's parent or guardian regarding any allegation or indication of such violation.

Upon the arrest of a person at least twelve years of age and not more than twenty-one years of age for violating subsection (1)(a) of this section, the person shall be detained or confined in a juvenile or adult facility for up to seventy-two hours. The person shall not be released within the seventy-two hours until after the person has been examined and evaluated by the designated crisis responder unless the court in its discretion releases the person sooner after a determination regarding probable cause or on probation bond or bail.

Within twenty-four hours of the arrest, the arresting law enforcement agency shall refer the person to the designated crisis responder for examination and evaluation under chapter 71.05 or 71.34 RCW and inform a parent or guardian of the person of the arrest, detention, and examination. The designated crisis responder shall examine and evaluate the person subject to the provisions of chapter 71.05 or 71.34 RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

Upon completion of any examination by the designated crisis responder, the results of the examination shall be sent to the court, and the court shall consider those results in making any determination about the person.

The designated crisis responder shall, to the extent permitted by law, notify a parent or guardian of the person that an examination and evaluation has taken place and the results of the examination. Nothing in this subsection prohibits the delivery of additional, appropriate mental health examinations to the person while the person is detained or confined.

If the designated crisis responder determines it is appropriate, the designated crisis responder may refer the person to the local behavioral health administrative services organization for follow-up services or other community providers for other services to the family and individual.

(3) Subsection (1) of this section does not apply to:

- (a) Any student or employee of a private military academy when on the property of the academy;
- (b) Any person engaged in military, law enforcement, or school district security activities. However, a person who is not a commissioned law enforcement officer and who provides school security services under the direction of a school administrator may not possess a device listed in subsection (1)(f) of this section unless he or she has successfully completed training in the use of such devices that is equivalent to the training received by commissioned law enforcement officers;
- (c) Any person who is involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed;

(d) Any person while the person is participating in a firearms or air gun competition approved by the school or school district;

(e) Any person in possession of a pistol who has been issued a license under RCW 9.41.070, or is exempt from the licensing requirement by RCW 9.41.060, while picking up or dropping off a student;

(f) Any nonstudent at least eighteen years of age legally in possession of a firearm or dangerous weapon that is secured within an attended vehicle or concealed from view within a locked unattended vehicle while conducting legitimate business at the school;

(g) Any nonstudent at least eighteen years of age who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school; or

(h) Any law enforcement officer of the federal, state, or local government agency.

(4) Subsections (1)(c) and (d) of this section do not apply to any person who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises.

(5) Subsection (1)(f)(i) of this section does not apply to any person who possesses a device listed in subsection (1)(f)(i) of this section, if the device is possessed and used solely for the purpose approved by a school for use in a school authorized event, lecture, or activity conducted on the school premises.

(6) Except as provided in subsection (3)(b), (c), (f), and (h) of this section, firearms are not permitted in a public or private school building.

(7) "GUN-FREE ZONE" signs shall be posted around school facilities giving warning of the prohibition of the possession of firearms on school grounds. [2019 c 325 § 5001; 2016 sp.s. c 29 § 403; 2014 c 225 § 56; 2009 c 453 § 1; 1999 c 167 § 1; 1996 c 295 § 13; 1995 c 87 § 1; 1994 sp.s. c 7 § 427; 1993 c 347 § 1; 1989 c 219 § 1; 1982 1st ex.s. c 47 § 4.]

Effective date—2019 c 325: See note following RCW 71.24.011.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.290 State preemption. The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county,

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or municipality. [1994 sp.s. c 7 § 428; 1985 c 428 § 1; 1983 c 232 § 12.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.300 Weapons prohibited in certain places—Local laws and ordinances—Exceptions—Penalty. (1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

For purposes of this subsection (1)(b), "weapon" means any firearm, explosive as defined in RCW 70.74.010, or any weapon of the kind usually known as slungshot, sand club, or metal knuckles, or any knife, dagger, dirk, or other similar weapon that is capable of causing death or bodily injury and is commonly used with the intent to cause death or bodily injury.

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for pistols and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility licensed or certified by the department of health for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public;

(d) That portion of an establishment classified by the state liquor and cannabis board as off-limits to persons under twenty-one years of age; or

(e) The restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration, including passenger screening checkpoints at or beyond the point at which a passenger initiates the screening process. These areas do not include airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that firearms and other weapons are prohibited in the area.

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

(5) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

(6) Subsection (1) of this section does not apply to:

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel, except that subsection (1)(b) of this section does apply to a law enforcement officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010; or

(c) Security personnel while engaged in official duties.

(7) Subsection (1)(a), (b), (c), and (e) of this section does not apply to correctional personnel or community corrections officers, as long as they are employed as such, who have completed government-sponsored law enforcement firearms training, except that subsection (1)(b) of this section does apply to a correctional employee or community corrections officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010.

(8) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

(9) Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

(10) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

(11) Government-sponsored law enforcement firearms training must be training that correctional personnel and community corrections officers receive as part of their job requirement and reference to such training does not constitute a mandate that it be provided by the correctional facility.

(12) Any person violating subsection (1) of this section is guilty of a gross misdemeanor.

(13) "Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250. [2018 c 201 § 9003; 2018 c 201 § 6007; 2011 c 221 § 2; 2008 c 33 § 1. Prior: 2004 c 116 § 1; 2004 c 16 § 1; 1994 sp.s. c 7 § 429; 1993 c 396 § 1; 1985 c 428 § 2.]

Reviser's note: This section was amended by 2018 c 201 § 6007 and by 2018 c 201 § 9003, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.310 Information pamphlet. (1) After a public hearing, the department of fish and wildlife shall publish a pamphlet on firearms safety and the legal limits of the use of firearms. The pamphlet shall include current information on

firearms laws and regulations and state preemption of local firearms laws. By July 1, 2017, the department of fish and wildlife shall update the pamphlet to incorporate information on suicide awareness and prevention as recommended by the safe homes task force established in *RCW 43.70.445.

(2) This pamphlet may be used in the department's hunter safety education program and shall be provided to the department of licensing for distribution to firearms dealers and persons authorized to issue concealed pistol licenses. The department of fish and wildlife shall reimburse the department of licensing for costs associated with distribution of the pamphlet. [2016 c 90 § 4; 1994 c 264 § 2; 1988 c 36 § 4; 1985 c 428 § 5.]

***Reviser's note:** RCW 43.70.445 was amended by 2017 c 262 § 2, renaming the "safe homes task force" the "suicide-safer homes task force."

Findings—2016 c 90: See note following RCW 43.70.442.

Additional notes found at www.leg.wa.gov

9.41.320 Fireworks. Nothing in this chapter shall prohibit the possession, sale, or use of fireworks when possessed, sold, or used in compliance with chapter 70.77 RCW. [1994 c 133 § 16.]

Additional notes found at www.leg.wa.gov

9.41.325 Undetectable or untraceable firearms—Penalties. (1) No person may knowingly or recklessly allow, facilitate, aid, or abet the manufacture or assembly of an undetectable firearm or untraceable firearm by a person who: (a) Is ineligible under state or federal law to possess a firearm; or (b) has signed a valid voluntary waiver of firearm rights that has not been revoked under RCW 9.41.350. For purposes of this provision, the failure to conduct a background check as provided in RCW 9.41.113 shall be prima facie evidence of recklessness.

(2)(a) Any person violating this section is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(b) If a person previously has been found guilty under this section, then the person is guilty of a class C felony punishable under chapter 9A.20 RCW for each subsequent knowing violation of this section. A person is guilty of a separate offense for each and every firearm to which this section applies. [2019 c 243 § 2.]

Effective date—2019 c 243: See note following RCW 9.41.010.

9.41.330 Felony firearm offenders—Determination of registration. (1) On or after June 9, 2016, except as provided in subsection (3) of this section, whenever a defendant in this state is convicted of a felony firearm offense or found not guilty by reason of insanity of any felony firearm offense, the court must consider whether to impose a requirement that the person comply with the registration requirements of RCW 9.41.333 and may, in its discretion, impose such a requirement.

(2) In determining whether to require the person to register, the court shall consider all relevant factors including, but not limited to:

(a) The person's criminal history;

(b) Whether the person has previously been found not guilty by reason of insanity of any offense in this state or elsewhere; and

(c) Evidence of the person's propensity for violence that would likely endanger persons.

(3) When a person is convicted of a felony firearm offense or found not guilty by reason of insanity of any felony firearm offense that was committed in conjunction with any of the following offenses, the court must impose a requirement that the person comply with the registration requirements of RCW 9.41.333:

(a) An offense involving sexual motivation;

(b) An offense committed against a child under the age of eighteen; or

(c) A serious violent offense.

(4) For purposes of this section, "sexual motivation" and "serious violent offense" are defined as in RCW 9.94A.030. [2016 c 94 § 1; 2013 c 183 § 3.]

9.41.333 Duty to register—Requirements. (1) Any adult or juvenile residing, whether or not the person has a fixed residence, in this state who has been required by a court to comply with the registration requirements of this section shall personally register with the county sheriff for the county of the person's residence.

(2) A person required to register under this section must provide the following information when registering:

(a) Name and any aliases used;

(b) Complete and accurate residence address or, if the person lacks a fixed residence, where he or she plans to stay;

(c) Identifying information of the gun offender, including a physical description;

(d) The offense for which the person was convicted;

(e) Date and place of conviction; and

(f) The names of any other county where the offender has registered pursuant to this section.

(3) The county sheriff may require the offender to provide documentation that verifies the contents of his or her registration.

(4) The county sheriff may take the offender's photograph or fingerprints for the inclusion of such record in the registration.

(5) Felony firearm offenders shall register with the county sheriff not later than forty-eight hours after:

(a) The date of release from custody, as a result of the felony firearm offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility; or

(b) The date the court imposes the felony firearm offender's sentence, if the offender receives a sentence that does not include confinement.

(6)(a) Except as described in (b) of this subsection, the felony firearm offender shall register with the county sheriff not later than twenty days after each twelve-month anniversary of the date the offender is first required to register, as described in subsection (5) of this section.

(b) If the felony firearm offender is confined to any correctional institution, state institution or facility, or health care facility throughout the twenty-day period described in (a) of this subsection, the offender shall personally appear before the county sheriff not later than forty-eight hours after release to verify and update, as appropriate, his or her registration.

(7) If the felony firearm offender changes his or her residence address and his or her new residence address is within this state, the offender shall personally register with the county sheriff for the county of the person's residence not later than forty-eight hours after the change of address. If the offender's residence address is within the same county as the offender's immediately preceding address, the offender shall update the contents of his or her current registration.

(8) The duty to register shall continue for a period of four years from the date the offender is first required to register, as described in subsection (5) of this section. [2013 c 183 § 4.]

9.41.335 Failure to register as felony firearm offender. (1) A person commits the crime of failure to register as a felony firearm offender if the person has a duty to register under RCW 9.41.333 and knowingly fails to comply with any of the requirements of RCW 9.41.333.

(2) Failure to register as a felony firearm offender is a gross misdemeanor. [2013 c 183 § 5.]

9.41.340 Return of privately owned firearm by law enforcement agency—Notification to family or household member—Exception—Exemption from public disclosure—Civil liability—Liability for request based on false information. (1) Each law enforcement agency shall develop a notification protocol that allows a family or household member to use an incident or case number to request to be notified when a law enforcement agency returns a privately owned firearm to the individual from whom it was obtained or to an authorized representative of that person.

(a) Notification may be made via telephone, email, text message, or another method that allows notification to be provided without unnecessary delay.

(b) If a law enforcement agency is in possession of more than one privately owned firearm from a single person, notification relating to the return of one firearm shall be considered notification for all privately owned firearms for that person.

(c) "Family or household member" has the same meaning as in RCW 26.50.010.

(2) A law enforcement agency shall not provide notification to any party other than a family or household member who has an incident or case number and who has requested to be notified pursuant to this section or another criminal justice agency.

(3) The information provided by a family or household member pursuant to chapter 130, Laws of 2015, including the existence of the request for notification, is not subject to public disclosure pursuant to chapter 42.56 RCW.

(4) An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or combination of units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to this section, so long as the release or failure was without gross negligence.

(5) An individual who knowingly makes a request for notification under this section based on false information may be held liable under RCW 9A.76.175. [2015 c 130 § 1.]

Short title—2015 c 130: "This act may be known and cited as the Sheena Henderson act." [2015 c 130 § 3.]

9.41.345 Return of privately owned firearm or concealed pistol license by law enforcement agency—Duties—Notice—Exception. (1) Before a law enforcement agency returns a privately owned firearm, the law enforcement agency must:

(a) Confirm that the individual to whom the firearm will be returned is the individual from whom the firearm was obtained or an authorized representative of that person;

(b) Confirm that the individual to whom the firearm will be returned is eligible to possess a firearm pursuant to RCW 9.41.040;

(c) Ensure that the firearm is not otherwise required to be held in custody or otherwise prohibited from being released; and

(d) Ensure that twenty-four hours have elapsed from the time the firearm was obtained by law enforcement, unless the firearm was seized in connection with a domestic violence call pursuant to RCW 10.99.030, in which case the law enforcement agency must ensure that five business days have elapsed from the time the firearm was obtained.

(2)(a) Once the requirements in subsections (1) and (3) of this section have been met, a law enforcement agency must release a firearm to the individual from whom it was obtained or an authorized representative of that person upon request without unnecessary delay.

(b)(i) If a firearm cannot be returned because it is required to be held in custody or is otherwise prohibited from being released, a law enforcement agency must provide written notice to the individual from whom it was obtained within five business days of the individual requesting return of his or her firearm and specify the reason the firearm must be held in custody.

(ii) Notification may be made via email, text message, mail service, or personal service. For methods other than personal service, service shall be considered complete once the notification is sent.

(3) If a family or household member has requested to be notified pursuant to RCW 9.41.340, a law enforcement agency must:

(a) Provide notice to the family or household member within one business day of verifying that the requirements in subsection (1) of this section have been met; and

(b) Hold the firearm in custody for seventy-two hours from the time notification has been provided.

(4)(a) A law enforcement agency may not return a concealed pistol license that has been surrendered to or impounded by the law enforcement agency for any reason to the licensee until the law enforcement agency determines the licensee is eligible to possess a firearm under state and federal law and meets the other eligibility requirements for a concealed pistol license under RCW 9.41.070.

(b) A law enforcement agency must release a concealed pistol license to the licensee without unnecessary delay, and in no case longer than five business days, after the law enforcement agency determines the requirements of (a) of this subsection have been met.

(5) The provisions of chapter 130, Laws of 2015 and subsection (4) of this section shall not apply to circumstances where a law enforcement officer has momentarily obtained a firearm or concealed pistol license from an individual and would otherwise immediately return the firearm or concealed

pistol license to the individual during the same interaction. [2019 c 367 § 5; 2018 c 226 § 1; 2015 c 130 § 2.]

Short title—2015 c 130: See note following RCW 9.41.340.

9.41.350 Voluntary waiver of firearm rights—Procedure—Penalty—Exemption from public disclosure. (1) A person may file a voluntary waiver of firearm rights with the clerk of the court in any county in Washington state. The clerk of the court must request photo identification to verify the person's identity prior to accepting the form. The person filing the form may provide an alternate person to be contacted if a voluntary waiver of firearm rights is revoked. By the end of the business day, the clerk of the court must transmit the accepted form to the Washington state patrol. The Washington state patrol must enter the voluntary waiver of firearm rights into the national instant criminal background check system and any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms within twenty-four hours of receipt of the form. Copies and records of the voluntary waiver of firearm rights shall not be disclosed except to law enforcement agencies.

(2) No sooner than seven calendar days after filing a voluntary waiver of firearm rights, the person may file a revocation of the voluntary waiver of firearm rights in the same county where the voluntary waiver of firearm rights was filed. The clerk of the court must request photo identification to verify the person's identity prior to accepting the form. By the end of the business day, the clerk of the court must transmit the form to the Washington state patrol and to any contact person listed on the voluntary waiver of firearm rights and destroy all records of the voluntary waiver. Within seven days of receiving a revocation of a voluntary waiver of firearm rights, the Washington state patrol must remove the person from the national instant criminal background check system, and any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms in which the person was entered, unless the person is otherwise ineligible to possess a firearm under RCW 9.41.040, and destroy all records of the voluntary waiver.

(3) A person who knowingly makes a false statement regarding their identity on the voluntary waiver of firearm rights form or revocation of waiver of firearm rights form is guilty of false swearing under RCW 9A.72.040.

(4) Neither a voluntary waiver of firearm rights nor a revocation of a voluntary waiver of firearm rights shall be considered by a court in any legal proceeding.

(5) A voluntary waiver of firearm rights may not be required of an individual as a condition for receiving employment, benefits, or services.

(6) All records obtained and all reports produced, as required by this section, are not subject to disclosure through the public records act under chapter 42.56 RCW. [2018 c 145 § 1.]

Effective date—2018 c 145 §§ 1, 3, and 4: "Sections 1, 3, and 4 of this act take effect January 1, 2019." [2018 c 145 § 5.]

9.41.352 Voluntary waiver of firearm rights—Form—Availability. (1) The administrator for the courts, under the direction of the chief justice, shall develop a voluntary

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waiver of firearm rights form and a revocation of voluntary waiver of firearm rights form by January 1, 2019.

(2) The forms must include all of the information necessary for identification and entry of the person into the national instant criminal background check system, and any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms. The voluntary waiver of firearm rights form must include the following language:

Because you have filed this voluntary waiver of firearm rights, effective immediately you may not purchase or receive any firearm. You may revoke this voluntary waiver of firearm rights any time after at least seven calendar days have elapsed since the time of filing.

(3) The forms must be made available on the administrator for the courts web site, at all county clerk offices, and must also be made widely available at firearm and ammunition dealers and health care provider locations. [2018 c 145 § 2.]

9.41.360 Unsafe storage of a firearm. (1) A person who stores or leaves a firearm in a location where the person knows, or reasonably should know, that a prohibited person may gain access to the firearm:

(a) Is guilty of community endangerment due to unsafe storage of a firearm in the first degree if a prohibited person obtains access and possession of the firearm and causes personal injury or death with the firearm; or

(b) Is guilty of community endangerment due to unsafe storage of a firearm in the second degree if a prohibited person obtains access and possession of the firearm and:

(i) Causes the firearm to discharge;

(ii) Carries, exhibits, or displays the firearm in a public place in a manner that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons; or

(iii) Uses the firearm in the commission of a crime.

(2)(a) Community endangerment due to unsafe storage of a firearm in the first degree is a class C felony punishable according to chapter 9A.20 RCW.

(b) Community endangerment due to unsafe storage of a firearm in the second degree is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Subsection (1) of this section does not apply if:

(a) The firearm was in secure gun storage, or secured with a trigger lock or similar device that is designed to prevent the unauthorized use or discharge of the firearm;

(b) In the case of a person who is a prohibited person on the basis of the person's age, access to the firearm is with the lawful permission of the prohibited person's parent or guardian and supervised by an adult, or is in accordance with RCW 9.41.042;

(c) The prohibited person obtains, or obtains and discharges, the firearm in a lawful act of self-defense; or

(d) The prohibited person's access to the firearm was obtained as a result of an unlawful entry, provided that the unauthorized access or theft of the firearm is reported to a local law enforcement agency in the jurisdiction in which the unauthorized access or theft occurred within five days of the time the victim of the unlawful entry knew or reasonably should have known that the firearm had been taken.

[Title 9 RCW—page 49]

(4) If a death or serious injury occurs as a result of an alleged violation of subsection (1)(a) of this section, the prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose or would defeat the purpose of the law in question.

(5) For the purposes of this section, "prohibited person" means a person who is prohibited from possessing a firearm under state or federal law.

(6) Nothing in this section mandates how or where a firearm must be stored. [2019 c 3 § 5 (Initiative Measure No. 1639, approved November 6, 2018).]

Finding—2019 c 3 (Initiative Measure No. 1639): "Gun violence is far too common in Washington and the United States. In particular, shootings involving the use of semiautomatic assault rifles have resulted in hundreds of lives lost, devastating injuries, and lasting psychological impacts on survivors, their families, and communities. Semiautomatic assault rifles are specifically designed to kill quickly and efficiently and have been used in some of the country's deadliest mass shootings, including in Newtown, Connecticut; Las Vegas, Nevada; and Parkland and Orlando, Florida, among others. Semiautomatic assault rifles have also been used in deadly shootings in Washington, including in Mukilteo and Tacoma.

The impacts of gun violence by assault weapons fall heavily on children and teenagers. According to one analysis, more than two hundred eight thousand students attending at least two hundred twelve schools have experienced a shooting on campus since the Columbine mass shooting in 1999. Active shooter drills are normal for a generation of American schoolchildren, instilling at a young age the sad and unnecessary realization that a mass shooting can happen in any community, in any school, at any time.

Enough is enough. The people find and declare that it is crucial and urgent to pass laws to increase public safety and reduce gun violence.

Implementing an enhanced background check system for semiautomatic assault rifles that is as strong as the one required to purchase a handgun and requiring safety training and a waiting period will help ensure that we keep these weapons out of dangerous hands. Further, federal law prohibits the sale of pistols to individuals under the age of twenty-one and at least a dozen states further restrict the ownership or possession of firearms by individuals under the age of twenty-one. This makes sense, as studies show that eighteen to twenty year olds commit a disproportionate number of firearm homicides in the United States and research indicates that the brain does not fully mature until a later age. Raising the minimum age to purchase semiautomatic assault rifles to twenty-one is a commonsense step the people wish to take to increase public safety.

Finally, firearms taken from the home by children or other persons prohibited from possessing firearms have been at the heart of several tragic gun violence incidents. One study shows that over eighty-five percent of school shooters obtained the firearm at their home or from a friend or relative. Another study found that more than seventy-five percent of firearms used in youth suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend. Secure gun storage requirements for all firearms will increase public safety by helping ensure that children and other prohibited persons do not inappropriately gain access to firearms, and notice requirements will make the potential dangers of firearms clear to purchasers.

Therefore, to increase public safety for all Washingtonians, in particular our children, this measure would, among other things: Create an enhanced background check system applicable to semiautomatic assault rifles similar to what is required for handguns, require that individuals complete a firearm safety training course and be at least twenty-one years of age to purchase or possess such weapons, enact a waiting period for the purchase of such weapons, and establish standards for the responsible storage of all firearms." [2019 c 3 § 1 (Initiative Measure No. 1639, approved November 6, 2018).]

Short title—2019 c 3 (Initiative Measure No. 1639): "This act may be known and cited as the public safety and semiautomatic assault rifle act." [2019 c 3 § 2 (Initiative Measure No. 1639, approved November 6, 2018).]

Effective dates—2019 c 3 (Initiative Measure No. 1639): "This act takes effect July 1, 2019, except for section 13 of this act which takes effect January 1, 2019." [2019 c 3 § 17 (Initiative Measure No. 1639, approved November 6, 2018).]

Implementation—2019 c 3 (Initiative Measure No. 1639): "The director of the department of licensing may take the necessary steps to ensure that this act is implemented on its effective date." [2019 c 3 § 18 (Initiative Measure No. 1639, approved November 6, 2018).]

9.41.365 Firearm security and storage—Requirements for dealers. (1) When selling or transferring any firearm, every dealer shall offer to sell or give the purchaser or transferee a secure gun storage device, or a trigger lock or similar device that is designed to prevent the unauthorized use or discharge of the firearm.

(2) Every store, shop, or sales outlet where firearms are sold, that is registered as a dealer in firearms with the department of licensing, shall conspicuously post, in a prominent location so that all patrons may take notice, the following warning sign, to be provided by the department of licensing, in block letters at least one inch in height:

WARNING: YOU MAY FACE CRIMINAL PROSECUTION IF YOU STORE OR LEAVE AN UNSECURED FIREARM WHERE A PERSON WHO IS PROHIBITED FROM POSSESSING FIREARMS CAN AND DOES OBTAIN POSSESSION.

(3) Every store, shop, or sales outlet where firearms are sold that is registered as a dealer in firearms with the department of licensing, upon the sale or transfer of a firearm, shall deliver a written warning to the purchaser or transferee that states, in block letters not less than one-fourth inch in height:

WARNING: YOU MAY FACE CRIMINAL PROSECUTION IF YOU STORE OR LEAVE AN UNSECURED FIREARM WHERE A PERSON WHO IS PROHIBITED FROM POSSESSING FIREARMS CAN AND DOES OBTAIN POSSESSION.

(4) Every person who violates this section is guilty of a class 1 civil infraction under chapter 7.80 RCW and may be fined up to two hundred fifty dollars. However, no such fines may be levied until thirty days have expired from the time warning signs required under subsection (2) of this section are distributed by the department of licensing. [2019 c 3 § 6 (Initiative Measure No. 1639, approved November 6, 2018).]

Finding—Short title—Effective dates—Implementation—2019 c 3 (Initiative Measure No. 1639): See notes following RCW 9.41.360.

9.41.800 Surrender of weapons or licenses—Prohibition on future possession or licensing. (1) Any court when entering an order authorized under chapter 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, *26.10.040, *26.10.115, 26.26B.020, 26.50.060, 26.50.070, or 26.26A.470 shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or is ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require that the party immediately surrender all firearms and other dangerous weapons;

(b) Require that the party immediately surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from accessing, obtaining, or possessing any firearms or other dangerous weapons;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(2) Any court when entering an order authorized under chapter 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, *26.10.040, *26.10.115, 26.26B.020, 26.50.060, 26.50.070, or 26.26A.470 may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a

party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or is ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require that the party immediately surrender all firearms and other dangerous weapons;

(b) Require that the party immediately surrender a concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from accessing, obtaining, or possessing any firearms or other dangerous weapons;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(3) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, *26.10, 26.26A, 26.26B, or 26.50 RCW that:

(a) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(b) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c)(i) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(ii) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury, the court shall:

(A) Require that the party immediately surrender all firearms and other dangerous weapons;

(B) Require that the party immediately surrender a concealed pistol license issued under RCW 9.41.070;

(C) Prohibit the party from accessing, obtaining, or possessing any firearms or other dangerous weapons; and

(D) Prohibit the party from obtaining or possessing a concealed pistol license.

(4) The court may order temporary surrender of all firearms and other dangerous weapons, and any concealed pistol license, without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

(5) In addition to the provisions of subsections (1), (2), and (4) of this section, the court may enter an order requiring a party to comply with the provisions in subsection (1) of this section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

(6) The requirements of subsections (1), (2), and (5) of this section may be for a period of time less than the duration of the order.

(7) The court may require the party to surrender all firearms and other dangerous weapons in his or her immediate possession or control or subject to his or her immediate possession or control, and any concealed pistol license issued under RCW 9.41.070, to the local law enforcement agency. Law enforcement officers shall use law enforcement databases to assist in locating the respondent in situations where the protected person does not know where the respondent

lives or where there is evidence that the respondent is trying to evade service.

(8) If the court enters a protection order, restraining order, or no-contact order that includes an order to surrender firearms, dangerous weapons, and any concealed pistol license under this section, the order must be served by a law enforcement officer. [2019 c 245 § 1; 2019 c 46 § 5006; 2014 c 111 § 2; 2013 c 84 § 25; 2002 c 302 § 704; 1996 c 295 § 14; 1994 sp.s. c 7 § 430.]

Reviser's note: *(1) Chapter 26.10 RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

(2) This section was amended by 2019 c 46 § 5006 and by 2019 c 245 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.41.801 Surrender of weapons or licenses—Ensuring compliance.

(1) Because of the heightened risk of lethality to petitioners when respondents to protection orders become aware of court involvement and continue to have access to firearms, and the frequency of noncompliance with court orders prohibiting possession of firearms, law enforcement and judicial processes must emphasize swift and certain compliance with court orders prohibiting access, possession, and ownership of firearms.

(2) A law enforcement officer serving a protection order, no-contact order, or restraining order that includes an order to surrender all firearms, dangerous weapons, and a concealed pistol license under RCW 9.41.800 shall inform the respondent that the order is effective upon service and the respondent must immediately surrender all firearms and dangerous weapons in his or her custody, control, or possession and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms, dangerous weapons, and concealed pistol license. The law enforcement officer shall take possession of all firearms, dangerous weapons, and any concealed pistol license belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. Alternatively, if personal service is not required because the respondent was present at the hearing at which the order was entered, the respondent must immediately surrender all firearms, dangerous weapons, and any concealed pistol license in a safe manner to the control of the local law enforcement agency on the day of the hearing at which the respondent was present.

(3) At the time of surrender, a law enforcement officer taking possession of firearms, dangerous weapons, and any concealed pistol license shall issue a receipt identifying all firearms, dangerous weapons, and any concealed pistol license that have been surrendered and provide a copy of the receipt to the respondent. The law enforcement agency shall file the original receipt with the court within twenty-four hours after service of the order and retain a copy of the receipt, electronically whenever electronic filing is available.

(4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms or dangerous weapons as required by an order issued under RCW 9.41.800, the court shall determine whether

probable cause exists to believe that the respondent has failed to surrender all firearms and dangerous weapons in their possession, custody, or control. If probable cause exists, the court shall issue a warrant describing the firearms or dangerous weapons and authorizing a search of the locations where the firearms and dangerous weapons are reasonably believed to be and the seizure of all firearms and dangerous weapons discovered pursuant to such search.

(5) If a person other than the respondent claims title to any firearms or dangerous weapons surrendered pursuant to this section, and the person is determined by the law enforcement agency to be the lawful owner of the firearm or dangerous weapon, the firearm or dangerous weapon shall be returned to the lawful owner, provided that:

(a) The firearm or dangerous weapon is removed from the respondent's access, custody, control, or possession and the lawful owner agrees by written document signed under penalty of perjury to store the firearm or dangerous weapon in a manner such that the respondent does not have access to or control of the firearm or dangerous weapon;

(b) The firearm or dangerous weapon is not otherwise unlawfully possessed by the owner; and

(c) The requirements of RCW 9.41.345 are met.

(6) Courts shall develop procedures to verify timely and complete compliance with orders to surrender weapons under RCW 9.41.800, including compliance review hearings to be held as soon as possible upon receipt from law enforcement of proof of service. A compliance review hearing is not required if the court can otherwise enter findings on the record or enter written findings that the proof of surrender or declaration of nonsurrender attested to by the person subject to the order, along with verification from law enforcement and any other relevant evidence, makes a sufficient showing that the person has timely and completely surrendered all firearms and dangerous weapons in their custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070, to a law enforcement agency. If the court does not have a sufficient record before it on which to make such a finding, the court must set a review hearing to occur as soon as possible at which the respondent must be present and provide testimony to the court under oath verifying compliance with the court's order.

(7) All law enforcement agencies must have policies and procedures to provide for the acceptance, storage, and return of firearms, dangerous weapons, and concealed pistol licenses that a court requires must be surrendered under RCW 9.41.800. A law enforcement agency holding any firearm or concealed pistol license that has been surrendered under RCW 9.41.800 shall comply with the provisions of RCW 9.41.340 and 9.41.345 before the return of the firearm or concealed pistol license to the owner or individual from whom it was obtained.

(8) The administrative office of the courts shall create a statewide pattern form to assist the courts in ensuring timely and complete compliance in a consistent manner with orders issued under this chapter. The administrative office of the courts shall report annually on the number of orders issued under this chapter by each court, the degree of compliance, and the number of firearms obtained, and may make recommendations regarding additional procedures to enhance compliance and victim safety. [2019 c 245 § 2.]

9.41.802 Proof of surrender and receipt pattern form—Declaration of nonsurrender pattern form—Administrative office of the courts to develop. By December 1, 2014, the administrative office of the courts shall develop a proof of surrender and receipt pattern form to be used to document that a respondent has complied with a requirement to surrender firearms, dangerous weapons, and his or her concealed pistol license, as ordered by a court under RCW 9.41.800. The administrative office of the courts must also develop a declaration of nonsurrender pattern form to document compliance when the respondent has no firearms, dangerous weapons, or concealed pistol license. [2014 c 111 § 4.]

9.41.804 Proof of surrender and receipt form, declaration of nonsurrender form—Requirement to file with clerk of the court. A party ordered to surrender firearms, dangerous weapons, and his or her concealed pistol license under RCW 9.41.800 must file with the clerk of the court a proof of surrender and receipt form or a declaration of nonsurrender form within five judicial days of the entry of the order. [2014 c 111 § 5.]

Effective date—2014 c 111 § 5: "Section 5 of this act takes effect December 1, 2014." [2014 c 111 § 7.]

9.41.810 Penalty. Any violation of any provision of this chapter, except as otherwise provided, shall be a misdemeanor and punishable accordingly. [1984 c 258 § 312; 1983 c 232 § 11; 1983 c 3 § 7; 1961 c 124 § 12; 1935 c 172 § 16; RRS § 2516-16. Formerly RCW 9.41.160.]

Intent—1984 c 258: See note following RCW 3.34.130.

Additional notes found at www.leg.wa.gov

Chapter 9.44 RCW PETITION MISCONDUCT

Sections

9.44.080 Misconduct in signing a petition.

9.44.080 Misconduct in signing a petition. In a situation not covered by RCW 29A.84.220, 29A.84.230, 29A.84.240, or 29A.84.250, every person who shall willfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his or her own name to or withdraw his or her name from any referendum or other petition circulated in pursuance of any law of this state or any municipal ordinance; or in signing his or her name to such petition shall willfully subscribe to any false statement concerning his or her age, citizenship, residence or other qualifications to sign the same; or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor. [2011 c 336 § 297; 1999 c 143 § 4; 1909 c 249 § 337; RRS § 2589.]

Forgery: RCW 9A.60.020.

Initiative and referendum petition forgery: RCW 29A.84.230, 29A.84.250.

Recall petition forgery: RCW 29A.84.240, 29A.84.220.

**Chapter 9.45 RCW
FRAUDS AND SWINDLES**

Sections

9.45.020	Substitution of child.
9.45.060	Encumbered, leased, or rented personal property—Construction.
9.45.070	Mock auctions.
9.45.080	Fraudulent removal of property.
9.45.090	Knowingly receiving fraudulent conveyance.
9.45.100	Fraud in assignment for benefit of creditors.
9.45.122	Measurement of commodities—Public policy.
9.45.124	Measurement of commodities—Measuring inaccurately—Altering measuring devices—Penalty.
9.45.126	Measurement of commodities—Inducing violations—Penalty.
9.45.160	Fraud in liquor warehouse receipts.
9.45.170	Penalty.
9.45.210	Altering sample or certificate of assay.
9.45.220	Making false sample or assay of ore.
9.45.260	Fire protection sprinkler system contractors—Wrongful acts.
9.45.270	Fraudulent filing of vehicle report of sale.

Bank or trust company

	<i>falsification or destruction of records: RCW 30A.12.090, 30A.12.100.</i>
	<i>preferential transfers: RCW 30A.44.110.</i>
	<i>receiving deposits when insolvent: RCW 30A.44.120.</i>
	<i>using name of unlawfully: RCW 30A.04.020.</i>

"Bushing" by motor vehicle dealers: RCW 46.70.180(4).

Cemeteries, representing fund as perpetual: RCW 68.40.085.

Cigarette tax fraud: RCW 82.24.110.

Domestic insurers, illegal or corrupt practices: RCW 48.06.190, 48.07.060, 48.08.040.

Election fraud: Chapter 29A.84 RCW.

Employment agent, fraud: RCW 49.44.050.

Falsification of books of credit union: Chapter 31.12 RCW.

Fish and wildlife, false or misleading information: RCW 77.15.270.

Food, drugs, and cosmetics: RCW 69.04.040, 69.04.060, 69.04.070.

Fraud: Chapter 9A.60 RCW.

Fraud by engraver of public bonds: RCW 39.44.101.

Fraudulent conveyances: Chapter 19.40 RCW.

Insurance

	<i>agent, etc., appropriating funds, etc.: RCW 48.17.480.</i>
	<i>fraud and unfair practices: Chapter 48.30 RCW.</i>

Insured property, fraudulent injury or destruction: RCW 48.30.220.

Intent to defraud: RCW 10.58.040.

Land registration fraud: RCW 65.12.750.

Motor vehicle

	<i>certificates of title, falsifying: RCW 46.12.750.</i>
	<i>dealers: RCW 46.70.180.</i>

Mutual savings banks

	<i>falsification of books, etc.: RCW 32.04.100.</i>
	<i>transfers due to insolvency: RCW 32.24.080.</i>

Obtaining employment by false recommendation: RCW 49.44.040.

Ownership of property, proof of: RCW 10.58.060.

Public assistance fraud: RCW 74.08.055, 74.08.331.

Savings and loan associations

	<i>falsification of books, etc.: RCW 33.36.040.</i>
	<i>illegal loans and purchasing at discount by employees: RCW 33.36.010, 33.36.020.</i>
	<i>preferential transfers of property: RCW 33.36.030.</i>

Sporting contest fraud: RCW 67.24.010.

State employees' retirement, falsification of statements, etc.: RCW 41.40.055.

State patrol retirement fund, falsifications: RCW 43.43.320.

Tax assessed property, removal to avoid payment: RCW 84.56.120, 84.56.200.

Teachers' retirement, falsification of statements, etc.: RCW 41.32.055.

Wages, rebating, etc., by employers: RCW 49.52.050, 49.52.090.

(2019 Ed.)

Warehouse operator or common carrier issuing false documents: Chapter 22.32 RCW.

9.45.020 Substitution of child. Every person to whom a child has been confided for nursing, education or any other purpose, who, with intent to deceive a person, guardian or relative of such child, shall substitute or produce to such parent, guardian or relative, another child or person in the place of the child so confided, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 29; 1992 c 7 § 9; 1909 c 249 § 123; RRS § 2375.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.060 Encumbered, leased, or rented personal property—Construction. Every person being in possession thereof, who shall sell, remove, conceal, convert to his or her own use, or destroy or connive at or consent to the sale, removal, conversion, concealment, or destruction of any personal property or any part thereof, upon which a security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease exists, with intent to hinder, delay, or defraud the secured party of such security agreement, or the holder of such mortgage, lien, or conditional sales contract or the lessor under such lease or rentor under such rental agreement, or any assignee of such security agreement, mortgage, lien, conditional sales contract, rental agreement or lease shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision. [2011 c 336 § 298; 1971 c 61 § 1; 1965 ex.s. c 109 § 1; 1909 c 249 § 377; RRS § 2629.]

Destruction or removal of fixtures, etc., from mortgaged real property: RCW 61.12.030.

Larceny, sale of mortgaged property: Chapter 9A.56 RCW.

9.45.070 Mock auctions. Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment in a state correctional facility for not more than five years or in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by auction, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall be guilty of a misdemeanor. [2011 c 96 § 6; 1992 c 7 § 10; 1909 c 249 § 378; RRS § 2630.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Auctioneering without license: RCW 36.71.070.

Auctioneers: Chapter 18.11 RCW.

9.45.080 Fraudulent removal of property. Every person who, with intent to defraud a prior or subsequent purchaser thereof, or prevent any of his or her property being made liable for the payment of any of his or her debts, or levied upon by an execution or warrant of attachment, shall remove any of his or her property, or secrete, assign, convey, or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey, or otherwise dispose of any of his or her books or accounts, vouchers or writings in any way relating to his or her business affairs, or destroy, obliterate, alter, or erase any of such books of account, accounts, vouchers, or writing or any entry, memorandum, or minute therein contained, shall be guilty of a gross misdemeanor. [2011 c 336 § 299; 1909 c 249 § 379; RRS § 2631.]

9.45.090 Knowingly receiving fraudulent conveyance. Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him or her in violation of, or with the intent to violate RCW 9.45.080, shall be guilty of a misdemeanor. [2011 c 336 § 300; 1909 c 249 § 380; RRS § 2632.]

9.45.100 Fraud in assignment for benefit of creditors. Every person who, having made, or being about to make, a general assignment of his or her property to pay his or her debts, shall by color or aid of any false or fraudulent representation, pretense, token, or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his or her claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor. [2011 c 336 § 301; 1909 c 249 § 381; RRS § 2633.]

Assignment for benefit of creditors: Chapter 7.08 RCW.

Banks and trust companies, preferential transfers: RCW 30A.44.110.

Mutual savings banks, transfer of assets due to insolvency: RCW 32.24.080.

9.45.122 Measurement of commodities—Public policy. Because of the widespread importance to the marketing of goods, raw materials, and agricultural products such as, but not limited to, grains, timber, logs, wood chips, scrap metal, oil, gas, petroleum products, coal, fish and other commodities, that qualitative and quantitative measurements of such goods, materials and products be accurately and honestly made, it is declared to be the public policy of this state that certain conduct with respect to said measurement be declared unlawful. [1967 c 200 § 1.]

Weights and measures: Chapter 19.94 RCW.

Additional notes found at www.leg.wa.gov

9.45.124 Measurement of commodities—Measuring inaccurately—Altering measuring devices—Penalty. Every person, corporation, or association whether profit or nonprofit, who shall ask or receive, or conspire to ask or receive, directly or indirectly, any compensation, gratuity, or reward or any promise thereof, on any agreement or understanding that he or she shall (1) intentionally make an inaccurate visual or mechanical measurement or an intentionally inaccurate recording of any visual or mechanical measurement of goods, raw materials, and agricultural products (whether severed or unsevered from the land) which he or she

has or will have the duty to measure, or shall (2) intentionally change, alter or affect, for the purpose of making an inaccurate measurement, any equipment or other device which is designed to measure, either qualitatively or quantitatively, such goods, raw materials, and agricultural products, or shall intentionally alter the recordation of such measurements, is guilty of a class B felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 30; 1992 c 7 § 11; 1967 c 200 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.126 Measurement of commodities—Inducing violations—Penalty. Every person who shall give, offer or promise, or conspire to give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any person, corporation, independent contractor, or agent, employee or servant thereof with intent to violate RCW 9.45.124, is guilty of a class B felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 31; 1992 c 7 § 12; 1967 c 200 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.160 Fraud in liquor warehouse receipts. It shall be unlawful for any person, firm, association or corporation to make, utter, circulate, sell or offer for sale any certificate of any warehouse, distillery or depository for intoxicating liquors unless the identical liquor mentioned in such certificate is in the possession of the warehouse, distillery or depository mentioned in such certificate fully paid for, so that the owners and holder of such certificate will be entitled to obtain such intoxicating liquors without the payment of any additional sum except the tax of the government and the tax of the state, county and city in which such warehouse, distillery or depository may be located, and any storage charges. [1909 c 202 § 1. No RRS.]

9.45.170 Penalty. Any person violating any of the provisions of RCW 9.45.160, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not more than five years nor less than one year, or imprisonment in the county jail for any length of time not exceeding one year. [1909 c 202 § 2. No RRS.]

9.45.210 Altering sample or certificate of assay. Any person who shall interfere with or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong or defraud, is guilty of a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or by a fine of not less than fifty nor more than one thousand dollars, or by both such fine and imprisonment. [2003 c 53 § 32; 1890 p 99 § 2; RRS § 2712.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.220 Making false sample or assay of ore. Any person who shall, with intent to cheat, wrong or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, is guilty of a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or by a fine of not less than fifty nor more than one thousand dollars, or by both such fine and imprisonment. [2003 c 53 § 33; 1890 p 99 § 3; RRS § 2713.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.260 Fire protection sprinkler system contractors—Wrongful acts. Any fire protection sprinkler system contractor, defined under RCW 18.160.010, who willfully and maliciously constructs, installs, or maintains a fire protection sprinkler system in any structure so as to threaten the safety of any occupant or user of the structure in the event of a fire, is guilty of a class C felony. This section may not be construed to create any criminal liability for a prime contractor or an owner of a structure unless it is proved that the prime contractor or owner had actual knowledge of an illegal construction, installation, or maintenance of a fire protection sprinkler system by a fire protection sprinkler system contractor. [1992 c 116 § 1.]

Fire protection sprinkler system contractors, licensing and regulation: Chapter 18.160 RCW.

9.45.270 Fraudulent filing of vehicle report of sale. Every person who files a vehicle report of sale without the knowledge of the transferee shall be guilty of fraudulent filing of vehicle report of sale and shall be punished as follows:

- (1) Where the victim incurred damages in an amount less than two hundred fifty dollars, the defendant is guilty of a gross misdemeanor.
- (2) Where the victim incurred damages in an amount exceeding two hundred fifty dollars, the defendant is guilty of a class C felony.
- (3) Where the victim incurred damages in an amount exceeding one thousand five hundred dollars, the defendant is guilty of a class B felony. [2006 c 291 § 1.]

**Chapter 9.46 RCW
GAMBLING—1973 ACT**

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9.46.010 Legislative declaration. The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles, and amusement games and the operation of punchboards, pull-tabs, card games and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant

thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be considered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder.

The legislature further declares that raffles authorized by the fish and wildlife commission involving hunting big game animals or wild turkeys shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder, with the exception of this section and RCW 9.46.400.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end. [1996 c 101 § 2; 1994 c 218 § 2; 1975 1st ex.s. c 259 § 1; 1974 ex.s. c 155 § 1; 1974 ex.s. c 135 § 1; 1973 1st ex.s. c 218 § 1.]

Findings—1996 c 101: See note following RCW 77.32.530.

Additional notes found at www.leg.wa.gov

9.46.0201 "Amusement game." "Amusement game," as used in this chapter, means a game played for entertainment in which:

- (1) The contestant actively participates;
- (2) The outcome depends in a material degree upon the skill of the contestant;
- (3) Only merchandise prizes are awarded;
- (4) The outcome is not in the control of the operator;
- (5) The wagers are placed, the winners are determined, and a distribution of prizes or property is made in the presence of all persons placing wagers at such game; and
- (6) Said game is conducted or operated by any agricultural fair, person, association, or organization in such manner and at such locations as may be authorized by rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended.

Cake walks as commonly known and fish ponds as commonly known shall be treated as amusement games for all purposes under this chapter. [1987 c 4 § 2. Formerly RCW 9.46.020(1), part.]

9.46.0205 "Bingo." "Bingo," as used in this chapter, means a game conducted only in the county within which the organization is principally located in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in which no cards are sold except at the time and place of said game, when said game is conducted by a bona fide charitable or nonprofit organization, or if an agricultural fair authorized under chapters 15.76 and 36.37 RCW, which does not conduct bingo on more than twelve consecutive days in any calendar year, and except in the case of any agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a bona fide member or an employee of said organization takes any part in the management or operation of said game, and no person who takes any part in the management or operation of said game takes any part in the management or operation of any game conducted by any other organization or any other branch of the same organization,

unless approved by the commission, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game. For the purposes of this section, the organization shall be deemed to be principally located in the county within which it has its primary business office. If the organization has no business office, the organization shall be deemed to be located in the county of principal residence of its chief executive officer: PROVIDED, That any organization which is conducting any licensed and established bingo game in any locale as of January 1, 1981, shall be exempt from the requirement that such game be conducted in the county in which the organization is principally located. [2002 c 369 § 1; 1987 c 4 § 3. Formerly RCW 9.46.020(2).]

9.46.0209 "Bona fide charitable or nonprofit organization." (1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or

(ii) Any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required; and

(ii) Demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under

this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide nonprofit organization also includes:

(a) A credit union organized and operating under state or federal law. All revenue less prizes and expenses received from raffles conducted by credit unions must be devoted to purposes authorized under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:

(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency.

(3) For the purposes of RCW 9.46.0277, a bona fide nonprofit organization also includes a county, city, or town, provided that all revenue less prizes and expenses from raffles conducted by the county, city, or town must be used for community activities or tourism promotion activities. [2017 c 133 § 1; 2009 c 137 § 1; 2007 c 452 § 1; 2000 c 233 § 1; 1987 c 4 § 4. Formerly RCW 9.46.020(3).]

9.46.0213 "Bookmaking." "Bookmaking," as used in this chapter, means accepting bets, upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or "vigorous" for the opportunity to place a bet. [1991 c 261 § 1; 1987 c 4 § 5. Formerly RCW 9.46.020(4).]

9.46.0217 "Commercial stimulant." "Commercial stimulant," as used in this chapter, means an activity is operated as a commercial stimulant, for the purposes of this chapter, only when it is an activity operated in connection with an established business, with the purpose of increasing the volume of sales of food or drink for consumption on that business premises. The commission may by rule establish guidelines and criteria for applying this definition to its applicants and licensees for gambling activities authorized by this chapter as commercial stimulants. [1994 c 120 § 1; 1987 c 4 § 6. Formerly RCW 9.46.020(5).]

9.46.0221 "Commission." "Commission," as used in this chapter, means the Washington state gambling commission created in RCW 9.46.040. [1987 c 4 § 7. Formerly RCW 9.46.020(6).]

9.46.0225 "Contest of chance." "Contest of chance," as used in this chapter, means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. [1987 c 4 § 8. Formerly RCW 9.46.020(7).]

9.46.0229 "Fishing derby." "Fishing derby," as used in this chapter, means a fishing contest, with or without the payment or giving of an entry fee or other consideration by some or all of the contestants, wherein prizes are awarded for the species, size, weight, or quality of fish caught in a bona fide fishing or recreational event. [1987 c 4 § 9. Formerly RCW 9.46.020(8).]

9.46.0233 "Fund-raising event." (1) "Fund-raising event," as used in this chapter, means a fund-raising event conducted during any seventy-two consecutive hours but exceeding twenty-four consecutive hours and not more than once in any calendar year or a fund-raising event conducted not more than twice each calendar year for not more than twenty-four consecutive hours each time by a bona fide charitable or nonprofit organization as defined in RCW 9.46.0209 other than any agricultural fair referred to thereunder, upon authorization therefor by the commission, which the legislature hereby authorizes to issue a license therefor, with or without fee, permitting the following activities, or any of them, during such event: Bingo, amusement games, contests of chance, lotteries, and raffles. However: (a) Gross wagers and bets or revenue generated from participants under subsection (2) of this section received by the organization less the amount of money paid by the organization as winnings, or as payment for services or equipment rental under subsection (2) of this section, and for the purchase cost of prizes given as winnings do not exceed ten thousand dollars during the total calendar days of such fund-raising event in the calendar year; (b) such activities shall not include any mechanical gambling or lottery device activated by the insertion of a coin or by the insertion of any object purchased by any person taking a chance by gambling in respect to the device; (c) only bona fide members of the organization who are not paid for such service or persons licensed or approved by the commission under subsection (2) of this section shall participate in the management or operation of the activities, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization; and (d) such organization shall notify the appropriate local law enforcement agency of the time and place where such activities shall be conducted. The commission shall require an annual information report setting forth in detail the expenses incurred and the revenue received relative to the activities permitted.

(2) Bona fide charitable or nonprofit organizations may hire a person or vendor, who is licensed or approved by the commission, to organize and conduct a fund-raising event on behalf of the sponsoring organization subject to the following restrictions:

(a) The person or vendor may not provide the facility for the event;

(b) The person or vendor may use paid personnel and may be compensated by a fixed fee determined prior to the event, but may not share in the proceeds of the event;

(c) All wagers must be made with scrip or chips having no cash value. At the end of the event, participants may be given the opportunity to purchase or otherwise redeem their scrip or chips for merchandise prizes;

(d) The value of all purchased prizes must not exceed ten percent of the gross revenue from the event; and

(e) Only members and guests of the sponsoring organization may participate in the event.

(3) Bona fide charitable or nonprofit organizations holding a license to conduct a fund-raising event may join together to jointly conduct a fund-raising event if:

(a) Approval to do so is received from the commission; and

(b) The method of dividing the income and expenditures and the method of recording and handling of funds are disclosed to the commission in the application for approval of the joint fund-raising event and are approved by the commission.

The gross wagers and bets or revenue generated from participants under subsection (2) of this section received by the organizations less the amount of money paid by the organizations as winnings, or as payment for services or equipment rental under subsection (2) of this section, and for the purchase costs of prizes given as winnings may not exceed ten thousand dollars during the total calendar days of such event. The net receipts each organization receives shall count against the organization's annual limit stated in this subsection.

A joint fund-raising event shall count against only the lead organization or organizations receiving fifty percent or more of the net receipts for the purposes of the number of such events an organization may conduct each year.

The commission may issue a joint license for a joint fund-raising event and charge a license fee for such license according to a schedule of fees adopted by the commission which reflects the added cost to the commission of licensing more than one licensee for the event. [2000 c 178 § 1; 1987 c 4 § 24. Formerly RCW 9.46.020(23).]

9.46.0237 "Gambling." "Gambling," as used in this chapter, means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include fishing derbies as defined by this chapter, parimutuel betting and handicapping contests as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health, or accident insurance. In addition, a contest of chance which is specifically excluded from the definition of lottery under this chapter shall not constitute gambling. [2005 c 351 § 1; 1987 c 4 § 10. Formerly RCW 9.46.020(9).]

9.46.0241 "Gambling device." "Gambling device," as used in this chapter, means: (1) Any device or mechanism the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance, including, but not limited to slot machines, video pull-tabs, video poker, and other electronic games of chance; (2) any device or mechanism which, when operated for a consideration, does not return the same value or thing of value for the same consideration upon each operation thereof; (3) any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and (4) any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. In the application of this definition, a pinball machine or similar mechanical amusement device which confers only an immediate and unrecorded right of replay on players thereof, which does not contain any mechanism which varies the chance of winning free games or the number of free games which may be won or a mechanism or a chute for dispensing coins or a facsimile thereof, and which prohibits multiple winnings depending upon the number of coins inserted and requires the playing of five balls individually upon the insertion of a nickel or dime, as the case may be, to complete any one operation thereof, shall not be deemed a gambling device: PROVIDED, That owning, possessing, buying, selling, renting, leasing, financing, holding a security interest in, storing, repairing and transporting such pinball machines or similar mechanical amusement devices shall not be deemed engaging in professional gambling for the purposes of this chapter and shall not be a violation of this chapter: PROVIDED FURTHER, That any fee for the purchase or rental of any such pinball machines or similar amusement devices shall have no relation to the use to which such machines are put but be based only upon the market value of any such machine, regardless of the location of or type of premises where used, and any fee for the storing, repairing and transporting thereof shall have no relation to the use to which such machines are put, but be commensurate with the cost of labor and other expenses incurred in any such storing, repairing and transporting. [1994 c 218 § 8; 1987 c 4 § 11. Formerly RCW 9.46.020(10).]

Additional notes found at www.leg.wa.gov

9.46.0245 "Gambling information." "Gambling information," as used in this chapter, means any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition, information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling. This section shall not apply to newspapers of general circulation or commercial radio and television stations licensed by the federal communications commission. [1987 c 4 § 12. Formerly RCW 9.46.020(11).]

9.46.0249 "Gambling premises." "Gambling premises," as used in this chapter, means any building, room, enclosure, vehicle, vessel or other place used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall

be presumed to be intended to be used for professional gambling. [1987 c 4 § 13. Formerly RCW 9.46.020(12).]

9.46.0253 "Gambling record." "Gambling record," as used in this chapter, means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling. [1987 c 4 § 14. Formerly RCW 9.46.020(13).]

9.46.0257 "Lottery." "Lottery," as used in this chapter, means a scheme for the distribution of money or property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance. [1987 c 4 § 15. Formerly RCW 9.46.020(14).]

9.46.0261 "Member," "bona fide member." "Member" and "bona fide member," as used in this chapter, mean a person accepted for membership in an organization eligible to be licensed by the commission under this chapter upon application, with such action being recorded in the official minutes of a regular meeting or who has held full and regular membership status in the organization for a period of not less than twelve consecutive months prior to participating in the management or operation of any gambling activity. Such membership must in no way be dependent upon, or in any way related to, the payment of consideration to participate in any gambling activity.

Member or bona fide member shall include only members of an organization's specific chapter or unit licensed by the commission or otherwise actively conducting the gambling activity: PROVIDED, That:

(1) Members of chapters or local units of a state, regional or national organization may be considered members of the parent organization for the purpose of a gambling activity conducted by the parent organization, if the rules of the parent organization so permit;

(2) Members of a bona fide auxiliary to a principal organization may be considered members of the principal organization for the purpose of a gambling activity conducted by the principal organization. Members of the principal organization may also be considered members of its auxiliary for the purpose of a gambling activity conducted by the auxiliary; and

(3) Members of any chapter or local unit within the jurisdiction of the next higher level of the parent organization, and members of a bona fide auxiliary to that chapter or unit, may assist any other chapter or local unit of that same organization licensed by the commission in the conduct of gambling activities.

No person shall be a member of any organization if that person's primary purpose for membership is to become, or continue to be, a participant in, or an operator or manager of, any gambling activity or activities. [1987 c 4 § 16. Formerly RCW 9.46.020(15).]

9.46.0265 "Player." "Player," as used in this chapter, means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any form of gambling in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any

material assistance to the establishment, conduct or operation of a particular gambling activity. A natural person who gambles at a social game of chance on equal terms with the other participants shall not be considered as rendering material assistance to the establishment, conduct or operation of the social game merely by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises for the game, or supplying cards or other equipment to be used in the games. A person who engages in "bookmaking" as defined in this chapter is not a "player." A person who pays a fee or "vigorish" enabling him or her to place a wager with a bookmaker, or pays a fee other than as authorized by this chapter to participate in a card game, contest of chance, lottery, or gambling activity, is not a player. [1997 c 118 § 2; 1991 c 261 § 2; 1987 c 4 § 17. Formerly RCW 9.46.020(16).]

9.46.0269 "Professional gambling." (1) A person is engaged in "professional gambling" for the purposes of this chapter when:

(a) Acting other than as a player or in the manner authorized by this chapter, the person knowingly engages in conduct which materially aids any form of gambling activity; or

(b) Acting other than in a manner authorized by this chapter, the person pays a fee to participate in a card game, contest of chance, lottery, or other gambling activity; or

(c) Acting other than as a player or in the manner authorized by this chapter, the person knowingly accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity; or

(d) The person engages in bookmaking; or

(e) The person conducts a lottery; or

(f) The person violates RCW 9.46.039.

(2) Conduct under subsection (1)(a) of this section, except as exempted under this chapter, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit the premises to be used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities authorized by this chapter, and acting other than as a player, and the person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, the person shall be considered as being engaged in professional gambling: PROVIDED, That the proprietor of a bowling establishment who awards prizes obtained from player contributions, to players successfully knocking down pins upon the contingency of identifiable pins being placed in a specified position or combination of positions, as designated by the posted rules of the bowling establishment, where the proprietor does not participate in the proceeds of the "prize fund"

shall not be construed to be engaging in "professional gambling" within the meaning of this chapter: PROVIDED FURTHER, That the books and records of the games shall be open to public inspection. [1997 c 78 § 1; 1996 c 252 § 2; 1987 c 4 § 18. Formerly RCW 9.46.020(17).]

9.46.0273 "Punchboards," "pull-tabs." "Punchboards" and "pull-tabs," as used in this chapter, shall be given their usual and ordinary meaning as of July 16, 1973, except that such definition may be revised by the commission pursuant to rules and regulations promulgated pursuant to this chapter. [1987 c 4 § 19. Formerly RCW 9.46.020(18).]

9.46.0277 "Raffle." "Raffle," as used in this chapter, means a game in which tickets bearing an individual number are sold for not more than one hundred dollars each and in which a prize or prizes are awarded on the basis of a drawing from the tickets by the person or persons conducting the game, when the game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of the organization takes any part in the management or operation of the game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting the game. [2009 c 133 § 1; 1995 2nd sp.s. c 4 § 1; 1987 c 4 § 20. Formerly RCW 9.46.020(19).]

9.46.0282 "Social card game." "Social card game" as used in this chapter means a card game that constitutes gambling and is authorized by the commission under RCW 9.46.070. Authorized card games may include a house-banked or a player-funded banked card game. No one may participate in the card game or have an interest in the proceeds of the card game who is not a player or a person licensed by the commission to participate in social card games. There shall be two or more participants in the card game who are players or persons licensed by the commission. The card game must be played in accordance with the rules adopted by the commission under RCW 9.46.070, which shall include but not be limited to rules for the collection of fees, limitation of wagers, and management of player funds. The number of tables authorized shall be set by the commission but shall not exceed a total of fifteen separate tables per establishment. [1997 c 118 § 1.]

9.46.0285 "Thing of value." "Thing of value," as used in this chapter, means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. [1987 c 4 § 22. Formerly RCW 9.46.020(21).]

9.46.0289 "Whoever," "person." "Whoever" and "person," as used in this chapter, include natural persons, corporations and partnerships and associations of persons; and when any corporate officer, director or stockholder or any partner authorizes, participates in, or knowingly accepts benefits from any violation of this chapter committed by his or her corporation or partnership, he or she shall be punishable

for such violation as if it had been directly committed by him or her. [1987 c 4 § 23. Formerly RCW 9.46.020(22).]

9.46.0305 Dice or coin contests for music, food, or beverage payment. The legislature hereby authorizes the wagering on the outcome of the roll of dice or the flipping of or matching of coins on the premises of an establishment engaged in the business of selling food or beverages for consumption on the premises to determine which of the participants will pay for coin-operated music on the premises or certain items of food or beverages served or sold by such establishment and therein consumed. Such establishments are hereby authorized to possess dice and dice cups on their premises, but only for use in such limited wagering. Persons engaged in such limited form of wagering shall not be subject to the criminal or civil penalties otherwise provided for in this chapter. [2009 c 357 § 1; 1987 c 4 § 25. Formerly RCW 9.46.020(1), part.]

Minors barred from gambling activities: RCW 9.46.228.

9.46.0311 Charitable, nonprofit organizations—Authorized gambling activities. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct bingo games, raffles, amusement games, and fundraising events, and to utilize punchboards and pull-tabs and to allow their premises and facilities to be used by only members, their guests, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, to play social card games authorized by the commission, when licensed, conducted or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto. [1987 c 4 § 26. Formerly RCW 9.46.030(1).]

9.46.0315 Raffles—No license required, when. Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of raffles, are hereby authorized to conduct raffles without obtaining a license to do so from the commission when such raffles are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission; when gross revenues from all such raffles held by the organization during the calendar year do not exceed five thousand dollars; and when tickets to such raffles are sold only to, and winners are determined only from among, the regular members of the organization conducting the raffle. The organization may provide unopened containers of beverages containing alcohol as raffle prizes if the appropriate permit has been obtained from the *liquor control board: PROVIDED, That raffles that exceed five thousand dollars may also be conducted pursuant to the provisions of this section if the organization obtains a license from the commission: PROVIDED FURTHER, That the term members for this purpose shall mean only those persons who have become members prior to the commencement of the raffle and whose qualification for membership was not dependent upon, or in any way related to, the purchase of a ticket, or tickets, for such raffles. [2012 c 131 § 1; 1991 c 192 § 4; 1987 c 4 § 27. Formerly RCW 9.46.030(2).]

*Reviser's note: The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

(2019 Ed.)

9.46.0321 Bingo, raffles, amusement games—No license required, when. Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of such activities are hereby authorized to conduct bingo, raffles, and amusement games, without obtaining a license to do so from the commission but only when:

(1) Such activities are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission;

(2) Said activities are, alone or in any combination, conducted no more than twice each calendar year and over a period of no more than twelve consecutive days each time, notwithstanding the limitations of RCW 9.46.0205: PROVIDED, That a raffle conducted under this subsection may be conducted for a period longer than twelve days;

(3) Only bona fide members of that organization, who are not paid for such services, participate in the management or operation of the activities;

(4) Gross revenues to the organization from all the activities together do not exceed five thousand dollars during any calendar year;

(5) All revenue therefrom, after deducting the cost of prizes and other expenses of the activity, is devoted solely to the purposes for which the organization qualifies as a bona fide charitable or nonprofit organization;

(6) The organization gives notice at least five days in advance of the conduct of any of the activities to the local police agency of the jurisdiction within which the activities are to be conducted of the organization's intent to conduct the activities, the location of the activities, and the date or dates they will be conducted; and

(7) The organization conducting the activities maintains records for a period of one year from the date of the event which accurately show at a minimum the gross revenue from each activity, details of the expenses of conducting the activities, and details of the uses to which the gross revenue therefrom is put. [1987 c 4 § 28. Formerly RCW 9.46.030(3).]

9.46.0323 Enhanced raffles—Authority of commission—Report, recommendations. (Expires June 30, 2022.)

(1) A bona fide charitable or nonprofit organization, as defined in RCW 9.46.0209, whose primary purpose is serving individuals with intellectual disabilities may conduct enhanced raffles if licensed by the commission.

(2) The commission has the authority to approve two enhanced raffles per calendar year for western Washington and two enhanced raffles per calendar year for eastern Washington. Whether the enhanced raffle occurs in western Washington or eastern Washington will be determined by the location where the grand prize winning ticket is to be drawn as stated on the organization's application to the commission. An enhanced raffle is considered approved when voted on by the commission.

(3) The commission has the authority to approve enhanced raffles under the following conditions:

(a) The value of the grand prize must not exceed five million dollars.

(b) Sales may be made in person, by mail, by fax, or by telephone only. Raffle ticket order forms may be printed from

the bona fide charitable or nonprofit organization's web site. Obtaining the form in this manner does not constitute a sale.

(c) Tickets purchased as part of a multiple ticket package may be purchased at a discount.

(d) Multiple smaller prizes are authorized during the course of an enhanced raffle for a grand prize including, but not limited to, early bird, refer a friend, and multiple ticket drawings.

(e) A purchase contract is not necessary for smaller non-cash prizes, but the bona fide charitable or nonprofit organization must be able to demonstrate that such a prize is available and sufficient funds are held in reserve in the event that the winner chooses a noncash prize.

(f) All enhanced raffles and associated smaller raffles must be independently audited, as defined by the commission during rule making. The audit results must be reported to the commission.

(g) Call centers, when licensed by the commission, are authorized. The bona fide charitable or nonprofit organization may contract with a call center vendor to receive enhanced raffle ticket sales. The vendor may not solicit sales. The vendor may be located outside the state, but the bona fide charitable or nonprofit organization must have a contractual relationship with the vendor stating that the vendor must comply with all applicable Washington state laws and rules.

(h) The bona fide charitable or nonprofit organization must be the primary recipient of the funds raised.

(i) Sales data may be transmitted electronically from the vendor to the bona fide charitable or nonprofit organization. Credit cards, issued by a state regulated or federally regulated financial institution, may be used for payment to participate in enhanced raffles.

(j) Receipts including ticket confirmation numbers may be sent to ticket purchasers either by mail or by email.

(k) In the event the bona fide charitable or nonprofit organization determines ticket sales are insufficient to qualify for a complete enhanced raffle to move forward, the enhanced raffle winner must receive fifty percent of the net proceeds in excess of expenses as the grand prize. The enhanced raffle winner will receive a choice between an annuity value equal to fifty percent of the net proceeds in excess of expenses paid by annuity over twenty years, or a one-time cash payment of seventy percent of the annuity value.

(l) A bona fide charitable or nonprofit organization is authorized to hire a consultant licensed by the commission to run an enhanced raffle; in addition, the bona fide charitable or nonprofit organization must have a dedicated employee who is responsible for oversight of enhanced raffle operations. The bona fide charitable or nonprofit organization is ultimately responsible for ensuring that an enhanced raffle is conducted in accordance with all applicable state laws and rules.

(4) The commission has the authority to set fees for bona fide charitable or nonprofit organizations, call center vendors, and consultants conducting enhanced raffles authorized under this section.

(5) The commission has the authority to adopt rules governing the licensing and operation of enhanced raffles.

(6) Except as specifically authorized in this section, enhanced raffles must be held in accordance with all other

requirements of this chapter, other applicable laws, and rules of the commission.

(7) For the purposes of this section:

(a) "Enhanced raffle" means a game in which tickets bearing an individual number are sold for not more than two hundred fifty dollars each and in which a grand prize and smaller prizes are awarded on the basis of drawings from the tickets by the person or persons conducting the game. An enhanced raffle may include additional related entries and drawings, such as early bird, refer a friend, and multiple ticket drawings when the bona fide charitable or nonprofit organization establishes the eligibility standards for such entries and drawings before any enhanced raffle tickets are sold. No drawing may occur by using a random number generator or similar means.

(b) "Early bird drawing" means a separate drawing for a separate prize held prior to the grand prize drawing. All tickets entered into the early bird drawing, including all early bird winning tickets, are entered into subsequent early bird drawings, and also entered into the drawing for the grand prize.

(c) "Refer a friend drawing" means a completely separate drawing, using tickets distinct from those for the enhanced raffle, for a separate prize held at the conclusion of the enhanced raffle for all enhanced raffle ticket purchasers, known as the referring friend, who refer other persons to the enhanced raffle when the other person ultimately purchases an enhanced raffle ticket. The referring friend will receive one ticket for each friend referred specifically for the refer a friend drawing. In addition, each friend referred could also become a referring friend and receive his or her own additional ticket for the refer a friend drawing.

(d) "Multiple ticket drawing" means a completely separate drawing, using tickets distinct from those for the enhanced raffle, for a separate prize held at the conclusion of the enhanced raffle for all enhanced raffle ticket purchasers who purchase a specified number of enhanced raffle tickets. For example, a multiple ticket drawing could include persons who purchase three or more enhanced raffle tickets in the same order, using the same payment information, with tickets in the same person's name. For each eligible enhanced raffle ticket purchased, the purchaser also receives a ticket for the multiple ticket drawing prize.

(e) "Western Washington" includes those counties west of the Cascade mountains, including Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom.

(f) "Eastern Washington" includes those counties east of the Cascade mountains that are not listed in (e) of this subsection.

(8) By December 2016, the commission must report back to the appropriate committees of the legislature on enhanced raffles. The report must include results of the raffles, revenue generated by the raffles, and identify any state or federal regulatory actions taken in relation to enhanced raffles in Washington. The report must also make recommendations, if any, for policy changes to the enhanced raffle authority.

(9) This section expires June 30, 2022. [2016 c 116 § 1; 2013 c 310 § 1.]

9.46.0325 Social card games, punchboards, pull-tabs authorized. The legislature hereby authorizes any person, association or organization operating an established business primarily engaged in the selling of food or drink for consumption on the premises to conduct social card games and to utilize punchboards and pull-tabs as a commercial stimulant to such business when licensed and utilized or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto. [1987 c 4 § 29. Formerly RCW 9.46.030(4).]

9.46.0331 Amusement games authorized—Minimum rules. The legislature hereby authorizes any person to conduct or operate amusement games when licensed and operated pursuant to the provisions of this chapter and rules and regulations adopted by the commission at such locations as the commission may authorize. The rules shall provide for at least the following:

(1) Persons other than bona fide charitable or bona fide nonprofit organizations shall conduct amusement games only after obtaining a special amusement game license from the commission.

(2) Amusement games may be conducted under such a license only as a part of, and upon the site of:

(a) Any agricultural fair as authorized under chapter 15.76 or 36.37 RCW; or

(b) A civic center of a county, city, or town; or

(c) A world's fair or similar exposition that is approved by the bureau of international expositions at Paris, France; or

(d) A community-wide civic festival held not more than once annually and sponsored or approved by the city, town, or county in which it is held; or

(e) A commercial exposition organized and sponsored by an organization or association representing the retail sales and service operators conducting business in a shopping center or other commercial area developed and operated for retail sales and service, but only upon a parking lot or similar area located in said shopping center or commercial area for a period of no more than seventeen consecutive days by any licensee during any calendar year; or

(f) An amusement park. An amusement park is a group of activities, at a permanent location, to which people go to be entertained through a combination of various mechanical or aquatic rides, theatrical productions, motion picture, and/or slide show presentations with food and drink service. The amusement park must include at least five different mechanical, or aquatic rides, three additional activities, and the gross receipts must be primarily from these amusement activities; or

(g) Within a regional shopping center. A regional shopping center is a shopping center developed and operated for retail sales and service by retail sales and service operators and consisting of more than six hundred thousand gross square feet not including parking areas. Amusement games conducted as a part of, and upon the site of, a regional shopping center shall not be subject to the prohibition on revenue sharing set forth in RCW 9.46.120(2); or

(h) A location that possesses a valid license from the Washington *state liquor control board and prohibits minors on their premises; or

(i) Movie theaters, bowling alleys, miniature golf course facilities, and amusement centers. For the purposes of this section an amusement center shall be defined as a permanent location whose primary source of income is from the operation of ten or more amusement devices; or

(j) Any business whose primary activity is to provide food service for on premises consumption and who offers family entertainment which includes at least three of the following activities: Amusement devices; theatrical productions; mechanical rides; motion pictures; and slide show presentations; or

(k) Other locations as the commission may authorize.

(3) No amusement games may be conducted in any location except in conformance with local zoning, fire, health, and similar regulations. In no event may the licensee conduct any amusement games at any of the locations set out in subsection (2) of this section without first having obtained the written permission to do so from the person or organization owning the premises or an authorized agent thereof, and from the persons sponsoring the fair, exhibition, commercial exhibition, or festival, or from the city or town operating the civic center, in connection with which the games are to be operated.

(4) In no event may a licensee conduct any amusement games at the location described in subsection (2)(g) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from entry during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and providing for hours for the close of business at such location that are no later than 10:00 p.m. on Fridays and Saturdays and on all other days that are the same as those of the regional shopping center in which the licensee is located.

(5) In no event may a licensee conduct any amusement game at a location described in subsection (2)(i) or (j) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from playing licensed amusement games during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and prohibiting minors from playing the amusement games after 10:00 p.m. on any day. [2009 c 78 § 1; 1991 c 287 § 1; 1987 c 4 § 30. Formerly RCW 9.46.030(5).]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

9.46.0335 Sports pools authorized. The legislature hereby authorizes any person, association, or organization to conduct sports pools without a license to do so from the commission but only when the outcome of which is dependent upon the score, or scores, of a certain athletic contest and which is conducted only in the following manner:

(1) A board or piece of paper is divided into one hundred equal squares, each of which constitutes a chance to win in the sports pool and each of which is offered directly to prospective contestants at one dollar or less;

(2) The purchaser of each chance or square signs his or her name on the face of each square or chance he or she purchases; and

(3) At some time not later than prior to the start of the subject athletic contest the pool is closed and no further chances in the pool are sold;

(4) After the pool is closed a prospective score is assigned by random drawing to each square;

(5) All money paid by entrants to enter the pool less taxes is paid out as the prize or prizes to those persons holding squares assigned the winning score or scores from the subject athletic contest;

(6) The sports pool board is available for inspection by any person purchasing a chance thereon, the commission, or by any law enforcement agency upon demand at all times prior to the payment of the prize;

(7) The person or organization conducting the pool is conducting no other sports pool on the same athletic event; and

(8) The sports pool conforms to any rules and regulations of the commission applicable thereto. [1987 c 4 § 31. Formerly RCW 9.46.030(6).]

9.46.0341 Golfing sweepstakes authorized. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct, without the necessity of obtaining a permit or license to do so from the commission, golfing sweepstakes permitting wagers of money, and the same shall not constitute such gambling or lottery as otherwise prohibited in this chapter, or be subject to civil or criminal penalties thereunder, but this only when the outcome of such golfing sweepstakes is dependent upon the score, or scores, or the playing ability, or abilities, of a golfing contest between individual players or teams of such players, conducted in the following manner:

(1) Wagers are placed by buying tickets on any players in a golfing contest to "win," "place," or "show" and those holding tickets on the three winners may receive a payoff similar to the system of betting identified as parimutuel, such moneys placed as wagers to be used primarily as winners' proceeds, except moneys used to defray the expenses of such golfing sweepstakes or otherwise used to carry out the purposes of such organization; or

(2) Participants in any golfing contest(s) pay a like sum of money into a common fund on the basis of attaining a stated number of points ascertainable from the score of such participants, and those participants attaining such stated number of points share equally in the moneys in the common fund, without any percentage of such moneys going to the sponsoring organization; or

(3) An auction is held in which persons may bid on the players or teams of players in the golfing contest, and the person placing the highest bid on the player or team that wins the golfing contest receives the proceeds of the auction, except moneys used to defray the expenses of the golfing sweepstakes or otherwise used to carry out the purposes of the organization; and

(4) Participation is limited to members of the sponsoring organization and their bona fide guests. [1997 c 38 § 1; 1987 c 4 § 32. Formerly RCW 9.46.030(7).]

9.46.0345 Bowling sweepstakes authorized. The legislature hereby authorizes bowling establishments to conduct, without the necessity of obtaining a permit or license to do so, as a commercial stimulant, a bowling activity which permits bowlers to purchase tickets from the establishment for a predetermined and posted amount of money, which tickets are then selected by the luck of the draw and the holder of the matching ticket so drawn has an opportunity to bowl a strike and if successful receives a predetermined and posted monetary prize: PROVIDED, That all sums collected by the establishment from the sale of tickets shall be returned to purchasers of tickets and no part of the proceeds shall inure to any person other than the participants winning in the game or a recognized charity. The tickets shall be sold, and accounted for, separately from all other sales of the establishment. The price of any single ticket shall not exceed one dollar. Accounting records shall be available for inspection during business hours by any person purchasing a chance thereon, by the commission or its representatives, or by any law enforcement agency. [1987 c 4 § 33. Formerly RCW 9.46.030(8).]

9.46.0351 Social card, dice games—Use of premises of charitable, nonprofit organizations. (1) The legislature hereby authorizes any bona fide charitable or nonprofit organization which is licensed pursuant to RCW 66.24.400, and its officers and employees, to allow the use of the premises, furnishings, and other facilities not gambling devices of such organization by members of the organization, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, who engage as players in the following types of gambling activities only:

(a) Social card games; and

(b) Social dice games, which shall be limited to contests of chance, the outcome of which are determined by one or more rolls of dice.

(2) Bona fide charitable or nonprofit organizations shall not be required to be licensed by the commission in order to allow use of their premises in accordance with this section. However, the following conditions must be met:

(a) No organization, corporation, or person shall collect or obtain or charge any percentage of or shall collect or obtain any portion of the money or thing of value wagered or won by any of the players: PROVIDED, That a player may collect his or her winnings; and

(b) No organization, corporation, or person shall collect or obtain any money or thing of value from, or charge or impose any fee upon, any person which either enables him or her to play or results in or from his or her playing: PROVIDED, That this subsection shall not preclude collection of a membership fee which is unrelated to participation in gambling activities authorized under this section. [1999 c 143 § 5; 1987 c 4 § 34. Formerly RCW 9.46.030(9).]

9.46.0356 Promotional contests of chance authorized. (1) The legislature authorizes:

(a) A business to conduct a promotional contest of chance as defined in this section, in this state, or partially in this state, whereby the elements of prize and chance are present but in which the element of consideration is not present;

(b) A financial institution, as defined in *RCW 30.22.040, to conduct a promotional contest of chance under this section in which: (i) A drawing for an annual prize is held that includes as eligible prize recipients only those persons who deposited funds at the financial institution in a savings account, certificate of deposit, or any other savings program and retained those funds for at least twelve months in the savings account, certificate of deposit, or other savings program; and (ii) drawings for other prizes are held from time to time that include as eligible prize recipients only those persons who deposited funds at the financial institution in a savings account, certificate of deposit, or other savings program. No such contest may be conducted, either wholly or partially, by means of the internet.

(2) Promotional contests of chance under this section are not gambling as defined in RCW 9.46.0237.

(3) Promotional contests of chance shall be conducted as advertising and promotional undertakings solely for the purpose of advertising or promoting the services, goods, wares, and merchandise of a business.

(4) No person eligible to receive a prize in a promotional contest of chance under subsection (1)(a) of this section may be required to:

(a) Pay any consideration to the promoter or operator of the business in order to participate in the contest; or

(b) Purchase any service, goods, wares, merchandise, or anything of value from the business, however, for other than contests entered through a direct mail solicitation, the promoter or sponsor may give additional entries or chances upon purchase of service, goods, wares, or merchandise if the promoter or sponsor provides an alternate method of entry requiring no consideration.

(5) No person eligible to receive a prize in a promotional contest of chance under subsection (1)(b) of this section may be required to pay any consideration other than the deposit of funds, or purchase any service, goods, wares, merchandise, or anything of value from the financial institution.

(6)(a) As used in this section, "consideration" means anything of pecuniary value required to be paid to the promoter or sponsor in order to participate in a promotional contest. Such things as visiting a business location, placing or answering a telephone call, completing an entry form or customer survey, or furnishing a stamped, self-addressed envelope do not constitute consideration.

(b) Coupons or entry blanks obtained by purchase of a bona fide newspaper or magazine or in a program sold in conjunction with a regularly scheduled sporting event are not consideration.

(7) Unless authorized by the commission, equipment or devices made for use in a gambling activity are prohibited from use in a promotional contest.

(8) This section shall not be construed to permit noncompliance with chapter 19.170 RCW, promotional advertising of prizes, and chapter 19.86 RCW, unfair business practices. [2011 c 303 § 2; 2000 c 228 § 1.]

*Reviser's note: RCW 30.22.040 was recodified as RCW 30A.22.040 pursuant to 2014 c 37 § 4, effective January 5, 2015.

Findings—Intent—2011 c 303: "The legislature finds that consumer savings is essential, both for individuals seeking to obtain the American dream, and in order to rebuild a strong economy. The legislature further finds that for most of the last two decades, consumers have borrowed more than they have saved, with current United States savings rates under six percent.

(2019 Ed.)

The legislature intends to encourage financial institutions to develop innovative products that create incentives to encourage consumer savings, particularly savings by low-income consumers." [2011 c 303 § 1.]

9.46.0361 Turkey shoots authorized. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct, without the necessity of obtaining a permit or license to do so from the commission, turkey shoots permitting wagers of money. Such contests shall not constitute such gambling or lottery as otherwise prohibited in this chapter, or be subject to civil or criminal penalties. Such organizations must be organized for purposes other than the conduct of turkey shoots.

Such turkey shoots shall be held in accordance with all other requirements of this chapter, other applicable laws, and rules that may be adopted by the commission. Gross revenues from all such turkey shoots held by the organization during the calendar year shall not exceed five thousand dollars. Turkey shoots conducted under this section shall meet the following requirements:

(1) The target shall be divided into one hundred or fewer equal sections, with each section constituting a chance to win. Each chance shall be offered directly to a prospective contestant for one dollar or less;

(2) The purchaser of each chance shall sign his or her name on the face of the section he or she purchases;

(3) The person shooting at the target shall not be a participant in the contest, but shall be a member of the organization conducting the contest;

(4) Participation in the contest shall be limited to members of the organization which is conducting the contest and their guests;

(5) The target shall contain the following information:

(a) Distance from the shooting position to the target;

(b) The gauge of the shotgun;

(c) The type of choke on the barrel;

(d) The size of shot that will be used; and

(e) The prize or prizes that are to be awarded in the contest;

(6) The targets, shotgun, and ammunition shall be available for inspection by any person purchasing a chance thereon, the commission, or by any law enforcement agency upon demand, at all times before the prizes are awarded;

(7) The turkey shoot shall award the prizes based upon the greatest number of shots striking a section;

(8) No turkey shoot may offer as a prize the right to advance or continue on to another turkey shoot or turkey shoot target; and

(9) Only bona fide members of the organization who are not paid for such service may participate in the management or operation of the turkey shoot, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization. [1987 c 4 § 36. Formerly RCW 9.46.030(12).]

9.46.039 Greyhound racing prohibited. (1) A person may not hold, conduct, or operate live greyhound racing for public exhibition, parimutuel betting, or special exhibition events, if such activities are conducted for gambling purposes. A person may not transmit or receive intrastate or interstate simulcasting of greyhound racing for commercial,

parimutuel, or exhibition purposes, if such activities are conducted for gambling purposes.

(2) A person who violates this section is guilty of a class B felony, under RCW 9.46.220, professional gambling in the first degree, and is subject to the penalty under RCW 9A.20.021. [1996 c 252 § 1.]

9.46.040 Gambling commission—Members—Appointment—Vacancies, filling. There shall be a commission, known as the "Washington state gambling commission", consisting of five members appointed by the governor with the consent of the senate. The members of the commission shall be appointed within thirty days of July 16, 1973 for terms beginning July 1, 1973, and expiring as follows: One member of the commission for a term expiring July 1, 1975; one member of the commission for a term expiring July 1, 1976; one member of the commission for a term expiring July 1, 1977; one member of the commission for a term expiring July 1, 1978; and one member of the commission for a term expiring July 1, 1979; each as the governor so determines. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six year terms: PROVIDED, That no member of the commission who has served a full six year term shall be eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the commission shall impair the right of the remaining member or members to act, except as in RCW 9.46.050(2) provided.

In addition to the members of the commission there shall be four ex officio members without vote from the legislature consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives; such appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first; members may be reappointed; vacancies shall be filled in the same manner as original appointments are made. Such ex officio members who shall collect data deemed essential to future legislative proposals and exchange information with the board shall be deemed engaged in legislative business while in attendance upon the business of the board and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the "gambling revolving fund" as being expenses relative to commission business. [1974 ex.s. c 155 § 12; 1974 ex.s. c 135 § 12; 1973 1st ex.s. c 218 § 4.]

Additional notes found at www.leg.wa.gov

9.46.050 Gambling commission—Chair—Quorum—Meetings—Compensation and travel expenses—Bond—Removal. (1) Upon appointment of the initial membership the commission shall meet at a time and place designated by the governor and proceed to organize, electing one of such

members as chair of the commission who shall serve until July 1, 1974; thereafter a chair shall be elected annually.

(2) A majority of the members shall constitute a quorum of the commission: PROVIDED, That all actions of the commission relating to the regulation of licensing under this chapter shall require an affirmative vote by three or more members of the commission.

(3) The principal office of the commission shall be at the state capitol, and meetings shall be held at least quarterly and at such other times as may be called by the chair or upon written request to the chair of a majority of the commission.

(4) Members shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) Before entering upon the duties of his or her office, each of the members of the commission shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his or her duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the commission.

(6) Any member of the commission may be removed for inefficiency, malfeasance, or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final. Removal of any member of the commission by the tribunal shall disqualify such member for reappointment. [2011 c 336 § 302; 1984 c 287 § 9; 1975-'76 2nd ex.s. c 34 § 7; 1973 1st ex.s. c 218 § 5.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

9.46.060 Gambling commission—Counsel—Audits—Payment for. (1) The attorney general shall be general counsel for the state gambling commission and shall assign such assistants as may be necessary in carrying out the purposes and provisions of this chapter, which shall include instituting and prosecuting any actions and proceedings necessary thereto.

(2) The state auditor shall audit the books, records, and affairs of the commission annually. The commission shall pay to the state treasurer for the credit of the state auditor such funds as may be necessary to defray the costs of such audits. The commission may provide for additional audits by certified public accountants. All such audits shall be public records of the state.

The payment for legal services and audits as authorized in this section shall be paid upon authorization of the commission from moneys in the gambling revolving fund. [1973 1st ex.s. c 218 § 6.]

9.46.070 Gambling commission—Powers and duties.

The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punchboards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter or any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission or director shall not issue, deny, suspend, or revoke any license because of considerations of race, sex, creed, color, or national origin: AND PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said person, association, or organization to utilize punchboards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to conduct or operate amusement games in such manner and at such locations as the commission may determine. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the premises, and for such other activities as may be licensed by the commis-

sion, which fees shall provide to the commission not less than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: PROVIDED, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for processing the application and investigation into the granting thereof: PROVIDED FURTHER, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: AND PROVIDED FURTHER, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission shall require fingerprinting and national criminal history background checks on any persons seeking licenses, certifications, or permits under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity. All national criminal history background checks shall be conducted using fingerprints submitted to the United States department of justice-federal bureau of investigation. The commission must establish rules to delineate which persons named on the application are subject to national criminal history background checks. In identifying these persons, the commission must take into consideration the nature, character, size, and scope of the gambling activities requested by the persons making such applications;

(8) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross income from any gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo. In establishing limitations pursuant to this subsection the commission shall take into account (a) the nature, character, and scope of the activities of the licensee; (b) the source of all other income of the licensee; and (c) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from non-profit, purposes. However, the commission's powers and duties granted by this subsection are discretionary and not mandatory;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization, corporation, or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW 9.46.0282;

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regulations shall be adopted pursuant to the administrative procedure act, chapter 34.05 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16)(a) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments. However, the commissioner's powers and duties granted by this subsection are discretionary and not mandatory.

(b) In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the class of activities to which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including

but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in connection with such business. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name, address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter;

(20) To renew the license of every person who applies for renewal within six months after being honorably discharged, removed, or released from active military service in the armed forces of the United States upon payment of the renewal fee applicable to the license period, if there is no cause for denial, suspension, or revocation of the license;

(21) To issue licenses under subsections (1) through (4) of this section that are valid for a period of up to eighteen months, if it chooses to do so, in order to transition to the use of the business licensing services program through the department of revenue; and

(22) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [2012 c 116 § 1; 2007 c 206 § 1; 2002 c 119 § 1; 1999 c 143 § 6; 1993 c 344 § 1; 1987 c 4 § 38; 1981 c 139 § 3. Prior: 1977 ex.s. c 326 § 3; 1977 ex.s. c 76 § 2; 1975-'76 2nd ex.s. c 87 § 4; 1975 1st ex.s. c 259 § 4; 1974 ex.s. c 155 § 4; 1974 ex.s. c 135 § 4; 1973 2nd ex.s. c 41 § 4; 1973 1st ex.s. c 218 § 7.]

Enforcement—Commission as a law enforcement agency: RCW 9.46.210.

Additional notes found at www.leg.wa.gov

9.46.0701 Charitable or nonprofit organizations—Sharing facilities. The commission may allow existing licensees under RCW 9.46.070(1) to share facilities at one location. [2002 c 369 § 2.]

9.46.071 Information for individuals with a gambling problem or disorder—Self-exclusion program—Fee increases. (1)(a) The legislature recognizes that some individuals in this state have a gambling problem or gambling disorder. Because the state promotes and regulates gambling

through the activities of the state lottery commission, the Washington horse racing commission, and the Washington state gambling commission, the state has the responsibility to continue to provide resources for the support of services for problem gambling and gambling disorders.

(b) The Washington state gambling commission, the Washington horse racing commission, and the state lottery commission shall jointly develop problem gambling and gambling disorder informational signs which include a toll-free hotline number for individuals with a gambling problem or gambling disorder. The signs shall be placed in the establishments of gambling licensees, horse racing licensees, and lottery retailers.

(c) The Washington state gambling commission, the Washington horse racing commission, and the state lottery commission may also contract with other qualified entities to provide public awareness, training, and other services to ensure the intent of this section is fulfilled.

(d) Individuals and families impacted by a gambling problem or gambling disorder will benefit from the availability of a uniform self-exclusion program where people may voluntarily exclude themselves from gambling at multiple gambling establishments by submitting one self-exclusion form to the state from one location for all gambling activities. Therefore, the Washington state gambling commission must establish a statewide self-exclusion program for all licensees. The commission has discretion in establishing the scope, process, and requirements of the self-exclusion program, including denying, suspending, or revoking an application, license, or permit. However, the initial program must comply with the following minimum requirements:

(i) The program must allow persons to voluntarily exclude themselves from gambling at authorized gambling establishments that offer house-banked social card games;

(ii) The program must have a process for federally recognized Indian tribes or tribal enterprises that own gambling operations or facilities with class III gaming compacts to voluntarily participate in the self-exclusion program;

(iii) Any individual registered with the self-exclusion program created under this section is prohibited from participating in gambling activities associated with this program and forfeits all moneys and things of value obtained by the individual or owed to the individual by an authorized gambling establishment as a result of prohibited wagers or gambling activities. The commission may adopt rules for the forfeiture of any moneys or things of value, including wagers, obtained by an authorized gambling establishment while an individual is registered with the self-exclusion program created under this section.

Moneys and things of value forfeited under the self-exclusion program must be distributed to the problem gambling account created in RCW 41.05.751 and/or a charitable or nonprofit organization that provides problem gambling services or increases awareness about problem gambling pursuant to rules adopted by the commission; and

(iv) The commission must adopt rules establishing the self-exclusion program by June 30, 2021.

(e) An individual who participates in the self-exclusion program does not have a cause of action against the state of Washington, the commission, or any gambling establishment, its employees, or officers for any acts or omissions in

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processing or enforcing the requirements of the self-exclusion program, including a failure to prevent an individual from gambling at an authorized gambling establishment.

(f) Any personal information collected, stored, or accessed under the self-exclusion program may only be used for the administration of the self-exclusion program and may not be disseminated for any purpose other than the administration of the self-exclusion program.

(2)(a) During any period in which RCW 82.04.285(2) is in effect, the commission may not increase fees payable by licensees under its jurisdiction for the purpose of funding services for problem gambling and gambling disorder. Any fee imposed or increased by the commission, for the purpose of funding these services, before July 1, 2005, has no force and effect after July 1, 2005.

(b) During any period in which RCW 82.04.285(2) is not in effect:

(i) The commission, the Washington state horse racing commission, and the state lottery commission may contract for services, in addition to those authorized in subsection (1) of this section, to assist in providing for problem gambling and gambling disorder treatment; and

(ii) The commission may increase fees payable by licensees under its jurisdiction for the purpose of funding the problem gambling and gambling disorder services authorized in this section. [2019 c 213 § 1; 2005 c 369 § 9; 2003 c 75 § 1; 1994 c 218 § 6.]

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 41.05.750.

Additional notes found at www.leg.wa.gov

9.46.072 Pathological gambling behavior—Warning.

An entity licensed under RCW 9.46.070(1) which conducts or allows its premises to be used for conducting bingo on more than three occasions per week shall include the following statement in any advertising or promotion of gambling activity conducted by the licensee:

"CAUTION: Participation in gambling activity may result in pathological gambling behavior causing emotional and financial harm. For help, call 1-800-547-6133."

For purposes of this section, "advertising" includes print media, point-of-sale advertising, electronic media, billboards, and radio advertising. [2002 c 369 § 3.]

9.46.075 Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable. The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(2) Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission;

(3) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;

(5) Denies the commission or its authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted or who fails promptly to produce for inspection or audit any book, record, document or item required by law or commission rule;

(6) Shall fail to display its license on the premises where the licensed activity is conducted at all times during the operation of the licensed activity;

(7) Makes a misrepresentation of, or fails to disclose, a material fact to the commission;

(8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter;

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal;

(10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

(11) Is a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to be inimical to the policy of this chapter or to the proper operation of the authorized gambling or related activities in this state. For the purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel shall be defined as any group of persons who operate together as career offenders.

For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license the gambling commission may consider

any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1981 c 139 § 4; 1975 1st ex.s. c 166 § 12.]

Additional notes found at www.leg.wa.gov

9.46.077 Gambling commission—Vacation of certain suspensions upon payment of monetary penalty. The commission, when suspending any license for a period of thirty days or less, may further provide in the order of suspension that such suspension shall be vacated upon payment to the commission of a monetary penalty in an amount then fixed by the commission. [1981 c 139 § 5.]

Additional notes found at www.leg.wa.gov

9.46.080 Gambling commission—Administrator—Staff—Rules and regulations—Service contracts. The commission shall employ a full time director, who shall be the administrator for the commission in carrying out its powers and duties and who shall issue rules and regulations adopted by the commission governing the activities authorized hereunder and shall supervise commission employees in carrying out the purposes and provisions of this chapter. In addition, the director shall employ a deputy director, not more than three assistant directors, together with such investigators and enforcement officers and such staff as the commission determines is necessary to carry out the purposes and provisions of this chapter. The director, the deputy director, the assistant directors, and personnel occupying positions requiring the performing of undercover investigative work shall be exempt from the provisions of chapter 41.06 RCW, as now law or hereafter amended. Neither the director nor any commission employee working therefor shall be an officer or manager of any bona fide charitable or bona fide nonprofit organization, or of any organization which conducts gambling activity in this state.

The director, subject to the approval of the commission, is authorized to enter into agreements on behalf of the commission for mutual assistance and services, based upon actual costs, with any state or federal agency or with any city, town, or county, and such state or local agency is authorized to enter into such an agreement with the commission. If a needed service is not available from another agency of state government within a reasonable time, the director may obtain that service from private industry. [1994 c 218 § 14; 1981 c 139 § 6; 1977 ex.s. c 326 § 4; 1974 ex.s. c 155 § 7; 1974 ex.s. c 135 § 7; 1973 1st ex.s. c 218 § 8.]

Additional notes found at www.leg.wa.gov

9.46.085 Gambling commission—Members and employees—Activities prohibited. A member or employee of the gambling commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any gambling activity regulated by the commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of [a] gambling activity, or the provision of independent consultant services in connection with a gambling activity. [1986 c 4 § 1.]

9.46.090 Gambling commission—Reports. Subject to RCW 40.07.040, the commission shall, from time to time, make reports to the governor and the legislature covering such matters in connection with this chapter as the governor and the legislature may require. These reports shall be public documents and contain such general information and remarks as the commission deems pertinent thereto and any information requested by either the governor or members of the legislature: PROVIDED, That the commission appointed pursuant to RCW 9.46.040 may conduct a thorough study of the types of gambling activity permitted and the types of gambling activity prohibited by this chapter and may make recommendations to the legislature as to: (1) Gambling activity that ought to be permitted; (2) gambling activity that ought to be prohibited; (3) the types of licenses and permits that ought to be required; (4) the type and amount of tax that ought to be applied to each type of permitted gambling activity; (5) any changes which may be made to the law of this state which further the purposes and policies set forth in RCW 9.46.010 as now law or hereafter amended; and (6) any other matter that the commission may deem appropriate. Members of the commission and its staff may contact the legislature, or any of its members, at any time, to advise it of recommendations of the commission. [1987 c 505 § 3; 1981 c 139 § 7; 1977 c 75 § 4; 1975 1st ex.s. c 166 § 4; 1973 1st ex.s. c 218 § 9.]

Additional notes found at www.leg.wa.gov

9.46.095 Gambling commission—Proceedings against, jurisdiction—Immunity from liability. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the commission or any member thereof for anything done or omitted to be done in or arising out of the performance of his or her duties under this title: PROVIDED, That an appeal from an adjudicative proceeding involving a final decision of the commission to deny, suspend, or revoke a license shall be governed by chapter 34.05 RCW, the Administrative Procedure Act.

Neither the commission nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done, or omitted to be done, by the commission or any member of the commission, or any employee of the commission, in the performance of his or her duties and in the administration of this title. [1989 c 175 § 41; 1981 c 139 § 17.]

Additional notes found at www.leg.wa.gov

9.46.100 Gambling revolving fund—Created—Receipts—Disbursements—Use. There is hereby created the gambling revolving fund which shall consist of all moneys receivable for licensing, penalties, forfeitures, and all other moneys, income, or revenue received by the commission. The state treasurer shall be custodian of the fund. All moneys received by the commission or any employee thereof, except for change funds and an amount of petty cash as fixed by rule or regulation of the commission, shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the gambling revolving fund. Disbursements from the revolving fund shall be on authorization of the commission or a duly authorized representative thereof. In order to maintain an

effective expenditure and revenue control the gambling revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. All expenses relative to commission business, including but not limited to salaries and expenses of the director and other commission employees shall be paid from the gambling revolving fund.

During the 2003-2005 fiscal biennium, the legislature may transfer from the gambling revolving fund to the problem gambling treatment account, contingent on enactment of chapter ..., Laws of 2004 (*Second Substitute House Bill No. 2776, problem gambling treatment). Also during the 2003-2005 fiscal biennium, the legislature may transfer from the gambling revolving fund to the state general fund such amounts as reflect the excess nontribal fund balance of the fund. The commission shall not increase fees during the 2003-2005 fiscal biennium for the purpose of restoring the excess fund balance transferred under this section. [2004 c 276 § 903; 2002 c 371 § 901; 1991 sp.s. c 16 § 917; 1985 c 405 § 505; 1977 ex.s. c 326 § 5; 1973 1st ex.s. c 218 § 10.]

*Reviser's note: Second Substitute House Bill No. 2776 was not enacted during the 2004 legislative session.

Additional notes found at www.leg.wa.gov

9.46.110 Taxation of gambling activities—Limitations—Restrictions on punchboards and pull-tabs—Lien.

(1) The legislative authority of any county, city-county, city, or town, by local law and ordinance, and in accordance with the provisions of this chapter and rules adopted under this chapter, may provide for the taxing of any gambling activity authorized by this chapter within its jurisdiction, the tax receipts to go to the county, city-county, city, or town so taxing the activity. Any such tax imposed by a county alone shall not apply to any gambling activity within a city or town located in the county but the tax rate established by a county, if any, shall constitute the tax rate throughout the unincorporated areas of such county.

(2) The operation of punchboards and pull-tabs are subject to the following conditions:

(a) Chances may only be sold to adults;

(b) The price of a single chance may not exceed one dollar;

(c) No punchboard or pull-tab license may award as a prize upon a winning number or symbol being drawn the opportunity of taking a chance upon any other punchboard or pull-tab;

(d) All prizes available to be won must be described on an information flare. All merchandise prizes must be on display within the immediate area of the premises in which any such punchboard or pull-tab is located. Upon a winning number or symbol being drawn, a merchandise prize must be immediately removed from the display and awarded to the winner. All references to cash or merchandise prizes, with a value over twenty dollars, must be removed immediately from the information flare when won, or such omission shall be deemed a fraud for the purposes of this chapter; and

(e) When any person wins money or merchandise from any punchboard or pull-tab over an amount determined by the commission, every licensee shall keep a public record of

the award for at least ninety days containing such information as the commission shall deem necessary.

(3)(a) Taxation of bingo and raffles shall never be in an amount greater than five percent of the gross receipts from a bingo game or raffle less the amount awarded as cash or merchandise prizes.

(b) Taxation of amusement games shall only be in an amount sufficient to pay the actual costs of enforcement of the provisions of this chapter by the county, city or town law enforcement agency and in no event shall such taxation exceed two percent of the gross receipts from the amusement game less the amount awarded as prizes.

(c) No tax shall be imposed under the authority of this chapter on bingo or amusement games when such activities or any combination thereof are conducted by any bona fide charitable or nonprofit organization as defined in this chapter, which organization has no paid operating or management personnel and has gross receipts from bingo or amusement games, or a combination thereof, not exceeding five thousand dollars per year, less the amount awarded as cash or merchandise prizes.

(d) No tax shall be imposed on the first ten thousand dollars of gross receipts less the amount awarded as cash or merchandise prizes from raffles conducted by any bona fide charitable or nonprofit organization as defined in this chapter.

(e) Taxation of punchboards and pull-tabs for bona fide charitable or nonprofit organizations is based on gross receipts from the operation of the games less the amount awarded as cash or merchandise prizes, and shall not exceed a rate of ten percent. At the option of the county, city-county, city, or town, the taxation of punchboards and pull-tabs for commercial stimulant operators may be based on gross receipts from the operation of the games, and may not exceed a rate of five percent, or may be based on gross receipts from the operation of the games less the amount awarded as cash or merchandise prizes, and may not exceed a rate of ten percent.

(f) Taxation of social card games may not exceed twenty percent of the gross revenue from such games.

(4) Taxes imposed under this chapter become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010. The lien shall attach on the date the tax becomes due and shall relate back and have priority against real and personal property to the same extent as ad valorem taxes. [1999 c 221 § 1; 1997 c 394 § 4; 1994 c 301 § 2; 1991 c 161 § 1; 1987 c 4 § 39. Prior: 1985 c 468 § 2; 1985 c 172 § 1; 1981 c 139 § 8; 1977 ex.s. c 198 § 1; 1974 ex.s. c 155 § 8; 1974 ex.s. c 135 § 8; 1973 1st ex.s. c 218 § 11.]

Additional notes found at www.leg.wa.gov

9.46.113 Taxation of gambling activities—Disbursement. Any county, city or town which collects a tax on gambling activities authorized pursuant to RCW 9.46.110 must use the revenue from such tax primarily for the purpose of public safety. [2010 c 127 § 6; 1975 1st ex.s. c 166 § 11.]

Additional notes found at www.leg.wa.gov

9.46.116 Fees on pull-tab and punchboard sales. The commission shall charge fees or increased fees on pull-tabs sold over-the-counter and on sales from punchboards and

pull-tab devices at levels necessary to assure that the increased revenues are equal or greater to the amount of revenue lost by removing the special tax on coin-operated gambling devices by the 1984 repeal of *RCW 9.46.115. [1985 c 7 § 2; 1984 c 135 § 2.]

*Reviser's note: RCW 9.46.115 was repealed by 1984 c 135 § 1, effective July 1, 1984.

Additional notes found at www.leg.wa.gov

9.46.120 Restrictions on management or operation personnel—Restriction on leased premises. (1) Except in the case of an agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a member of a bona fide charitable or nonprofit organization (and their employees) or any other person, association or organization (and their employees) approved by the commission, shall take any part in the management or operation of any gambling activity authorized under this chapter unless approved by the commission. No person who takes any part in the management or operation of any such gambling activity shall take any part in the management or operation of any gambling activity conducted by any other organization or any other branch of the same organization unless approved by the commission. No part of the proceeds of the activity shall inure to the benefit of any person other than the organization conducting such gambling activities or if such gambling activities be for the charitable benefit of any specific persons designated in the application for a license, then only for such specific persons as so designated.

(2) No bona fide charitable or nonprofit organization or any other person, association or organization shall conduct any gambling activity authorized under this chapter in any leased premises if rental for such premises is unreasonable or to be paid, wholly or partly, on the basis of a percentage of the receipts or profits derived from such gambling activity. [1997 c 394 § 3; 1987 c 4 § 40; 1973 1st ex.s. c 218 § 12.]

9.46.130 Inspection and audit of premises, paraphernalia, books, and records—Reports for the commission. The premises and paraphernalia, and all the books and records of any person, association, or organization conducting gambling activities authorized under this chapter and any person, association, or organization receiving profits therefrom or having any interest therein shall be subject to inspection and audit at any reasonable time, with or without notice, upon demand, by the commission or its designee, the attorney general or his or her designee, the chief of the Washington state patrol or his or her designee or the prosecuting attorney, sheriff, or director of public safety or their designees of the county wherein located, or the chief of police or his or her designee of any city or town in which said organization is located, for the purpose of determining compliance or non-compliance with the provisions of this chapter and any rules or regulations or local ordinances adopted pursuant thereto. A reasonable time for the purpose of this section shall be: (1) If the items or records to be inspected or audited are located anywhere upon a premises any portion of which is regularly open to the public or members and guests, then at any time when the premises are so open, or at which they are usually open; or (2) if the items or records to be inspected or audited are not located upon a premises set out in subsection (1) of

this section, then any time between the hours of 8:00 a.m. and 9:00 p.m., Monday through Friday.

The commission shall be provided at such reasonable intervals as the commission shall determine with a report, under oath, detailing all receipts and disbursements in connection with such gambling activities together with such other reasonable information as required in order to determine whether such activities comply with the purposes of this chapter or any local ordinances relating thereto. [2011 c 336 § 303; 1981 c 139 § 10; 1975 1st ex.s. c 166 § 7; 1973 1st ex.s. c 218 § 13.]

Additional notes found at www.leg.wa.gov

9.46.140 Gambling commission—Investigations—Inspections—Hearing and subpoena power—Administrative law judges. (1) The commission or its authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the commission or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the commission's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, who may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in RCW 34.05.446, 34.05.449, and 34.05.452.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 175 § 42; 1981 c 67 § 16; 1977 ex.s. c 326 § 7; 1975 1st ex.s. c 166 § 8; 1973 1st ex.s. c 218 § 14.]

Additional notes found at www.leg.wa.gov

9.46.150 Injunctions—Voiding of licenses, permits, or certificates. (1) Any activity conducted in violation of any provision of this chapter may be enjoined in an action commenced by the commission through the attorney general or by the prosecuting attorney or legal counsel of any city or town in which the prohibited activity may occur.

(2) When a violation of any provision of this chapter or any rule or regulation adopted pursuant hereto has occurred on any property or premises for which one or more licenses, permits, or certificates issued by this state, or any political subdivision or public agency thereof are in effect, all such licenses, permits and certificates may be voided and no license, permit, or certificate so voided shall be issued or reissued for such property or premises for a period of up to sixty days thereafter. [1973 1st ex.s. c 218 § 15.]

9.46.153 Applicants and licensees—Responsibilities and duties—Waiver of liability—Investigation statement as privileged. (1) It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted;

(2) All applicants and licensees shall consent to inspections, searches and seizures and the supplying of handwriting examples as authorized by this chapter and rules adopted hereunder;

(3) All licensees, and persons having any interest in licensees, including but not limited to employees and agents of licensees, and other persons required to be qualified under this chapter or rules of the commission shall have a duty to inform the commission or its staff of any action or omission which they believe would constitute a violation of this chapter or rules adopted pursuant thereto. No person who so informs the commission or the staff shall be discriminated against by an applicant or licensee because of the supplying of such information;

(4) All applicants, licensees, persons who are operators or directors thereof and persons who otherwise have a substantial interest therein shall have the continuing duty to provide any assistance or information required by the commission and to investigations conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee or officer or director thereof or person with a substantial interest therein, refuses to comply, the applicant or licensee may be denied or revoked by the commission;

(5) All applicants and licensees shall waive any and all liability as to the state of Washington, its agencies, employees and agents for any damages resulting from any disclosure or publication in any manner, other than a wilfully unlawful disclosure or publication, of any information acquired by the commission during its licensing or other investigations or inquiries or hearings;

(6) Each applicant or licensee may be photographed for investigative and identification purposes in accordance with rules of the commission;

(7) An application to receive a license under this chapter or rules adopted pursuant thereto constitutes a request for determination of the applicant's and those person's with an

interest in the applicant, general character, integrity and ability to engage or participate in, or be associated with, gambling or related activities impacting this state. Any written or oral statement made in the course of an official investigation, proceeding or process of the commission by any member, employee or agent thereof or by any witness, testifying under oath, which is relevant to the investigation, proceeding or process, is absolutely privileged and shall not impose any liability for slander, libel or defamation, or constitute any grounds for recovery in any civil action. [1981 c 139 § 14.]

Additional notes found at www.leg.wa.gov

9.46.155 Applicants and licensees—Bribes to public officials, employees, agents—Penalty. (1) No applicant or licensee shall give or provide, or offer to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any of its agencies or political subdivisions, any compensation or reward, or share of the money or property paid or received through gambling activities, in consideration for obtaining any license, authorization, permission or privilege to participate in any gaming operations except as authorized by this chapter or rules adopted pursuant thereto.

(2) Violation of this section is a class C felony for which a person, upon conviction, shall be punished by imprisonment for not more than five years or a fine of not more than one hundred thousand dollars, or both. [2003 c 53 § 34; 1981 c 139 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.46.158 Applicants, licensees, operators—Commission approval for hiring certain persons. No applicant for a license from, nor licensee of, the commission, nor any operator of any gambling activity, shall, without advance approval of the commission, knowingly permit any person to participate in the management or operation of any activity for which a license from the commission is required or which is otherwise authorized by this chapter if that person:

(1) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; or

(2) Has violated, failed, or refused to comply with provisions, requirements, conditions, limitations or duties imposed by this chapter, and any amendments thereto, or any rules adopted by the commission pursuant thereto, or has permitted, aided, abetted, caused, or conspired with another to cause, any person to violate any of the provisions of this chapter or rules of the commission. [1981 c 139 § 18.]

Additional notes found at www.leg.wa.gov

9.46.160 Conducting activity without license. Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission shall be

guilty of a class B felony. If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [1991 c 261 § 3; 1975 1st ex.s. c 166 § 9; 1973 1st ex.s. c 218 § 16.]

Additional notes found at www.leg.wa.gov

9.46.170 False or misleading entries or statements, refusal to produce records. Whoever, in any application for a license or in any book or record required to be maintained by the commission or in any report required to be submitted to the commission, shall make any false or misleading statement, or make any false or misleading entry or wilfully fail to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection by the commission, or its designee, any book, record, or document required to be maintained or made by federal or state law, shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 4; 1973 1st ex.s. c 218 § 17.]

9.46.180 Causing person to violate chapter. Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter shall be guilty of a class B felony subject to the penalty in RCW 9A.20.021. [1991 c 261 § 5; 1977 ex.s. c 326 § 8; 1973 1st ex.s. c 218 § 18.]

9.46.185 Causing person to violate rule or regulation. Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule or regulation adopted pursuant to this chapter shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 6; 1977 ex.s. c 326 § 9.]

9.46.190 Violations relating to fraud or deceit. Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

(1) Employ any device, scheme, or artifice to defraud; or
(2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or

(3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;

Shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 7; 1977 ex.s. c 326 § 10; 1973 1st ex.s. c 218 § 19.]

9.46.192 Cities and towns—Ordinance enacting certain sections of chapter—Limitations—Penalties. Every city or town is authorized to enact as an ordinance of that city or town any or all of the sections of this chapter the violation of which constitutes a misdemeanor or gross misdemeanor. The city or town may not modify the language of any section of this chapter in enacting such section except as necessary to put the section in the proper form of an ordinance or to provide for a sentence [to] be served in the appropriate detention

facility. The ordinance must provide for the same maximum penalty for its violation as may be imposed under the section in this chapter. [1977 ex.s. c 326 § 11.]

9.46.193 Cities and towns—Ordinance adopting certain sections of chapter—Jurisdiction of courts. District courts operating under the provisions of chapters 3.30 through 3.74 RCW, except municipal departments of such courts operating under chapter 3.46 RCW and municipal courts operating under chapter 3.50 RCW, shall have concurrent jurisdiction with the superior court to hear, try, and determine misdemeanor and gross misdemeanor violations of this chapter and violations of any ordinance passed under authority of this chapter by any city or town.

Municipal courts operating under chapters 35.20 or 3.50 RCW and municipal departments of the district court operating under chapter 3.46 RCW, shall have concurrent jurisdiction with the superior court to hear, try, and determine violations of any ordinance passed under authority of this chapter by the city or town in which the court is located.

Notwithstanding any other provision of law, each of these courts shall have the jurisdiction and power to impose up to the maximum penalties provided for the violation of the ordinances adopted under the authority of this chapter. Review of the judgments of these courts shall be as provided in other criminal actions. [1977 ex.s. c 326 § 12.]

9.46.195 Obstruction of public servant—Penalty. No person shall intentionally obstruct or attempt to obstruct a public servant in the administration or enforcement of this chapter by using or threatening to use physical force or by means of any unlawful act. Any person who violates this section shall be guilty of a misdemeanor. [1974 ex.s. c 155 § 11; 1974 ex.s. c 135 § 11.]

Additional notes found at www.leg.wa.gov

9.46.196 Cheating—Defined. "Cheating," as used in this chapter, means to:

(1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;

(2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;

(3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or

(4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section. [2002 c 253 § 1; 1991 c 261 § 8; 1977 ex.s. c 326 § 13.]

9.46.1961 Cheating in the first degree. (1) A person is guilty of cheating in the first degree if he or she engages in cheating and:

(a) Knowingly causes, aids, abets, or conspires with another to engage in cheating; or

(b) Holds a license or similar permit issued by the state of Washington to conduct, manage, or act as an employee in an authorized gambling activity.

(2019 Ed.)

(2) Cheating in the first degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. In addition to any other penalties imposed by law for a conviction of a violation of this section the court may impose an additional penalty of up to twenty thousand dollars on adult offenders. [2015 c 265 § 12; 2002 c 253 § 2.]

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

9.46.1962 Cheating in the second degree. (1) A person is guilty of cheating in the second degree if he or she engages in cheating and his or her conduct does not constitute cheating in the first degree.

(2) Cheating in the second degree is a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [2002 c 253 § 3.]

9.46.198 Working in gambling activity without license as violation—Penalty. Any person who works as an employee or agent or in a similar capacity for another person in connection with the operation of an activity for which a license is required under this chapter or by commission rule without having obtained the applicable license required by the commission under RCW 9.46.070(17) shall be guilty of a gross misdemeanor and shall, upon conviction, be punished by up to three hundred sixty-four days in the county jail or a fine of not more than five thousand dollars, or both. [2011 c 96 § 7; 1999 c 143 § 7; 1977 ex.s. c 326 § 14.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

9.46.200 Action for money damages due to violations—Interest—Attorneys' fees—Evidence for exoneration. In addition to any other penalty provided for in this chapter, every person, directly or indirectly controlling the operation of any gambling activity authorized by this chapter, including a director, officer, and/or manager of any association, organization, or corporation conducting the same, whether charitable, nonprofit, or profit, shall be liable, jointly and severally, for money damages suffered by any person because of any violation of this chapter, together with interest on any such amount of money damages at six percent per annum from the date of the loss, and reasonable attorneys' fees: PROVIDED, That if any such director, officer, and/or manager did not know any such violation was taking place and had taken all reasonable care to prevent any such violation from taking place, and if such director, officer, and/or manager shall establish by a preponderance of the evidence that he or she did not have such knowledge and that he or she had exercised all reasonable care to prevent the violations he or she shall not be liable hereunder. Any civil action under this section may be considered a class action. [2011 c 336 § 304; 1987 c 4 § 41; 1974 ex.s. c 155 § 10; 1974 ex.s. c 135 § 10; 1973 1st ex.s. c 218 § 20.]

Additional notes found at www.leg.wa.gov

9.46.210 Enforcement—Commission as a law enforcement agency. (1) It shall be the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter.

(2) In addition to the authority granted by subsection (1) of this section law enforcement agencies of cities and coun-

ties shall investigate and report to the commission all violations of the provisions of this chapter and of the rules of the commission found by them and shall assist the commission in any of its investigations and proceedings respecting any such violations. Such law enforcement agencies shall not be deemed agents of the commission.

(3) In addition to its other powers and duties, the commission shall have the power to enforce the penal provisions of *chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, both assistant directors, and each of the commission's investigators, enforcement officers, and inspectors shall have the power, under the supervision of the commission, to enforce the penal provisions of *chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of *chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a warrant, any person or persons found in the act of violating any of the penal provisions of *chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth above, the commission shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this chapter, as now law or hereafter amended, and to obtain information from and provide information to all other law enforcement agencies.

(4) Criminal history record information that includes nonconviction data, as defined in RCW 10.97.030, may be disseminated by a criminal justice agency to the Washington state gambling commission for any purpose associated with the investigation for suitability for involvement in gambling activities authorized under this chapter. The Washington state gambling commission shall only disseminate nonconviction data obtained under this section to criminal justice agencies. [2000 c 46 § 1; 1981 c 139 § 11; 1977 ex.s. c 326 § 15; 1975 1st ex.s. c 166 § 10; 1974 ex.s. c 155 § 9; 1974 ex.s. c 135 § 9; 1973 1st ex.s. c 218 § 21.]

***Reviser's note:** 1973 1st ex.s. c 218 consisted entirely of chapter 9.46 RCW and the repeal of various former laws regulating gambling.

Additional notes found at www.leg.wa.gov

9.46.212 Officers designated with police powers authorized to take action to prevent physical injury to person or substantial damage to property—Immunity from civil liability—Exception. When physical injury to a person or substantial damage to property occurs, or is about to occur, within the presence of an officer of the commission designated with police powers pursuant to RCW 9.46.210, the designated officer is authorized to take such action as is reasonably necessary to prevent physical injury to a person or substantial damage to property or prevent further injury to a person or further substantial damage to property. A designated officer shall be immune from civil liability for damages arising out of the action of the designated officer to prevent physical injury to a person or substantial damage to property or prevent further injury to a person or further substantial damage to property, unless it is shown that the designated officer acted with gross negligence or bad faith. [2017 c 111 § 1.]

9.46.215 Ownership or interest in gambling device—Penalty—Exceptions. (1) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs, or transports any gambling device or offers or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a class C felony and shall be fined not more than one hundred thousand dollars or imprisoned not more than five years or both.

(2) This section does not apply to persons licensed by the commission, or who are otherwise authorized by this chapter, or by commission rule, to conduct gambling activities without a license, respecting devices that are to be used, or are being used, solely in that activity for which the license was issued, or for which the person has been otherwise authorized if:

(a) The person is acting in conformance with this chapter and the rules adopted under this chapter; and

(b) The devices are a type and kind traditionally and usually employed in connection with the particular activity.

(3) This section also does not apply to any act or acts by the persons in furtherance of the activity for which the license was issued, or for which the person is authorized, when the activity is conducted in compliance with this chapter and in accordance with the rules adopted under this chapter.

(4) In the enforcement of this section direct possession of any such a gambling device is presumed to be knowing possession thereof. [2003 c 53 § 35; 1994 c 218 § 9.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.46.217 Gambling records—Penalty—Exceptions. Whoever knowingly prints, makes, possesses, stores, or transports any gambling record, or buys, sells, offers, or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a gross misdemeanor. However, this section does not apply to records relating to and kept for activities authorized by this chapter when the records are of the type and kind traditionally and usually employed in connection with the particular activity. This section also does not apply to any act or acts in furtherance of the activities when conducted in compliance with this chapter

and in accordance with the rules adopted under this chapter. In the enforcement of this section direct possession of any such a gambling record is presumed to be knowing possession thereof. [1994 c 218 § 10.]

Additional notes found at www.leg.wa.gov

9.46.220 Professional gambling in the first degree.

(1) A person is guilty of professional gambling in the first degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) Acts in concert with or conspires with five or more people; or

(b) Personally accepts wagers exceeding five thousand dollars during any thirty-day period on future contingent events; or

(c) The operation for whom the person works, or with which the person is involved, accepts wagers exceeding five thousand dollars during any thirty-day period on future contingent events; or

(d) Operates, manages, or profits from the operation of a premises or location where persons are charged a fee to participate in card games, lotteries, or other gambling activities that are not authorized by this chapter or licensed by the commission.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the first degree is a class B felony subject to the penalty set forth in RCW 9A.20.021. [1997 c 78 § 2; 1994 c 218 § 11; 1991 c 261 § 10; 1987 c 4 § 42; 1973 1st ex.s. c 218 § 22.]

Additional notes found at www.leg.wa.gov

9.46.221 Professional gambling in the second degree.

(1) A person is guilty of professional gambling in the second degree if he or she engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) Acts in concert with or conspires with less than five people; or

(b) Accepts wagers exceeding two thousand dollars during any thirty-day period on future contingent events; or

(c) The operation for whom the person works, or with which the person is involved, accepts wagers exceeding two thousand dollars during any thirty-day period on future contingent events; or

(d) Maintains a "gambling premises" as defined in this chapter; or

(e) Maintains gambling records as defined in RCW 9.46.0253.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the second degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. [1997 c 78 § 3; 1994 c 218 § 12; 1991 c 261 § 11.]

(2019 Ed.)

Additional notes found at www.leg.wa.gov

9.46.222 Professional gambling in the third degree.

(1) A person is guilty of professional gambling in the third degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) His or her conduct does not constitute first or second degree professional gambling;

(b) He or she operates any of the unlicensed gambling activities authorized by this chapter in a manner other than as prescribed by this chapter; or

(c) He or she is directly employed in but not managing or directing any gambling operation.

(2) This section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and the rules adopted pursuant to this chapter.

(3) Professional gambling in the third degree is a gross misdemeanor subject to the penalty established in RCW 9A.20.021. [1994 c 218 § 13; 1991 c 261 § 12.]

Additional notes found at www.leg.wa.gov

9.46.225 Professional gambling—Penalties not applicable to authorized activities.

The penalties provided for professional gambling in this chapter shall not apply to the activities authorized by this chapter when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations of the commission. [1987 c 4 § 37. Formerly RCW 9.46.030(11).]

9.46.228 Gambling activities by persons under age eighteen prohibited—Penalties—Jurisdiction—In-house controlled purchase programs authorized.

(1) It is unlawful for any person under the age of eighteen to play in authorized gambling activities including, but not limited to, punchboards, pull-tabs, or card games, or to participate in fund-raising events. Persons under the age of eighteen may play bingo, raffles, and amusement game activities only as provided in commission rules.

(2) A person under the age of eighteen who violates subsection (1) of this section by engaging in, or attempting to engage in, prohibited gambling activities commits a class 2 civil infraction under chapter 7.80 RCW and is subject to a fine set out in chapter 7.80 RCW, up to four hours of community restitution, and any court imposed costs.

(3) The juvenile court divisions in superior courts within the state have jurisdiction for enforcement of this section.

(4)(a) An employer may conduct an in-house controlled purchase program authorized for the purposes of employee training and employer self-compliance checks.

(b) The civil infraction provisions of this section do not apply to a person under the age of eighteen who is participating in an in-house controlled purchase program authorized by the commission under rules adopted by the commission. Violations occurring under an in-house controlled purchase program authorized by the commission may not be used for criminal or administrative prosecution.

(c) An employer who conducts an in-house controlled purchase program authorized under this section shall provide

his or her employees a written description of the employer's in-house controlled purchase program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding unauthorized persons engaging in gambling activities during a controlled purchase program authorized under this section.

(5) A person under the age of eighteen who violates subsection (1) of this section shall not collect any winnings or recover any losses arising as a result of unlawfully participating in any gambling activity. Additionally, any money or anything of value which has been obtained by, or is owed to, any person under the age of eighteen as a result of such participation shall be forfeited to the department of social and health services division of alcohol and substance abuse or its successor and used for a program related to youth problem gambling awareness, prevention, and/or education. Any person claiming any money or things of value subject to forfeiture under this subsection will receive notice and an opportunity for a hearing under RCW 9.46.231. [2009 c 357 § 2.]

9.46.231 Gambling devices, real and personal property—Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them:

- (a) All gambling devices as defined in this chapter;
- (b) All furnishings, fixtures, equipment, and stock, including without limitation furnishings and fixtures adaptable to nongambling uses and equipment and stock for printing, recording, computing, transporting, or safekeeping, used in connection with professional gambling or maintaining a gambling premises;
- (c) All conveyances, including aircraft, vehicles, or vessels, that are used, or intended for use, in any manner to facilitate the sale, delivery, receipt, or operation of any gambling device, or the promotion or operation of a professional gambling activity, except that:
 - (i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 - (ii) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;
 - (iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and
 - (iv) If the owner of a conveyance has been arrested under this chapter the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;
- (d) All books, records, and research products and materials, including formulas, microfilm, tapes, and electronic data that are used, or intended for use, in violation of this chapter;
- (e) All moneys, negotiable instruments, securities, or other tangible or intangible property of value at stake or displayed in or in connection with professional gambling activity or furnished or intended to be furnished by any person to

facilitate the promotion or operation of a professional gambling activity;

(f) All tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to professional gambling activity and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. Personal property may not be forfeited under this subsection (1)(f), to the extent of the interest of an owner, by reason of any act or omission that that owner establishes was committed or omitted without the owner's knowledge or consent; and

(g) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements that:

- (i) Have been used with the knowledge of the owner for the manufacturing, processing, delivery, importing, or exporting of any illegal gambling equipment, or operation of a professional gambling activity that would constitute a felony violation of this chapter; or
- (ii) Have been acquired in whole or in part with proceeds traceable to a professional gambling activity, if the activity is not less than a class C felony.

Real property forfeited under this chapter that is encumbered by a bona fide security interest remains subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission. Property may not be forfeited under this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent.

(2)(a) A law enforcement officer of this state may seize real or personal property subject to forfeiture under this chapter upon process issued by any superior court having jurisdiction over the property. Seizure of real property includes the filing of a lis pendens by the seizing agency. Real property seized under this section may not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later, but real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a bona fide security interest.

(b) Seizure of personal property without process may be made if:

- (i) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (ii) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;
- (iii) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (iv) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure under subsection (2) of this section, proceedings for forfeiture are deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property must be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, must be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized is deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons must be afforded a reasonable opportunity to be heard as to the claim or right. The hearing must be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except if the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing must be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is

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to be removed must be the district court if the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom must be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees. In cases involving personal property, the burden of producing evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving property seized under subsection (1)(a) of this section, the only issues to be determined by the tribunal are whether the item seized is a gambling device, and whether the device is an antique device as defined by RCW 9.46.235. In cases involving real property, the burden of producing evidence is upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture is upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a final determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1) of this section.

(6) If property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to the agency for training or use in enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public; or

(c) Destroy any articles that may not be lawfully possessed within the state of Washington, or that have a fair market value of less than one hundred dollars.

(7)(a) If property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property. The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure, and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(8) The seizing law enforcement agency shall retain forfeited property and net proceeds exclusively for the expansion and improvement of gambling-related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(9) Gambling devices that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and must be seized and summarily forfeited to the state. Gambling equipment that is seized or comes into the possession of a law enforcement agency, the owners of which are unknown, are contraband and must be summarily forfeited to the state.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. The supe-

rior court shall enter orders for the forfeiture of real property, subject to court rules. The seizing agency shall file such an order in the county auditor's records in the county in which the real property is located.

(11)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (6)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer before asserting a claim under this section.

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search; and

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency shall notify the landlord of the status of the claim by the end of the thirty-day period. This section does not require the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency within seven days of receipt of notification of the illegal activity.

(12) The landlord's claim for damages under subsection (11) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (6)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (7)(a) of this section.

(13) Subsections (11) and (12) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (11) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

(14) Liability is not imposed by this section upon any authorized state, county, or municipal officer, including a commission special agent, in the lawful performance of his or her duties. [2008 c 6 § 629; 1997 c 128 § 1; 1994 c 218 § 7.]

Additional notes found at www.leg.wa.gov

9.46.235 Slot machines, antique—Defenses concerning—Presumption created. (1) For purposes of a prosecution under RCW 9.46.215 or a seizure, confiscation, or destruction order under RCW 9.46.231, it shall be a defense that the gambling device involved is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or defendant's possession. Operation of an antique slot machine shall be only by free play or with coins provided at no cost by the owner. No slot machine, having been seized under this chapter, may be altered, destroyed, or disposed of without affording the owner thereof an opportunity to present a defense under this section. If the defense is applicable, the antique slot machine shall be returned to the owner or defendant, as the court may direct.

(2) RCW 9.46.231 shall have no application to any antique slot machine that has not been operated for gambling purposes while in the owner's possession.

(3) For the purposes of this section, a slot machine shall be conclusively presumed to be an antique slot machine if it is at least twenty-five years old.

(4) RCW 9.46.231 and 9.46.215 do not apply to gambling devices on board a passenger cruise ship which has been registered and bonded with the federal maritime commission, if the gambling devices are not operated for gambling purposes within the state. [1994 c 218 § 15; 1987 c 191 § 1; 1977 ex.s. c 165 § 1.]

Additional notes found at www.leg.wa.gov

9.46.240 Gambling information, transmitting or receiving. Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, the internet, a telecommunications transmission system, or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a class C felony subject to the penalty set forth in RCW 9A.20.021. However, this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted under this chapter. [2006 c 290 § 2; 1991 c 261 § 9; 1987 c 4 § 44; 1973 1st ex.s. c 218 § 24.]

Additional notes found at www.leg.wa.gov

9.46.250 Gambling property or premises—Common nuisances, abatement—Termination of interests, licenses—Enforcement. (1) All gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by law. The plaintiff in any action brought under this subsection against any gambling premises, need not show special injury and may, in the discretion of the court, be relieved of all requirements as to giving security.

(2) When any property or premise held under a mortgage, contract, or leasehold is determined by a court having jurisdiction to be a gambling premises, all rights and interests of the holder therein shall terminate and the owner shall be entitled to immediate possession at his or her election: PROVIDED, HOWEVER, That this subsection shall not apply to those premises in which activities authorized by this chapter or any act or acts in furtherance thereof are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto.

(3) When any property or premises for which one or more licenses issued by the commission are in effect, is determined by a court having jurisdiction to be a gambling premise, all such licenses may be voided and no longer in effect, and no license so voided shall be issued or reissued for such property or premises for a period of up to sixty days thereafter. Enforcement of this subsection shall be the duty of all peace officers and all taxing and licensing officials of this state and its political subdivisions and other public agencies. This subsection shall not apply to property or premises in which activities authorized by this chapter, or any act or acts in furtherance thereof, are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. [2011 c 336 § 305; 1987 c 4 § 45; 1973 1st ex.s. c 218 § 25.]

9.46.260 Proof of possession as evidence of knowledge of its character. Proof of possession of any device used for professional gambling or any record relating to professional gambling specified in RCW 9.46.215 is prima facie evidence of possession thereof with knowledge of its character or contents. [1994 c 218 § 16; 1973 1st ex.s. c 218 § 26.]

Additional notes found at www.leg.wa.gov

9.46.270 Taxing authority, exclusive. This chapter shall constitute the exclusive legislative authority for the taxing by any city, town, city-county or county of any gambling activity and its application shall be strictly construed to those activities herein permitted and to those persons, associations or organizations herein permitted to engage therein. [1973 1st ex.s. c 218 § 27.]

9.46.285 Licensing and regulation authority, exclusive. This chapter constitutes the exclusive legislative authority for the licensing and regulation of any gambling activity and the state preempts such licensing and regulatory functions, except as to the powers and duties of any city, town, city-county, or county which are specifically set forth in this chapter. Any ordinance, resolution, or other legislative act by any city, town, city-county, or county relating to gambling in existence on September 27, 1973 shall be as of that date null and void and of no effect. Any such city, town, city-county, or county may thereafter enact only such local law as is consistent with the powers and duties expressly granted to and imposed upon it by chapter 9.46 RCW and which is not in conflict with that chapter or with the rules of the commission. [1973 2nd ex.s. c 41 § 8.]

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9.46.291 State lottery exemption. The provisions of this chapter shall not apply to the conducting, operating, participating, or selling or purchasing of tickets or shares in the "lottery" or "state lottery" as defined in RCW 67.70.010 when such conducting, operating, participating, or selling or purchasing is in conformity to the provisions of chapter 67.70 RCW and to the rules adopted thereunder. [1982 2nd ex.s. c 7 § 39.]

Additional notes found at www.leg.wa.gov

9.46.293 Fishing derbies exempted. Any fishing derby, defined under RCW 9.46.0229, shall not be subject to any other provisions of this chapter or to any rules or regulations of the commission. [1989 c 8 § 1; 1975 1st ex.s. c 166 § 13.]

Additional notes found at www.leg.wa.gov

9.46.295 Licenses, scope of authority—Exception. (1) Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

(2)(a) A city or town with a prohibition on house-banked social card game licenses that annexes an area that is within a city, town, or county that permits house-banked social card games may allow a house-banked social card game business that was licensed by the commission as of July 26, 2009, to continue operating if the city or town is authorized to impose a tax under RCW 82.14.415 and can demonstrate that the continuation of the house-banked social card game business will reduce the credit against the state sales and use tax as provided in RCW 82.14.415(7).

(b) A city or town that allowed a house-banked social card game business in an annexed area to continue operating under (a) of this subsection before July 15, 2010, shall allow all social card game businesses in the annexed area that were operating and licensed by the commission as of January 1, 2011, to continue operating.

(c) A city or town that allows a social card game business in an annexed area to continue operating is not required to allow additional social card game businesses. [2011 c 134 § 1; 2009 c 550 § 2; 1974 ex.s. c 155 § 6; 1974 ex.s. c 135 § 6.]

Additional notes found at www.leg.wa.gov

9.46.300 Licenses and reports—Public inspection—Exceptions and requirements—Charges. All applications for licenses made to the commission, with the exception of any portions of the applications describing the arrest or conviction record of any person, and all reports required by the commission to be filed by its licensees on a periodic basis concerning the operation of the licensed activity or concerning any organization, association, or business in connection with which a licensed activity is operated, in the commission files, shall be open to public inspection at the commission's offices upon a prior written request of the commission. The

staff of the commission may decline to allow an inspection until such time as the inspection will not unduly interfere with the other duties of the staff. The commission may charge the person making a request for an inspection an amount necessary to offset the costs to the commission of providing the inspection and copies of any requested documents. [1977 ex.s. c 326 § 17.]

9.46.310 Licenses for manufacture, sale, distribution, or supply of gambling devices. No person shall manufacture, and no person shall sell, distribute, furnish or supply to any other person, any gambling device, including but not limited to punchboards and pull-tabs, in this state, or for use within this state, without first obtaining a license to do so from the commission under the provisions of this chapter.

Such licenses shall not be issued by the commission except respecting devices which are designed and permitted for use in connection with activities authorized under this chapter: PROVIDED, That this requirement for licensure shall apply only insofar as the commission has adopted, or may adopt, rules implementing it as to particular categories of gambling devices and related equipment. [1981 c 139 § 13.]

Additional notes found at www.leg.wa.gov

9.46.350 Civil action to collect fees, interest, penalties, or tax—Writ of attachment—Records as evidence. At any time within five years after any amount of fees, interest, penalties, or tax which is imposed pursuant to this chapter, or rules adopted pursuant thereto, shall become due and payable, the attorney general, on behalf of the commission, may bring a civil action in the courts of this state, or any other state, or of the United States, to collect the amount delinquent, together with penalties and interest: PROVIDED, That where the tax is one imposed by a county, city or town under RCW 9.46.110, any such action shall be brought by that county, city or town on its own behalf. An action may be brought whether or not the person owing the amount is at such time a licensee pursuant to the provisions of this chapter.

If such an action is brought in the courts of this state, a writ of attachment may be issued and no bond or affidavit prior to the issuance thereof shall be required. In all actions in this state, the records of the commission, or the appropriate county, city or town, shall be prima facie evidence of the determination of the tax due or the amount of the delinquency. [1981 c 139 § 16.]

Additional notes found at www.leg.wa.gov

9.46.360 Indian tribes—Compact negotiation process. (1) The negotiation process for compacts with federally recognized Indian tribes for conducting class III gaming, as defined in the Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2701 et seq., on federal Indian lands is governed by this section.

(2) The gambling commission through the director or the director's designee shall negotiate compacts for class III gaming on behalf of the state with federally recognized Indian tribes in the state of Washington.

(3) When a tentative agreement with an Indian tribe on a proposed compact is reached, the director shall immediately

transmit a copy of the proposed compact to all voting and ex officio members of the gambling commission and to the standing committees designated pursuant to subsection (5) of this section.

(4) Notwithstanding RCW 9.46.040, the four ex officio members of the gambling commission shall be deemed voting members of the gambling commission for the sole purpose of voting on proposed compacts submitted under this section.

(5) Within thirty days after receiving a proposed compact from the director, one standing committee from each house of the legislature shall hold a public hearing on the proposed compact and forward its respective comments to the gambling commission. The president of the senate shall designate the senate standing committee that is to carry out the duties of this section, and the speaker of the house of representatives shall designate the house standing committee that is to carry out the duties of this section. The designated committees shall continue to perform under this section until the president of the senate or the speaker of the house of representatives, as the case may be, designates a different standing committee.

(6) The gambling commission may hold public hearings on the proposed compact any time after receiving a copy of the compact from the director. Within forty-five days after receiving the proposed compact from the director, the gambling commission, including the four ex officio members, shall vote on whether to return the proposed compact to the director with instructions for further negotiation or to forward the proposed compact to the governor for review and final execution.

(7) Notwithstanding provisions in this section to the contrary, if the director forwards a proposed compact to the gambling commission and the designated standing committees within ten days before the beginning of a regular session of the legislature, or during a regular or special session of the legislature, the thirty-day time limit set forth in subsection (5) of this section and the forty-five day limit set forth in subsection (6) of this section are each forty-five days and sixty days, respectively.

(8) Funding for the negotiation process under this section must come from the gambling revolving fund.

(9) In addition to the powers granted under this chapter, the commission, consistent with the terms of any compact, is authorized and empowered to enforce the provisions of any compact between a federally recognized Indian tribe and the state of Washington. [1992 c 172 § 2.]

Additional notes found at www.leg.wa.gov

9.46.36001 Tribal actions—Federal jurisdiction. The state consents to the jurisdiction of the federal courts in actions brought by a tribe pursuant to the Indian gaming regulatory act of 1988 or seeking enforcement of a state/tribal compact adopted under the Indian gaming regulatory act, conditioned upon the tribe entering into such a compact and providing similar consent. This limited waiver of sovereign immunity shall not extend to actions other than those expressly set forth herein. [2007 c 321 § 1; 2001 c 236 § 1.]

9.46.400 Wildlife raffle. Any raffle authorized by the fish and wildlife commission involving hunting big game animals or wild turkeys shall not be subject to any provisions of this chapter other than RCW 9.46.010 and this section or to any rules or regulations of the gambling commission. [1996 c 101 § 3.]

Findings—1996 c 101: See note following RCW 77.32.530.

9.46.410 Use of public assistance electronic benefit cards prohibited—Licensee to report violations—Suspension of license. (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards for the purpose of participating in any of the activities authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580.

(3) Any licensee authorized under this chapter is required to comply with RCW 74.08.580(2). If the licensee fails to comply with RCW 74.08.580(2), its license shall be immediately suspended until it complies with RCW 74.08.580(2). If the licensee remains otherwise eligible to be licensed, the commission may reinstate the license once the licensee has complied with RCW 74.08.580(2). [2011 1st sp.s. c 42 § 19; 2002 c 252 § 2.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

9.46.420 RCW 9.46.410 to be negotiated with Indian tribes. The commission shall consider the provisions of RCW 9.46.410 as elements to be negotiated with federally recognized Indian tribes as provided in RCW 9.46.360. [2002 c 252 § 3.]

9.46.901 Intent—1987 c 4. The separation of definitions and authorized activities provisions of the state's gambling statutes into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the provisions involved. [1987 c 4 § 1.]

9.46.902 Construction—1987 c 4. This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections. [1987 c 4 § 48.]

9.46.903 Intent—1994 c 218. The legislature intends with chapter 218, Laws of 1994 to clarify the state's public policy on gambling regarding the frequency of state lottery drawings, the means of addressing problem and compulsive gambling, and the enforcement of the state's gambling laws. Chapter 218, Laws of 1994 is intended to clarify the specific types of games prohibited in chapter 9.46 RCW and is not intended to add to existing law regarding prohibited activities. The legislature recognizes that slot machines, video pull-tabs, video poker, and other electronic games of chance have been considered to be gambling devices before April 1, 1994. [1994 c 218 § 1.]

(2019 Ed.)

Additional notes found at www.leg.wa.gov

Chapter 9.47 RCW GAMBLING

Sections

9.47.080	Bucket shop defined.
9.47.090	Maintaining bucket shop—Penalty.
9.47.100	Written statement to be furnished—Presumption.
9.47.120	Bunco steering.

Action to recover

leased premises used for gambling: RCW 4.24.080.
money lost at gambling: RCW 4.24.070, 4.24.090.

Baseball, bribery and illegal practices: RCW 67.04.010, 67.04.020, 67.04.050.

Gaming apparatus, search and seizure: RCW 10.79.015.

Sporting contests, fraud: RCW 67.24.010.

9.47.080 Bucket shop defined. A bucket shop is hereby defined to be a shed, tent, tenement, booth, building, float or vessel, or any part thereof, wherein may be made contracts respecting the purchase or sale upon margin or credit of any commodities, securities, or property, or option for the purchase thereof, wherein both parties intend that such contract shall or may be terminated, closed and settled; either,

(1) Upon the basis of the market prices quoted or made on any board of trade or exchange upon which such commodities, securities, or property may be dealt in; or,

(2) When the market prices for such commodities, securities or property shall reach a certain figure in any such board of trade or exchange; or,

(3) On the basis of the difference in the market prices at which said commodities, securities or property are, or purport to be, bought and sold. [1909 c 249 § 223; RRS § 2475.]

Securities and investments: Title 21 RCW.

9.47.090 Maintaining bucket shop—Penalty. Every person, whether in his or her own behalf, or as agent, servant or employee of another person, within or outside of this state, who shall open, conduct or carry on any bucket shop, or make or offer to make any contract described in RCW 9.47.080, or with intent to make such a contract, or assist therein, shall receive, exhibit, or display any statement of market prices of any commodities, securities, or property, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years. [2003 c 53 § 36; 1992 c 7 § 13; 1909 c 249 § 224; RRS § 2476.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.47.100 Written statement to be furnished—Presumption. Every person, whether in his or her own behalf, or as the servant, agent, or employee of another person, within or outside of this state, who shall buy or sell for another, or execute any order for the purchase or sale of any commodities, securities, or property, upon margin or credit, whether for immediate or future delivery, shall, upon written demand therefor, furnish such principal or customer with a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, the place where, the amount of, and the price at which the same was either bought or sold; and

if such person shall refuse or neglect to furnish such statement within forty-eight hours after such written demand, such refusal shall be prima facie evidence as against him or her that such purchase or sale was made in violation of RCW 9.47.090. [2011 c 336 § 306; 1909 c 249 § 225; RRS § 2477.]

9.47.120 Bunco steering. Every person who shall entice, or induce another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice or device, is being conducted or operated; or while in such place shall entice or induce another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice, or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan any money or property, or representative of either, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 37; 1992 c 7 § 14; 1909 c 249 § 227; RRS § 2479.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Swindling: Chapter 9A.60 RCW.

Chapter 9.47A RCW INHALING TOXIC FUMES

Sections

9.47A.010	Definition.
9.47A.020	Unlawful inhalation—Exception.
9.47A.030	Possession of certain substances prohibited, when.
9.47A.040	Sale of certain substances prohibited, when.
9.47A.050	Penalty.

9.47A.010 Definition. As used in this chapter, the phrase "substance containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any substance containing one or more of the following chemical compounds:

- (1) Acetone;
- (2) Amylacetate;
- (3) Benzol or benzene;
- (4) Butyl acetate;
- (5) Butyl alcohol;
- (6) Carbon tetrachloride;
- (7) Chloroform;
- (8) Cyclohexanone;
- (9) Ethanol or ethyl alcohol;
- (10) Ethyl acetate;
- (11) Hexane;
- (12) Isopropanol or isopropyl alcohol;
- (13) Isopropyl acetate;
- (14) Methyl "cellosolve" acetate;
- (15) Methyl ethyl ketone;
- (16) Methyl isobutyl ketone;
- (17) Toluol or toluene;
- (18) Trichloroethylene;
- (19) Tricresyl phosphate;
- (20) Xylol or xylene; or

(21) Any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors. [1984 c 68 § 1; 1969 ex.s. c 149 § 1.]

9.47A.020 Unlawful inhalation—Exception. It is unlawful for any person to intentionally smell or inhale the fumes of any type of substance as defined in RCW 9.47A.010 or to induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes. This section does not apply to the inhalation of any anesthesia for medical or dental purposes. [1984 c 68 § 2; 1969 ex.s. c 149 § 2.]

9.47A.030 Possession of certain substances prohibited, when. No person may, for the purpose of violating RCW 9.47A.020, use, or possess for the purpose of so using, any substance containing a solvent having the property of releasing toxic vapors or fumes. [1984 c 68 § 3; 1969 ex.s. c 149 § 3.]

9.47A.040 Sale of certain substances prohibited, when. No person may sell, offer to sell, deliver, or give to any other person any container of a substance containing a solvent having the property of releasing toxic vapors or fumes, if he or she has knowledge that the product sold, offered for sale, delivered, or given will be used for the purpose set forth in RCW 9.47A.020. [2011 c 336 § 307; 1984 c 68 § 4; 1969 ex.s. c 149 § 4.]

9.47A.050 Penalty. Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or by both. [1969 ex.s. c 149 § 5.]

Chapter 9.51 RCW JURIES, CRIMES RELATING TO

Sections

9.51.010	Misconduct of officer drawing jury.
9.51.020	Soliciting jury duty.
9.51.030	Misconduct of officer in charge of jury.
9.51.040	Grand juror acting after challenge allowed.
9.51.050	Disclosing transaction of grand jury.
9.51.060	Disclosure of deposition returned by grand jury.

Grand juries: Chapter 10.27 RCW.

Juries: Chapter 2.36 RCW.

Juror asking or receiving bribe: RCW 9A.72.100.

Trial

*district courts: Chapter 12.12 RCW.
generally: Chapter 4.44 RCW.*

9.51.010 Misconduct of officer drawing jury. Every person charged by law with the preparation of any jury list or list of names from which any jury is to be drawn, and every person authorized by law to assist at the drawing of a grand or petit jury to attend a court or term of court or to try any cause or issue, who shall—

(1) Place in any such list any name at the request or solicitation, direct or indirect, of any person; or

(2) Designedly put upon the list of jurors, as having been drawn, any name which was not lawfully drawn for that purpose; or

(3) Designedly omit to place upon such list any name which was lawfully drawn; or

(4) Designedly sign or certify a list of such jurors as having been drawn which were not lawfully drawn; or

(5) Designedly and wrongfully withdraw from the box or other receptacle for the ballots containing the names of such jurors any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omit to place therein any name lawfully drawn or designated, or place therein a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or

(6) In drawing or impanelling such jury, do any act which is unfair, partial or improper in any respect;

Shall be guilty of a gross misdemeanor. [1909 c 249 § 75; Code 1881 § 922; 1854 p 94 § 107; RRS § 2327.]

9.51.020 Soliciting jury duty. Every person who shall, directly or indirectly, solicit or request any person charged with the duty of preparing any jury list to put his or her name, or the name of any other person, on any such list, shall be guilty of a gross misdemeanor. [2011 c 336 § 308; 1909 c 249 § 76; 1888 p 114 § 1; RRS § 2328.]

9.51.030 Misconduct of officer in charge of jury. Every person to whose charge a jury shall be committed by a court or magistrate, who shall knowingly, without leave of such court or magistrate, permit them or any one of them to receive any communication from any person, to make any communication to any person, to obtain or receive any book, paper or refreshment, or to leave the jury room, shall be guilty of a gross misdemeanor. [1909 c 249 § 77; RRS § 2329.]

9.51.040 Grand juror acting after challenge allowed. Every grand juror who, with knowledge that a challenge interposed against him or her by a defendant has been allowed, shall be present at, or take part, or attempt to take part, in the consideration of the charge against the defendant who interposed such challenge, or the deliberations of the grand jury thereon, shall be guilty of a misdemeanor. [2011 c 336 § 309; 1909 c 249 § 121; RRS § 2373.]

9.51.050 Disclosing transaction of grand jury. Every judge, grand juror, prosecuting attorney, clerk, stenographer, or other officer who, except in the due discharge of his or her official duty, shall disclose the fact that a presentment has been made or indictment found or ordered against any person, before such person shall be in custody; and every grand juror, clerk, or stenographer who, except when lawfully required by a court or officer, shall disclose any evidence adduced before the grand jury, or any proceeding, discussion, or vote of the grand jury or any member thereof, shall be guilty of a misdemeanor. [2011 c 336 § 310; 1909 c 249 § 126; Code 1881 § 991; 1854 p 111 § 56; RRS § 2378.]

(2019 Ed.)

9.51.060 Disclosure of deposition returned by grand jury. Every clerk of any court or other officer who shall willfully permit any deposition, or the transcript of any testimony, returned by a grand jury and filed with such clerk or officer, to be inspected by any person except the court, the deputies or assistants of such clerk, and the prosecuting attorney and his or her deputies, until after the arrest of the defendant, shall be guilty of a misdemeanor. [2011 c 336 § 311; 1909 c 249 § 127; RRS § 2379.]

Chapter 9.54 RCW STOLEN PROPERTY RESTORATION

Sections

9.54.130 Restoration of stolen property—Duty of officers.

Theft and robbery: Chapter 9A.56 RCW.

9.54.130 Restoration of stolen property—Duty of officers. The officer arresting any person charged as principal or accessory in any robbery or larceny shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his or her hands, and shall annex a schedule thereof to his or her return of the warrant.

Whenever the prosecuting attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his or her demand, shall deliver it to him or her and take his or her receipt therefor, after which such prosecuting attorney shall be answerable for the same. [2011 c 336 § 312; 1909 c 249 § 357; RRS § 2609.]

Chapter 9.55 RCW LEGISLATURE, CRIMES RELATING TO

Sections

9.55.020 Witness refusing to attend legislature or committee or to testify.

9.55.020 Witness refusing to attend legislature or committee or to testify. Every person duly summoned to attend as a witness before either house of the legislature of this state, or any committee thereof authorized to summon witnesses, who shall refuse or neglect, without lawful excuse, to attend pursuant to such summons, or who shall willfully refuse to be sworn or to affirm or to answer any material or proper question or to produce, upon reasonable notice, any material or proper books, papers or documents in his or her possession or under his or her control, shall be guilty of a gross misdemeanor. [2011 c 336 § 313; 1909 c 249 § 86; RRS § 2338.]

Candidate buying liquor for another person on election day: RCW 66.44.265.

Legislative inquiry: Chapter 44.16 RCW.

Chapter 9.61 RCW MALICIOUS MISCHIEF—INJURY TO PROPERTY

Sections

9.61.160 Threats to bomb or injure property—Penalty.

9.61.190 Carrier or racing pigeons—Injury to.

9.61.200 Carrier or racing pigeons—Removal or alteration of identification.

9.61.230	Telephone harassment.
9.61.240	Telephone harassment—Permitting telephone to be used.
9.61.250	Telephone harassment—Offense, where deemed committed.
9.61.260	Cyberstalking.

Endangering life by breach of labor contract: RCW 49.44.080.

Explosives, endangering life or property: RCW 70.74.270, 70.74.280, 70.74.310.

Insured property, injury or destruction: RCW 48.30.220.

Malicious mischief: RCW 9A.48.070 through 9A.48.100.

Mutilation or destruction of property by school official: RCW 28A.635.070.

Nuisance: Chapter 9.66 RCW.

Ownership of property—Proof of: RCW 10.58.060.

Public library property, intentional injury: RCW 27.12.330.

9.61.160 Threats to bomb or injure property—Penalty. (1) It shall be unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any governmental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated.

(2) It shall not be a defense to any prosecution under this section that the threatened bombing or injury was a hoax.

(3) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 38; 1977 ex.s. c 231 § 1; 1959 c 141 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Explosives, endangering life or property: RCW 70.74.270, 70.74.280, 70.74.310.

9.61.190 Carrier or racing pigeons—Injury to. It is a class 1 civil infraction for any person, other than the owner thereof or his or her authorized agent, to knowingly shoot, kill, maim, injure, molest, entrap, or detain any Antwerp Messenger or Racing Pigeon, commonly called "carrier or racing pigeons", having the name of its owner stamped upon its wing or tail or bearing upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon. [2011 c 336 § 314; 1987 c 456 § 25; 1963 c 69 § 1.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Additional notes found at www.leg.wa.gov

9.61.200 Carrier or racing pigeons—Removal or alteration of identification. It is a class 2 civil infraction for any person other than the owner thereof or his or her authorized agent to remove or alter any stamp, leg band, ring, or other mark of identification attached to any Antwerp Messenger or Racing Pigeon. [2011 c 336 § 315; 1987 c 456 § 26; 1963 c 69 § 2.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Additional notes found at www.leg.wa.gov

9.61.230 Telephone harassment. (1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household;

is guilty of a gross misdemeanor, except as provided in subsection (2) of this section.

(2) The person is guilty of a class C felony punishable according to chapter 9A.20 RCW if either of the following applies:

(a) That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state; or

(b) That person harasses another person under subsection (1)(c) of this section by threatening to kill the person threatened or any other person. [2003 c 53 § 39; 1992 c 186 § 6; 1985 c 288 § 11; 1967 c 16 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Communicating with child for immoral purposes: RCW 9.68A.090.

Interference with telephone message: RCW 9A.48.070, 9A.48.080.

Additional notes found at www.leg.wa.gov

9.61.240 Telephone harassment—Permitting telephone to be used. Any person who knowingly permits any telephone under his or her control to be used for any purpose prohibited by RCW 9.61.230 shall be guilty of a misdemeanor. [2011 c 336 § 316; 1967 c 16 § 2.]

9.61.250 Telephone harassment—Offense, where deemed committed. Any offense committed by use of a telephone as set forth in RCW 9.61.230 may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received. [1967 c 16 § 3.]

9.61.260 Cyberstalking. (1) A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:

(a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

(b) Anonymously or repeatedly whether or not conversation occurs; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

(2) Cyberstalking is a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Cyberstalking is a class C felony if either of the following applies:

(a) The perpetrator has previously been convicted of the crime of harassment, as defined in RCW 9A.46.060, with the

same victim or a member of the victim's family or household or any person specifically named in a no-contact order or no-harassment order in this or any other state; or

(b) The perpetrator engages in the behavior prohibited under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

(4) Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

(5) For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging. [2004 c 94 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 9.62 RCW

MALICIOUS PROSECUTION—ABUSE OF PROCESS

Sections

9.62.010	Malicious prosecution.
9.62.020	Instituting suit in name of another.

9.62.010 Malicious prosecution. Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years; and

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor. [2003 c 53 § 40; 1992 c 7 § 15; 1909 c 249 § 117; Code 1881 § 899; 1873 p 203 § 98; 1854 p 92 § 89; RRS § 2369.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.62.020 Instituting suit in name of another. Every person who shall institute or prosecute any action or other proceeding in the name of another, without his or her consent and contrary to law, shall be guilty of a gross misdemeanor. [2011 c 336 § 317; 1909 c 249 § 124; RRS § 2376.]

Chapter 9.66 RCW NUISANCE

Sections

9.66.010	Public nuisance.
9.66.020	Unequal damage.
9.66.030	Maintaining or permitting nuisance.
9.66.040	Abatement of nuisance.
9.66.050	Deposit of unwholesome substance.

Cemeteries established illegally: RCW 68.56.040.

Furnishing impure water: RCW 70.54.020.

Malicious mischief—Injury to property: Chapters 9.61, 9A.48 RCW.

Mausoleums and columbariums constructed illegally: RCW 68.28.060.

Nuisances: Chapter 7.48 RCW.

Poisoning food or water: RCW 69.40.030.

Sexually transmitted disease control, penalty: RCW 70.24.080.

(2019 Ed.)

9.66.010 Public nuisance. A public nuisance is a crime against the order and economy of the state. Every place

(1) Wherein any fighting between people or animals or birds shall be conducted; or,

(2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

(3) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

(1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

(2) Shall offend public decency; or,

(3) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley, highway, or municipal transit vehicle or station; or,

(4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance. [1994 c 45 § 3; 1971 ex.s. c 280 § 22; 1909 c 249 § 248; 1895 c 14 § 1; Code 1881 § 1246; RRS § 2500.]

Findings—Declaration—Severability—1994 c 45: See notes following RCW 7.48.140.

Boxing and wrestling regulated: Chapter 67.08 RCW.

Devices simulating traffic control signs declared public nuisance: RCW 47.36.180.

Highway obstructions: Chapter 47.32 RCW.

Navigation, obstructing: Chapter 88.28 RCW.

Parimutuel betting on horse races permitted: RCW 67.16.060.

Additional notes found at www.leg.wa.gov

9.66.020 Unequal damage. An act which affects a considerable number of persons in any of the ways specified in RCW 9.66.010 is not less a public nuisance because the extent of the damage is unequal. [1909 c 249 § 249; Code 1881 § 1236; 1875 p 79 § 2; RRS § 2501.]

9.66.030 Maintaining or permitting nuisance. Every person who shall commit or maintain a public nuisance, for which no special punishment is prescribed; or who shall wilfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and every person who shall let, or permit to be used, any building or boat, or portion thereof, knowing that it is intended to be, or is being used, for committing or maintaining any such nuisance, shall be guilty of a misdemeanor. [1909 c 249 § 250; Code 1881 § 1248; 1875 p 81 § 14; RRS § 2502.]

9.66.040 Abatement of nuisance. Any court or magistrate before whom there may be pending any proceeding for a violation of RCW 9.66.030, shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant: PROVIDED, That if the conviction was had in a district court, the district judge shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein. [1987 c 202 § 140;

1957 c 45 § 4; 1909 c 249 § 251; Code 1881 §§ 1244, 1245; 1875 p 80 §§ 10, 11; RRS § 2503.]

Intent—1987 c 202: See note following RCW 2.04.190.

Jurisdiction to abate a nuisance: State Constitution Art. 4 § 6 (Amendment 28).

9.66.050 Deposit of unwholesome substance. Every person who shall deposit, leave or keep, on or near a highway or route of public travel, on land or water, any unwholesome substance; or who shall establish, maintain or carry on, upon or near a highway or route of public travel, on land or water, any business, trade or manufacture which is noisome or detrimental to the public health; or who shall deposit or cast into any lake, creek or river, wholly or partly in this state, the offal from or the dead body of any animal, shall be guilty of a gross misdemeanor. [1909 c 249 § 285; RRS § 2537.]

Discharging ballast: RCW 88.28.060.

Disposal of dead animals: Chapter 16.68 RCW.

Water pollution: Chapter 35.88 RCW, RCW 70.54.010 through 70.54.030, chapter 90.48 RCW.

Chapter 9.68 RCW

OBSCENITY AND PORNOGRAPHY

Sections

9.68.015	Obscene literature, shows, etc.—Exemptions.
9.68.030	Indecent articles, etc.
9.68.050	"Erotic material"—Definitions.
9.68.060	"Erotic material"—Determination by court—Labeling—Penalties.
9.68.070	Prosecution for violation of RCW 9.68.060—Defense.
9.68.080	Unlawful acts.
9.68.090	Civil liability of wholesaler or wholesaler-distributor.
9.68.100	Exceptions to RCW 9.68.050 through 9.68.120.
9.68.110	Motion picture operator or projectionist exempt, when.
9.68.120	Provisions of RCW 9.68.050 through 9.68.120 exclusive.
9.68.130	"Sexually explicit material"—Defined—Unlawful display.
9.68.140	Promoting pornography—Class C felony—Penalties.
9.68.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Indictment or information, obscene literature: RCW 10.37.130.

Injunctions, obscene materials: Chapter 7.42 RCW.

Public indecency: Chapter 9A.88 RCW.

Telephone calls using obscene language: RCW 9.61.230 through 9.61.250.

9.68.015 Obscene literature, shows, etc.—Exemptions. Nothing in chapter 260, Laws of 1959 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1959 c 260 § 2.]

9.68.030 Indecent articles, etc. Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. [1971 ex.s. c 185 § 2; 1909 c 249 § 208; RRS § 2460.]

9.68.050 "Erotic material"—Definitions. For the purposes of RCW 9.68.050 through 9.68.120:

(1) "Minor" means any person under the age of eighteen years;

(2) "Erotic material" means printed material, photographs, pictures, motion pictures, sound recordings, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;

(3) "Person" means any individual, corporation, or other organization;

(4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, motion pictures, or sound recordings. [1992 c 5 § 1; 1969 ex.s. c 256 § 13.]

Reviser's note: As to the constitutionality of this section, see *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

Additional notes found at www.leg.wa.gov

9.68.060 "Erotic material"—Determination by court—Labeling—Penalties. (1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a state-

ment that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

(a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned for up to three hundred sixty-four days;

(c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year. [2011 c 96 § 8; 2003 c 53 § 41; 1992 c 5 § 2; 1969 ex.s. c 256 § 14.]

Reviser's note: As to the constitutionality of this section, see *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.68.070 Prosecution for violation of RCW 9.68.060—Defense. In any prosecution for violation of RCW 9.68.060, it shall be a defense that:

(1) If the violation pertains to a motion picture or sound recording, the minor was accompanied by a parent, parent's spouse, or guardian; or

(2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or

(3) Such minor was accompanied by a person who represented himself or herself to be a parent, or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation. [2011 c 336 § 318; 1992 c 5 § 4; 1969 ex.s. c 256 § 15.]

Reviser's note: As to the constitutionality of this section, see *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

Additional notes found at www.leg.wa.gov

9.68.080 Unlawful acts. (1) It shall be unlawful for any minor to misrepresent his or her true age or his or her true status as the child, stepchild, or ward of a person accompanying him or her, for the purpose of purchasing or obtaining access to any material described in RCW 9.68.050.

(2) It shall be unlawful for any person accompanying such minor to misrepresent his or her true status as parent, spouse of a parent, or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in RCW 9.68.050. [2011 c 336 § 319; 1969 ex.s. c 256 § 16.]

Additional notes found at www.leg.wa.gov

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9.68.090 Civil liability of wholesaler or wholesaler-distributor. No retailer, wholesaler, or exhibitor is to be deprived of service from a wholesaler or wholesaler-distributor of books, magazines, motion pictures, sound recordings, or other materials or subjected to loss of his or her franchise or right to deal or exhibit as a result of his or her attempts to comply with this statute. Any publisher, distributor, or other person, or combination of such persons, which withdraws or attempts to withdraw a franchise or other right to sell at retail, wholesale or exhibit materials on account of the retailer's, wholesaler's, or exhibitor's attempts to comply with RCW 9.68.050 through 9.68.120 shall incur civil liability to such retailer, wholesaler, or exhibitor for threefold the actual damages resulting from such withdrawal or attempted withdrawal. [2011 c 336 § 320; 1992 c 5 § 3; 1969 ex.s. c 256 § 17.]

Reviser's note: As to the constitutionality of this section, see *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

Additional notes found at www.leg.wa.gov

9.68.100 Exceptions to RCW 9.68.050 through 9.68.120. Nothing in RCW 9.68.050 through 9.68.120 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1969 ex.s. c 256 § 18.]

Additional notes found at www.leg.wa.gov

9.68.110 Motion picture operator or projectionist exempt, when. The provisions of RCW 9.68.050 through 9.68.120 shall not apply to acts done in the scope of his or her employment by a motion picture operator or projectionist employed by the owner or manager of a theatre or other place for the showing of motion pictures, unless the motion picture operator or projectionist has a financial interest in such theatre or place wherein he or she is so employed or unless he or she caused to be performed or exhibited such performance or motion picture without the knowledge and consent of the manager or owner of the theatre or other place of showing. [2011 c 336 § 321; 1969 ex.s. c 256 § 19.]

Additional notes found at www.leg.wa.gov

9.68.120 Provisions of RCW 9.68.050 through 9.68.120 exclusive. The provisions of RCW 9.68.050 through 9.68.120 shall be exclusive. [1969 ex.s. c 256 § 20.]

Additional notes found at www.leg.wa.gov

9.68.130 "Sexually explicit material"—Defined—Unlawful display. (1) A person is guilty of unlawful display of sexually explicit material if he or she knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.

(2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or

emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

(3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor. [2011 c 336 § 322; 1975 1st ex.s. c 156 § 1.]

9.68.140 Promoting pornography—Class C felony—Penalties. A person who, for profit-making purposes and with knowledge, sells, exhibits, displays, or produces any lewd matter as defined in RCW 7.48A.010 is guilty of promoting pornography. Promoting pornography is a class C felony and shall bear the punishment and fines prescribed for that class of felony. In imposing the criminal penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the felony. All fines assessed under this chapter shall be paid into the general treasury of the state. [1985 c 235 § 3; 1982 c 184 § 8.]

Class C felony—Authorized sentence: RCW 9A.20.020.

Additional notes found at www.leg.wa.gov

9.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 19.]

Chapter 9.68A RCW SEXUAL EXPLOITATION OF CHILDREN

Sections

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9.68A.001 Legislative findings, intent. The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

The legislature further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

The legislature further finds that due to the changing nature of technology, offenders are now able to access child pornography in different ways and in increasing quantities. By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of the legislature to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct. It is also the intent of the legislature to clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the legislature that the first degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or image unit of prosecution, while the second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009). Furthermore, it is the intent

of the legislature to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each separate session of intentionally viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.

The decisions of the Washington supreme court in *State v. Boyd*, 160 W.2d 424, 158 P.3d 54 (2007), and *State v. Grenning*, 169 Wn.2d 47, 234 P.3d 169 (2010), require prosecutors to duplicate and distribute depictions of a minor engaged in sexually explicit conduct ("child pornography") as part of the discovery process in a criminal prosecution. The legislature finds that the importance of protecting children from repeat exploitation in child pornography is not being given sufficient weight under these decisions. The importance of protecting children from repeat exploitation in child pornography is based upon the following findings:

(1) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited;

(2) The state has a compelling interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain;

(3) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse;

(4) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys;

(5) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense. The legislature is also aware that the Adam Walsh child protection and safety act, P.L. 109-248, 120 Stat. 587 (2006), codified at 18 U.S.C. Sec. 3509(m), prohibits the duplication and distribution of child pornography as part of the discovery process in federal prosecutions. This federal law has been in effect since 2006, and upheld repeatedly as constitutional. Courts interpreting the Walsh act have found that such limitations can be employed while still providing the defendant due process. The legislature joins congress, and the legislatures of other states that have passed similar provisions, in protecting these child victims so that our justice system does not cause repeat exploitation, while still providing due process to criminal defendants. [2012 c 135 § 1; 2010 c 227 § 1; 2007 c 368 § 1; 1984 c 262 § 1.]

9.68A.005 Chapter not applicable to lawful conduct between spouses. This chapter does not apply to lawful conduct between spouses. [2010 c 227 § 2.]

9.68A.011 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) An "internet session" means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.

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(2) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.

(3) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(4) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse;

(e) Defecation or urination for the purpose of sexual stimulation of the viewer;

(f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

(5) "Minor" means any person under eighteen years of age.

(6) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration. [2010 c 227 § 3; 2002 c 70 § 1; 1989 c 32 § 1; 1984 c 262 § 2.]

9.68A.040 Sexual exploitation of a minor—Elements of crime—Penalty. (1) A person is guilty of sexual exploitation of a minor if the person:

(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;

(b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is a class B felony punishable under chapter 9A.20 RCW. [1989 c 32 § 2; 1984 c 262 § 3.]

9.68A.050 Dealing in depictions of minor engaged in sexually explicit conduct. (1)(a) A person eighteen years of age or older commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person eighteen years of age or older commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of dealing in one or more depictions or images of visual or printed matter constitutes a separate offense. [2019 c 128 § 3; 2017 c 126 § 3; 2010 c 227 § 4; 1989 c 32 § 3; 1984 c 262 § 4.]

Short title—2019 c 128: See note following RCW 13.40.660.

9.68A.053 Sexually explicit images—Crimes by minors—Penalties. (1)(a)(i) A person under the age of eighteen commits the crime of a minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct in the first degree when he or she knowingly distributes, publishes, transfers, disseminates, or exchanges a visual or printed matter that depicts another minor thirteen years of age or older engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(ii) Minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct in the first degree is a gross misdemeanor.

(b)(i) A person under the age of eighteen commits the crime of a minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct in the second degree when he or she knowingly distributes, publishes, transfers, disseminates, or exchanges a visual or printed matter that depicts another minor thirteen years of age or older engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(ii) Minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct in the second degree is a misdemeanor.

(2)(a) A person under age eighteen commits the crime of minor dealing in depictions of another minor twelve years of age or younger engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts another minor twelve years of age or younger engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts another minor twelve years of age or younger engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Minor dealing in depictions of another minor twelve years of age or younger engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(3)(a) A person under age eighteen commits the crime of minor dealing in depictions of another minor twelve years of age or younger engaged in sexually explicit conduct in the second degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts another minor twelve years of age or younger engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts another minor twelve years of age or younger engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Minor dealing in depictions of a minor twelve years of age or younger engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(4)(a) Any person under the age of eighteen commits the crime of minor financing or selling depictions of another minor engaged in sexually explicit conduct when he or she finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(b) Minor financing or selling depictions of another minor engaged in sexually explicit conduct is a class B felony punishable under chapter 9A.20 RCW.

(5)(a) A person under the age of eighteen commits the crime of minor selling depictions of himself or herself engaged in sexually explicit conduct when he or she sells a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(b) Minor selling depictions of himself or herself engaged in sexually explicit conduct is a misdemeanor.

(6) This section does not apply to a person under eighteen years of age who finances, attempts to finance, develops, duplicates, publishes, prints, disseminates, exchanges, or possesses a visual or printed matter that depicts himself or herself engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4).

(7) For the purposes of determining the unit of prosecution under this section, each depiction or image of visual or printed matter constitutes a separate offense. [2019 c 128 § 4.]

Short title—2019 c 128: See note following RCW 13.40.660.

9.68A.055 Sexually explicit images—Forfeiture by minors. A minor who possesses any depiction or depictions of any other minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011 forfeits any right to continued possession of the depiction or depictions and any court exercising jurisdiction over such depiction or depictions shall order forfeiture of the depiction or depictions to the custody of law enforcement. [2019 c 128 § 9.]

Short title—2019 c 128: See note following RCW 13.40.660.

9.68A.060 Sending, bringing into state depictions of minor engaged in sexually explicit conduct. (1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense.

(3) This section does not apply to a minor who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting any minor thirteen years of age or older engaged in sexually explicit conduct.

(4) This section does not apply to a person under thirteen years of age who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for distribution, visual or printed matter depicting himself or herself engaged in sexually explicit conduct. [2019 c 128 § 5; 2017 c 126 § 4; 2010 c 227 § 5; 1989 c 32 § 4; 1984 c 262 § 5.]

Short title—2019 c 128: See note following RCW 13.40.660.

9.68A.070 Possession of depictions of minor engaged in sexually explicit conduct. (1)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sex-

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ually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) Except as provided in subsections (3) and (4) of this section, a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

(3) This section does not apply to a minor's possession of visual or printed matter depicting any minor thirteen years of age or older engaged in sexually explicit conduct.

(4) This section does not apply to a person under thirteen years of age in possession of visual or printed matter depicting himself or herself engaged in sexually explicit conduct. [2019 c 128 § 6; 2017 c 126 § 2; 2010 c 227 § 6; 2006 c 139 § 3; 1990 c 155 § 1; 1989 c 32 § 5; 1984 c 262 § 6.]

Short title—2019 c 128: See note following RCW 13.40.660.

Additional notes found at www.leg.wa.gov

9.68A.075 Viewing depictions of a minor engaged in sexually explicit conduct. (1) Except as provided in subsections (5) and (6) of this section, a person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a class B felony punishable under chapter 9A.20 RCW.

(2) Except as provided in subsections (5) and (6) of this section, a person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the second degree, a class C felony punishable under chapter 9A.20 RCW.

(3) For the purposes of determining whether a person intentionally viewed over the internet a visual or printed matter depicting a minor engaged in sexually explicit conduct in subsection (1) or (2) of this section, the trier of fact shall consider the title, text, and content of the visual or printed matter, as well as the internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, number of visual or printed matter depicting minors engaged in sexually explicit conduct, defendant's access to and control over the electronic device and its contents upon

which the visual or printed matter was found, or any other relevant evidence. The state must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

(4) For the purposes of this section, each separate internet session of intentionally viewing over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense.

(5) This section does not apply to a minor who intentionally views over the internet visual or printed matter depicting a minor thirteen years of age or older engaged in sexually explicit conduct.

(6) This section does not apply to a person under thirteen years of age who intentionally views over the internet visual or printed matter depicting himself or herself engaged in sexually explicit conduct. [2019 c 128 § 7; 2010 c 227 § 7.]

Short title—2019 c 128: See note following RCW 13.40.660.

9.68A.080 Reporting of depictions of minor engaged in sexually explicit conduct—Civil immunity. (1) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

(2) If, in the course of repairing, modifying, or maintaining a computer that has been submitted either privately or commercially for repair, modification, or maintenance, a person has reasonable cause to believe that the computer stores visual or printed matter that depicts a minor engaged in sexually explicit conduct, the person performing the repair, modification, or maintenance may report such incident, or cause a report to be made, to the proper law enforcement agency.

(3) A person who makes a report in good faith under this section is immune from civil liability resulting from the report. [2002 c 70 § 2; 1989 c 32 § 6; 1984 c 262 § 7.]

9.68A.090 Communication with minor for immoral purposes—Penalties. (1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.

(3) For the purposes of this section, "electronic communication" has the same meaning as defined in RCW 9.61.260. [2013 c 302 § 1; 2006 c 139 § 1. Prior: 2003 c 53 § 42; 2003 c 26 § 1; 1989 c 32 § 7; 1986 c 319 § 2; 1984 c 262 § 8.]

Effective date—2013 c 302: "This act takes effect August 1, 2013." [2013 c 302 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.68A.100 Commercial sexual abuse of a minor—Penalties—Consent of minor does not constitute defense.

(1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.

(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2017 c 231 § 3; 2013 c 302 § 2; 2010 c 289 § 13; 2007 c 368 § 2; 1999 c 327 § 4; 1989 c 32 § 8; 1984 c 262 § 9.]

Finding—2017 c 231: See note following RCW 9A.04.080.

Effective date—2013 c 302: See note following RCW 9.68A.090.

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Additional requirements: RCW 9A.88.130.

Vehicle impoundment: RCW 9A.88.140.

9.68A.101 Promoting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense.

(1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(2) Promoting commercial sexual abuse of a minor is a class A felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which anything of value is given or received.

(e) A "patron" is a person who provides or agrees to provide anything of value to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2017 c 231 § 4; 2013 c 302 § 3; 2012 c 144 § 1; 2010 c 289 § 14; 2007 c 368 § 4.]

Finding—2017 c 231: See note following RCW 9A.04.080.

Effective date—2013 c 302: See note following RCW 9.68A.090.

9.68A.102 Promoting travel for commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.

(2) Promoting travel for commercial sexual abuse of a minor is a class C felony.

(3) Consent of a minor to the travel for commercial sexual abuse, or the sexually explicit act or sexual conduct itself, does not constitute a defense to any offense listed in this section.

(4) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021. [2013 c 302 § 4; 2007 c 368 § 5.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

9.68A.103 Permitting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

(2019 Ed.)

(2) Permitting commercial sexual abuse of a minor is a gross misdemeanor.

(3) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section. [2013 c 302 § 5; 2007 c 368 § 7.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

9.68A.105 Additional fee assessment. (1)(a) In addition to penalties set forth in RCW 9.68A.100, 9.68A.101, and 9.68A.102, an adult offender who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance shall be assessed a five thousand dollar fee.

(b) The court may not reduce, waive, or suspend payment of all or part of the fee assessed unless it finds, on the record, that the adult offender does not have the ability to pay in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(2) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(a) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services for victims, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(b) Two percent of the revenue from fees imposed under this section shall be remitted quarterly to the department of commerce, together with a report detailing the fees assessed, the revenue received, and how that revenue was spent.

(c) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(3) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. [2015 c 265 § 13; 2013 c 121 § 4; 2012 c 134 § 4; 2010 c 289 § 15; 2007 c 368 § 11; 1995 c 353 § 12.]

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Intent—Finding—2013 c 121: See note following RCW 43.280.091.

9.68A.106 Additional fee assessment—Internet advertisement. (1) In addition to all other penalties under this chapter, an adult offender convicted of an offense under RCW 9.68A.100, 9.68A.101, or 9.68A.102 shall be assessed an additional fee of five thousand dollars per offense when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime.

(2) For purposes of this section, an "internet advertisement" means a statement in electronic media that would be understood by a reasonable person to be an implicit or explicit offer for sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, in exchange for something of value.

(3) Amounts collected as penalties under this section shall be deposited in the account established under RCW 43.63A.740. [2015 c 265 § 14; 2013 c 9 § 1.]

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

9.68A.107 Additional fee assessment—Depiction or image of visual or printed matter. (1) In addition to penalties set forth in RCW 9.68A.070, a person who is convicted of violating RCW 9.68A.070 shall be assessed a fee of one thousand dollars for each depiction or image of visual or printed matter that constitutes a separate conviction.

(2) Fees assessed under this section shall be collected by the clerk of the court and remitted to the state treasurer for deposit into the child rescue fund created in RCW 9.68A.200. [2015 c 279 § 2.]

Findings—2015 c 279: "The legislature finds that sexual abuse and exploitation of children robs victims of their childhood and irrevocably interferes with their emotional and psychological development. Victims of child pornography often experience severe and lasting harm from the permanent memorialization of the crimes committed against them. Child victims endure depression, withdrawal, anger, and other psychological disorders. Victims also experience feelings of guilt and responsibility for the sexual abuse as well as feelings of betrayal, powerlessness, worthlessness, and low self-esteem. Each and every time such an image is viewed, traded, printed, or downloaded, the child in that image is victimized again.

The legislature finds that the expansion of the internet and computer-related technologies have led to a dramatic increase in the availability of child pornography by simplifying how it can be created, distributed, and collected. Investigators and prosecutors report dramatic increases in the number and violent character of the sexually abusive images of children being trafficked through the internet. Between 2005 and 2009, the national center for missing and exploited children's child victim identification program has seen a four hundred thirty-two percent increase in child pornography films and files submitted for identification of the children depicted. The United States department of justice estimates that pornographers have recorded the abuse of more than one million children in the United States alone. Furthermore, a well-known study conducted by crimes against children research center for the national center for missing and exploited children concluded that an estimated forty percent of those who possess child pornography have also directly victimized a child and fifteen percent have attempted to entice a child over the internet.

The legislature finds that due to a lack of dedicated resources, only two percent of known child exploitation offenders are being investigated. The legislature finds that additional funding sources are needed to ensure that law enforcement agencies can adequately investigate and prosecute offenders and victims can receive necessary services, including mental health treatment. Finally, the legislature finds that offenders convicted of crimes relating to child pornography should bear the high cost of investigations and prosecutions of these crimes and also the cost of providing services to victims." [2015 c 279 § 1.]

9.68A.110 Certain defenses barred, permitted. (1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement

and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100 through 9.68A.102, except for the purpose of facilitating an investigation where the minor is also the alleged victim and the:

(a) Investigation is authorized pursuant to RCW 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or

(b) Minor's aid in the investigation involves only telephone or electronic communication with the defendant.

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.100, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW. Nothing in chapter 227, Laws of 2010 is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

(6) In a prosecution under RCW 9.68A.070 or 9.68A.075, it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:

(i) He or she was engaged in a research activity;

(ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher education; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or

(b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:

(i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;

(ii) The research is directly related to a legislative activity; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.

(7) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct. [2011 c 241 § 4. Prior: 2010 c 289 § 17; 2010 c 227 § 8; 2007 c 368 § 3; 1992 c 178 § 1; 1989 c 32 § 9; 1986 c 319 § 3; 1984 c 262 § 10.]

Findings—Effective date—2011 c 241: See notes following RCW 9.73.230.

Additional notes found at www.leg.wa.gov

9.68A.120 Seizure and forfeiture of property. The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to

that agency for the exclusive use of enforcing this chapter or chapter 9A.88 RCW;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law.

(10)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the prostitution prevention and intervention account under RCW 43.63A.740.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to an independent selling agency.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure determined when possible by reference to an applicable commonly used index. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(11) Forfeited property and net proceeds not required to be paid to the state treasurer under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Money remaining after payment of these expenses shall be retained by the seizing law enforcement agency for the exclusive use of enforcing the provisions of this chapter or chapter 9A.88 RCW. [2014 c 188 § 3; 2009 c 479 § 12; 1999 c 143 § 8; 1984 c 262 § 11.]

Effective date—2009 c 479: See note following RCW 2.56.030.

9.68A.130 Recovery of costs of suit by minor. A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees. [1984 c 262 § 12.]

9.68A.150 Allowing minor on premises of live erotic performance—Definitions—Penalty. (1) No person may knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing matter which is erotic material.

(2) Any person who is convicted of violating this section is guilty of a gross misdemeanor.

(3) For the purposes of this section:

(a) "Minor" means any person under the age of eighteen years.

(b) "Erotic materials" means live performance:

(i) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors; and

(ii) Which explicitly depicts or describes patently offensive representations or descriptions of sexually explicit conduct as defined in RCW 9.68A.011; and

(iii) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value for minors.

(c) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to, or before an audience of one or more, with or without consideration.

(d) "Person" means any individual, partnership, firm, association, corporation, or other legal entity. [2003 c 53 § 43; 1987 c 396 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.68A.170 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Restrictions on access. (1) In any criminal proceeding, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct shall remain in the care, custody, and control of either a law enforcement agency or the court.

(2) Despite any request by the defendant or prosecution, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct shall not be copied, photographed, duplicated, or otherwise reproduced, so long as the property or material is made reasonably available to the parties. Such property or material shall be deemed to be reasonably available to the parties if the prosecution, defense counsel, or any individual sought to be qualified to furnish expert testimony at trial has ample opportunity for inspection, viewing, and examination of the property or material at a law enforcement facility or a neutral facility approved by the court upon petition by the defense.

(3) The defendant may view and examine the property and materials only while in the presence of his or her attorney. If the defendant is proceeding pro se, the court will appoint an individual to supervise the defendant while he or she examines the materials.

(4) The court may direct that a mirror image of a computer hard drive containing such depictions be produced for use by an expert only upon a showing that an expert has been retained and is prepared to conduct a forensic examination while the mirror imaged hard drive remains in the care, custody, and control of a law enforcement agency or the court. Upon a substantial showing that the expert's analysis cannot be accomplished while the mirror imaged hard drive is kept within the care, custody, and control of a law enforcement agency or the court, the court may order its release to the expert for analysis for a limited time. If release is granted, the court shall issue a protective order setting forth such terms and conditions as are necessary to protect the rights of the victims, to document the chain of custody, and to protect physical evidence. [2012 c 135 § 2.]

9.68A.180 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Sealing, storage, destruction of exhibits. (1) Whenever a depiction of a minor engaged in sexually explicit conduct, regardless of its format, is marked as an exhibit in a criminal proceeding, the prosecutor shall seek an order sealing the exhibit at the close of the trial. Any exhibits sealed under this section shall be sealed with evidence tape in a manner that prevents access to, or viewing of, the depiction of a minor engaged in sexually explicit conduct and shall be labeled so as to identify its contents. Anyone seeking to view such an exhibit must obtain permission from the superior court after providing at least ten days notice to the prosecuting attorney. Appellate attorneys for the defendant and the state shall be given access to the exhibit, which must remain in the care and custody of either a law enforcement agency or the court. Any other person moving to view such an exhibit must demonstrate to the court that his or her reason for viewing the exhibit is of sufficient importance to justify another violation of the victim's privacy.

(2) Whenever the clerk of the court receives an exhibit of a depiction of a minor engaged in sexually explicit conduct, he or she shall store the exhibit in a secure location, such as a safe. The clerk may arrange for the transfer of such exhibits to a law enforcement agency evidence room for safekeeping provided the agency agrees not to destroy or dispose of the exhibits without an order of the court.

(3) If the criminal proceeding ends in a conviction, the clerk of the court shall destroy any exhibit containing a depiction of a minor engaged in sexually explicit conduct five years after the judgment is final, as determined by the provisions of RCW 10.73.090(3). Before any destruction, the clerk shall contact the prosecuting attorney and verify that there is no collateral attack on the judgment pending in any court. If the criminal proceeding ends in a mistrial, the clerk shall either maintain the exhibit or return it to the law enforcement agency that investigated the criminal charges for safekeeping until the matter is set for retrial. If the criminal proceeding ends in an acquittal, the clerk shall return the exhibit to the law enforcement agency that investigated the criminal charges for either safekeeping or destruction. [2012 c 135 § 3.]

9.68A.190 Criminal proceedings—Depictions of minors engaged in sexually explicit conduct—Depictions distributed to defense counsel or expert witnesses prior to June 7, 2012—Distribution of depictions under color of law not a defense. Any depiction of a minor engaged in sexually explicit conduct, in any format, distributed as discovery to defense counsel or an expert witness prior to June 7, 2012, shall either be returned to the law enforcement agency that investigated the criminal charges or destroyed, if the case is no longer pending in superior court. If the case is still pending, the depiction shall be returned to the superior court judge assigned to the case or the presiding judge. The court shall order either the destruction of the depiction or the safekeeping of the depiction if it will be used at trial.

It is not a defense to violations of this chapter for crimes committed after December 31, 2012, that the initial receipt of the depictions was done under the color of law through the discovery process. [2012 c 135 § 4.]

(2019 Ed.)

9.68A.200 Child rescue fund. (1) The child rescue fund is created in the custody of the state treasurer. All receipts from fees collected under RCW 9.68A.107 must be deposited into the fund.

(2) Only the attorney general for the state of Washington or the attorney general's designee may authorize expenditures from the fund.

(3) The attorney general or his or her designee must make any expenditures from the fund according to the following schedule:

(a) Twenty-five percent of receipts for grants to child advocacy centers, as defined in RCW 26.44.020; and

(b) Seventy-five percent of receipts for grants to the Washington internet crimes against children task force for use in investigations and prosecutions of crimes against children.

(4) The fund is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2015 c 279 § 3.]

Findings—2015 c 279: See note following RCW 9.68A.107.

9.68A.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 20.]

Chapter 9.69 RCW DUTY OF WITNESSES

Sections

9.69.100 Duty of witness of offense against child or any violent offense—Penalty.

Labor and industries officer, disobeying subpoena to appear before: RCW 43.22.300.

Legislative hearings, failure to obey subpoena or testify: RCW 44.16.120 through 44.16.150.

Obstructing governmental operation: Chapter 9A.76 RCW.

Wills, fraudulently failing to deliver: RCW 11.20.010.

9.69.100 Duty of witness of offense against child or any violent offense—Penalty. (1) A person who witnesses the actual commission of:

(a) A violent offense as defined in RCW 9.94A.030 or preparations for the commission of such an offense;

(b) A sexual offense against a child or an attempt to commit such a sexual offense; or

(c) An assault of a child that appears reasonably likely to cause substantial bodily harm to the child,

shall as soon as reasonably possible notify the prosecuting attorney, law enforcement, medical assistance, or other public officials.

(2) This section shall not be construed to affect privileged relationships as provided by law.

(3) The duty to notify a person or agency under this section is met if a person notifies or attempts to provide such notice by telephone or any other means as soon as reasonably possible.

(4) Failure to report as required by subsection (1) of this section is a gross misdemeanor. However, a person is not required to report under this section where that person has a reasonable belief that making such a report would place that person or another family or household member in danger of immediate physical harm. [1987 c 503 § 18; 1985 c 443 § 21; 1970 ex.s. c 49 § 8.]

Abuse of children: Chapter 26.44 RCW.

Additional notes found at www.leg.wa.gov

Chapter 9.72 RCW PERJURY

Sections

9.72.090 Committal of witness—Detention of documents.

Banks and trust companies

false swearing in bank or trust company examinations: RCW 30A.04.060.
knowingly subscribing to false statement: RCW 30A.12.090.

Elections

falsification by voter: Chapter 29A.84 RCW.
initiative and referendum petition signer, false statement: RCW 29A.84.230.
recall petition signer, false statement: RCW 29A.84.240.
voting by mail, falsification of qualifications: RCW 29A.84.680.

Land registration falsification: RCW 65.12.740.

Marriage affidavit falsification: RCW 26.04.210.

Perjury and interference with official proceedings: Chapter 9A.72 RCW.

Public assistance, falsification of application: RCW 74.08.055.

Sufficiency of indictment or information charging perjury: RCW 10.37.140.

Taxation, false property listing: RCW 84.40.120.

9.72.090 Committal of witness—Detention of documents. Whenever it shall appear probable to a judge, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before such judge, magistrate, or officer has committed perjury in any testimony so given, or offered any false evidence, he or she may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for such person's appearance to answer such charge. In such case such judge, magistrate, or officer may detain any book, paper, document, record or other instrument produced before him or her or direct it to be delivered to the prosecuting attorney. [1987 c 202 § 141; 1909 c 249 § 107; RRS § 2359.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 9.73 RCW PRIVACY, VIOLATING RIGHT OF

Sections

9.73.010 Divulging telegram.

[Title 9 RCW—page 100]

9.73.020	Opening sealed letter.
9.73.030	Intercepting, recording, or divulging private communication—Consent required—Exceptions.
9.73.040	Intercepting private communication—Court order permitting interception—Grounds for issuance—Duration—Renewal.
9.73.050	Admissibility of intercepted communication in evidence.
9.73.060	Violating right of privacy—Civil action—Liability for damages.
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9.73.095	Intercepting, recording, or divulging offender conversations—Conditions—Notice.
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9.73.110	Intercepting, recording, or disclosing private communications—Not unlawful for building owner—Conditions.
9.73.120	Reports—Required, when, contents.
9.73.130	Recording private communications—Authorization—Application for, contents.
9.73.140	Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders.
9.73.200	Intercepting, transmitting, or recording conversations concerning controlled substances—Findings.
9.73.210	Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Authorization—Monthly report—Admissibility—Destruction of information.
9.73.220	Judicial authorizations—Availability of judge required.
9.73.230	Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties.
9.73.240	Intercepting, transmitting, or recording conversations concerning controlled substances—Concurrent power of attorney general to investigate and prosecute.
9.73.260	Pen registers, trap and trace devices, cell site simulator devices.
9.73.270	Collecting, using electronic data or metadata—Cell site simulator devices—Requirements.

9.73.010 Divulging telegram. Every person who shall wrongfully obtain or attempt to obtain, any knowledge of a telegraphic message, by connivance with the clerk, operator, messenger, or other employee of a telegraph company, and every clerk, operator, messenger, or other employee of such company who shall willfully divulge to any but the person for whom it was intended, any telegraphic message or dispatch intrusted to him or her for transmission or delivery, or the nature or contents thereof, or shall willfully refuse, neglect, or delay duly to transmit or deliver the same, shall be guilty of a misdemeanor. [2011 c 336 § 323; 1909 c 249 § 410; Code 1881 § 2342; RRS § 2662.]

Intercepting, delaying telegram: RCW 9A.48.070, 9A.48.080.

9.73.020 Opening sealed letter. Every person who shall wilfully open or read, or cause to be opened or read, any sealed message, letter or telegram intended for another person, or publish the whole or any portion of such a message, letter or telegram, knowing it to have been opened or read without authority, shall be guilty of a misdemeanor. [1909 c 249 § 411; RRS § 2663.]

9.73.030 Intercepting, recording, or divulging private communication—Consent required—Exceptions. (1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:

(a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(2) Notwithstanding subsection (1) of this section, wire communications or conversations (a) of an emergency nature, such as the reporting of a fire, medical emergency, crime, or disaster, or (b) which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands, or (c) which occur anonymously or repeatedly or at an extremely inconvenient hour, or (d) which relate to communications by a hostage holder or barricaded person as defined in RCW 70.85.100, whether or not conversation ensues, may be recorded with the consent of one party to the conversation.

(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.

(4) An employee of any regularly published newspaper, magazine, wire service, radio station, or television station acting in the course of bona fide news gathering duties on a full-time or contractual or part-time basis, shall be deemed to have consent to record and divulge communications or conversations otherwise prohibited by this chapter if the consent is expressly given or if the recording or transmitting device is readily apparent or obvious to the speakers. Withdrawal of the consent after the communication has been made shall not prohibit any such employee of a newspaper, magazine, wire service, or radio or television station from divulging the communication or conversation. [1986 c 38 § 1; 1985 c 260 § 2; 1977 ex.s. c 363 § 1; 1967 ex.s. c 93 § 1.]

Reviser's note: This section was amended by 1985 c 260 § 2 and by 1986 c 38 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

9.73.040 Intercepting private communication—Court order permitting interception—Grounds for issuance—Duration—Renewal. (1) An ex parte order for the interception of any communication or conversation listed in RCW 9.73.030 may be issued by any superior court judge in the state upon verified application of either the state attorney general or any county prosecuting attorney setting forth fully facts and circumstances upon which the application is based and stating that:

(a) There are reasonable grounds to believe that national security is endangered, that a human life is in danger, that

arson is about to be committed, or that a riot is about to be committed, and

(b) There are reasonable grounds to believe that evidence will be obtained essential to the protection of national security, the preservation of human life, or the prevention of arson or a riot, and

(c) There are no other means readily available for obtaining such information.

(2) Where statements are solely upon the information and belief of the applicant, the grounds for the belief must be given.

(3) The applicant must state whether any prior application has been made to obtain such communications on the same instrument or for the same person and if such prior application exists the applicant shall disclose the current status thereof.

(4) The application and any order issued under RCW 9.73.030 through 9.73.080 shall identify as fully as possible the particular equipment, lines or location from which the information is to be obtained and the purpose thereof.

(5) The court may examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(6) Orders issued under this section shall be effective for fifteen days, after which period the court which issued the order may upon application of the officer who secured the original order renew or continue the order for an additional period not to exceed fifteen days.

(7) No order issued under this section shall authorize or purport to authorize any activity which would violate any laws of the United States. [1967 ex.s. c 93 § 2.]

Additional notes found at www.leg.wa.gov

9.73.050 Admissibility of intercepted communication in evidence. Any information obtained in violation of RCW 9.73.030 or pursuant to any order issued under the provisions of RCW 9.73.040 shall be inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except with the permission of the person whose rights have been violated in an action brought for damages under the provisions of RCW 9.73.030 through 9.73.080, or in a criminal action in which the defendant is charged with a crime, the commission of which would jeopardize national security. [1967 ex.s. c 93 § 3.]

Additional notes found at www.leg.wa.gov

9.73.060 Violating right of privacy—Civil action—Liability for damages. Any person who, directly or by means of a detective agency or any other agent, violates the provisions of this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his or her business, his or her person, or his or her reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by him or her on account of violation of the provisions of this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed one thousand dollars, and a reasonable attorney's fee and other costs of litigation. [2011 c 336 § 324; 1977 ex.s. c 363 § 2; 1967 ex.s. c 93 § 4.]

Additional notes found at www.leg.wa.gov

9.73.070 Persons and activities excepted from chapter. (1) The provisions of this chapter shall not apply to any activity in connection with services provided by a common carrier pursuant to its tariffs on file with the Washington utilities and transportation commission or the Federal Communication Commission and any activity of any officer, agent or employee of a common carrier who performs any act otherwise prohibited by this law in the construction, maintenance, repair and operations of the common carrier's communications services, facilities, or equipment or incident to the use of such services, facilities or equipment. Common carrier as used in this section means any person engaged as a common carrier or public service company for hire in intrastate, interstate or foreign communication by wire or radio or in intrastate, interstate or foreign radio transmission of energy.

(2) The provisions of this chapter shall not apply to:

(a) Any common carrier automatic number, caller, or location identification service that has been approved by the Washington utilities and transportation commission; or

(b) A 911 or enhanced 911 emergency service as defined in RCW 82.14B.020, for purposes of aiding public health or public safety agencies to respond to calls placed for emergency assistance. [1994 c 49 § 1. Prior: 1991 c 329 § 8; 1991 c 312 § 1; 1967 ex.s. c 93 § 5.]

Additional notes found at www.leg.wa.gov

9.73.080 Penalties. (1) Except as otherwise provided in this chapter, any person who violates RCW 9.73.030 is guilty of a gross misdemeanor.

(2) Any person who knowingly alters, erases, or wrongfully discloses any recording in violation of RCW 9.73.090(1)(c) is guilty of a gross misdemeanor. [2000 c 195 § 3; 1989 c 271 § 209; 1967 ex.s. c 93 § 6.]

Intent—2000 c 195: See note following RCW 9.73.090.

Additional notes found at www.leg.wa.gov

9.73.090 Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility. (1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:

(a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him or her shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his or her constitutional rights, and such statements informing him or her shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities;

(c) Sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles. All law enforcement officers wearing a sound recording device that makes recordings corresponding to videos recorded by video cameras mounted in law enforcement vehicles must be in uniform. A sound recording device that makes a recording pursuant to this subsection (1)(c) must be operated simultaneously with the video camera when the operating system has been activated for an event. No sound recording device may be intentionally turned off by the law enforcement officer during the recording of an event. Once the event has been captured, the officer may turn off the audio recording and place the system back into "pre-event" mode.

No sound or video recording made under this subsection (1)(c) may be duplicated and made available to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the event or events which were recorded. Such sound recordings shall not be divulged or used by any law enforcement agency for any commercial purpose.

A law enforcement officer shall inform any person being recorded by sound under this subsection (1)(c) that a sound recording is being made and the statement so informing the person shall be included in the sound recording, except that the law enforcement officer is not required to inform the person being recorded if the person is being recorded under exigent circumstances. A law enforcement officer is not required to inform a person being recorded by video under this subsection (1)(c) that the person is being recorded by video.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may renew or continue the authorization for additional periods not to exceed seven days.

(5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization.

Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days. [2011 c 336 § 325; 2006 c 38 § 1; 2000 c 195 § 2; 1989 c 271 § 205; 1986 c 38 § 2; 1977 ex.s. c 363 § 3; 1970 ex.s. c 48 § 1.]

Intent—2000 c 195: "The legislature intends, by the enactment of this act, to provide a very limited exception to the restrictions on disclosure of intercepted communications." [2000 c 195 § 1.]

Additional notes found at www.leg.wa.gov

9.73.095 Intercepting, recording, or divulging offender conversations—Conditions—Notice. (1) RCW 9.73.030 through 9.73.080 and 9.73.260 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an offender or resident of a state correctional facility; or intercepting, recording, or divulging any monitored nontelephonic conversations in offender living units, cells, rooms, dormitories, and common spaces where offenders may be present. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2)(a) All personal calls made by offenders shall be made using a calling system approved by the secretary of corrections which is at least as secure as the system it replaces. In approving one or more calling systems, the secretary of corrections shall consider the safety of the public, the ability to reduce telephone fraud, and the ability of offender families to select a low-cost option.

(b) The calls shall be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison offender, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an offender or resident of a state correctional facility as provided for by this section. The department shall also adhere to the following procedures and restrictions when intercepting, recording, or divulging any monitored nontelephonic conversations in offender living units, cells, rooms, dormitories, and common spaces where offenders may be present:

(a) Unless otherwise provided for in this section, after intercepting or recording any conversation, only the superintendent and his or her designee shall have access to that recording.

(b) The contents of any intercepted and recorded conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(c) All conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an offender or resident and an attorney. The department shall develop policies and procedures to implement this section. The department's policies and procedures implemented under this section shall also recognize the privileged nature of confessions made by an offender to a member of the clergy or a priest in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs as provided in RCW 5.60.060(3).

(5) The department shall notify in writing all offenders, residents, and personnel of state correctional facilities that their nontelephonic conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section.

(6) The department shall notify all visitors to state correctional facilities who may enter offender living units, cells, rooms, dormitories, or common spaces where offenders may be present, that their conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section. The notice required under this subsection shall be accomplished through a means no less conspicuous than a general posting in a location likely to be seen by visitors entering the facility. [2004 c 13 § 2; 1998 c 217 § 2; 1996 c 197 § 1; 1989 c 271 § 210.]

Findings—Intent—2004 c 13: "The legislature finds that the current telephone service for offender calls from department of corrections facilities is based on outdated technology that provides neither the most secure nor the most accountable system available and is provided at a high cost to the offenders' families. The legislature, in budget provisions, has required the secretary of corrections to investigate other systems as offender telephone service contracts came due for renewal. The legislature now finds that the current statute prevents the secretary of corrections from using systems that provide greater security, more offender accountability, and lower costs.

Therefore, the legislature intends to remove this barrier while retaining the intent of the statute to provide safe, accountable, and affordable telephone services." [2004 c 13 § 1.]

Local government reimbursement claims: RCW 4.92.280.

Additional notes found at www.leg.wa.gov

9.73.100 Recordings available to defense counsel.

Video and/or sound recordings obtained by police personnel under the authority of RCW 9.73.090 and 9.73.100 shall be made available for hearing and/or viewing by defense counsel at the request of defense counsel whenever a criminal charge has been filed against the subject of the video and/or sound recordings. [1970 ex.s. c 48 § 2.]

Additional notes found at www.leg.wa.gov

9.73.110 Intercepting, recording, or disclosing private communications—Not unlawful for building owner—Conditions. It shall not be unlawful for the owner or person entitled to use and possession of a building, as defined in RCW 9A.04.110(5), or the agent of such person, to intercept, record, or disclose communications or conversations which occur within such building if the persons engaged in such communication or conversation are engaged in a criminal act at the time of such communication or conversation by virtue of unlawful entry or remaining unlawfully in such building. [1977 ex.s. c 363 § 4.]

9.73.120 Reports—Required, when, contents. (1) Within thirty days after the expiration of an authorization or an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as now or hereafter amended, the issuing or denying judge shall make a report to the administrator for the courts stating that:

- (a) An authorization, extension or renewal was applied for;
- (b) The kind of authorization applied for;
- (c) The authorization was granted as applied for, was modified, or was denied;
- (d) The period of recording authorized by the authorization and the number and duration of any extensions or renewals of the authorization;
- (e) The offense specified in the authorization or extension or renewal of authorization;
- (f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made;
- (g) Whether an arrest resulted from the communication which was the subject of the authorization; and
- (h) The character of the facilities from which or the place where the communications were to be recorded.

(2) In addition to reports required to be made by applicants pursuant to federal law, all judges of the superior court authorized to issue authority pursuant to this chapter shall make annual reports on the operation of this chapter to the administrator for the courts. The reports made under this subsection must include information on authorizations for the installation and use of pen registers and trap and trace devices under RCW 9.73.260. The reports by the judges shall contain (a) the number of applications made; (b) the number of authorizations issued; (c) the respective periods of such authorizations; (d) the number and duration of any renewals thereof;

(e) the crimes in connection with which the communications or conversations were sought; (f) the names of the applicants; and (g) such other and further particulars as the administrator for the courts may require, except that the administrator for the courts shall not require the reporting of information that might lead to the disclosure of the identity of a confidential informant.

The chief justice of the supreme court shall annually report to the governor and the legislature on such aspects of the operation of this chapter as appropriate including any recommendations as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights. [1998 c 217 § 3; 1989 c 271 § 207; 1977 ex.s. c 363 § 5.]

Local government reimbursement claims: RCW 4.92.280.

Additional notes found at www.leg.wa.gov

9.73.130 Recording private communications—Authorization—Application for, contents. Each application for an authorization to record communications or conversations pursuant to RCW 9.73.090 as now or hereafter amended shall be made in writing upon oath or affirmation and shall state:

- (1) The authority of the applicant to make such application;
- (2) The identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to record a communication or conversation is sought and the identity of whoever authorized the application;
- (3) A particular statement of the facts relied upon by the applicant to justify his or her belief that an authorization should be issued, including:
 - (a) The identity of the particular person, if known, committing the offense and whose communications or conversations are to be recorded;
 - (b) The details as to the particular offense that has been, is being, or is about to be committed;
 - (c) The particular type of communication or conversation to be recorded and a showing that there is probable cause to believe such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be recorded;
 - (d) The character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be recorded;
 - (e) A statement of the period of time for which the recording is required to be maintained, if the character of the investigation is such that the authorization for recording should not automatically terminate when the described type of communication or conversation has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(f) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) Where the application is for the renewal or extension of an authorization, a particular statement of facts showing the results thus far obtained from the recording, or a reasonable explanation of the failure to obtain such results;

(5) A complete statement of the facts concerning all previous applications, known to the individual authorizing and to the individual making the application, made to any court for authorization to record a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each application; and

(6) Such additional testimony or documentary evidence in support of the application as the judge may require. [2011 c 336 § 326; 1977 ex.s. c 363 § 6.]

9.73.140 Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders. Within a reasonable time but not later than thirty days after the termination of the period of the authorization or of extensions or renewals thereof, or the date of the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended, the issuing authority shall cause to be served on the person named in the authorization or application for an authorization, and such other parties to the recorded communications as the judge may in his or her discretion determine to be in the interest of justice, an inventory which shall include:

(1) Notice of the entry of the authorization or the application for an authorization which has been denied under RCW 9.73.090 as now or hereafter amended;

(2) The date of the entry of the authorization or the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended;

(3) The period of authorized or disapproved recording; and

(4) The fact that during the period wire or oral communications were or were not recorded.

The issuing authority, upon the filing of a motion, may in its discretion make available to such person or his or her attorney for inspection such portions of the recorded communications, applications and orders as the court determines to be in the interest of justice. On an ex parte showing of good cause to the court the serving of the inventory required by this section may be postponed or dispensed with. [2011 c 336 § 327; 1977 ex.s. c 363 § 7.]

9.73.200 Intercepting, transmitting, or recording conversations concerning controlled substances—Findings. The legislature finds that the unlawful manufacturing, selling, and distributing of controlled substances is becoming increasingly prevalent and violent. Attempts by law enforcement officers to prevent the manufacture, sale, and distribution of drugs is resulting in numerous life-threatening situations since drug dealers are using sophisticated weapons and modern technological devices to deter the efforts of law enforcement officials to enforce the controlled substance statutes. Dealers of unlawful drugs are employing a wide variety of violent methods to realize the enormous profits of the drug trade.

Therefore, the legislature finds that conversations regarding illegal drug operations should be intercepted, transmitted, and recorded in certain circumstances without prior judicial approval in order to protect the life and safety of law

enforcement personnel and to enhance prosecution of drug offenses, and that that interception and transmission can be done without violating the constitutional guarantees of privacy. [1989 c 271 § 201.]

Additional notes found at www.leg.wa.gov

9.73.210 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Authorization—Monthly report—Admissibility—Destruction of information. (1) If a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger, law enforcement personnel may, for the sole purpose of protecting the safety of the consenting party, intercept, transmit, or record a private conversation or communication concerning:

(a) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or

(b) Person(s) engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

(2) Before any interception, transmission, or recording of a private conversation or communication pursuant to this section, the police commander or officer making the determination required by subsection (1) of this section shall complete a written authorization which shall include (a) the date and time the authorization is given; (b) the persons, including the consenting party, expected to participate in the conversation or communication, to the extent known; (c) the expected date, location, and approximate time of the conversation or communication; and (d) the reasons for believing the consenting party's safety will be in danger.

(3) A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations made under this section, the date and time of each authorization, and whether an interception, transmission, or recording was made with respect to each authorization.

(4) Any information obtained pursuant to this section is inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except:

(a) With the permission of the person whose communication or conversation was intercepted, transmitted, or recorded without his or her knowledge;

(b) In a civil action for personal injury or wrongful death arising out of the same incident, where the cause of action is based upon an act of physical violence against the consenting party; or

(c) In a criminal prosecution, arising out of the same incident for a serious violent offense as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense.

(5) Nothing in this section bars the admission of testimony of a participant in the communication or conversation unaided by information obtained pursuant to this section.

(6) The authorizing agency shall immediately destroy any written, transcribed, or recorded information obtained from an interception, transmission, or recording authorized under this section unless the agency determines there has been a personal injury or death or a serious violent offense which may give rise to a civil action or criminal prosecution in which the information may be admissible under subsection (4)(b) or (c) of this section.

(7) Nothing in this section authorizes the interception, recording, or transmission of a telephonic communication or conversation. [2011 c 241 § 3; 1989 c 271 § 202.]

Findings—Effective date—2011 c 241: See notes following RCW 9.73.230.

Additional notes found at www.leg.wa.gov

9.73.220 Judicial authorizations—Availability of judge required. In each superior court judicial district in a county with a population of two hundred ten thousand or more there shall be available twenty-four hours a day at least one superior court or district court judge or magistrate designated to receive telephonic requests for authorizations that may be issued pursuant to this chapter. The presiding judge of each such superior court in conjunction with the district court judges in that superior court judicial district shall establish a coordinated schedule of rotation for all of the superior and district court judges and magistrates in the superior court judicial district for purposes of ensuring the availability of at least one judge or magistrate at all times. During the period that each judge or magistrate is designated, he or she shall be equipped with an electronic paging device when not present at his or her usual telephone. It shall be the designated judge's or magistrate's responsibility to ensure that all attempts to reach him or her for purposes of requesting authorization pursuant to this chapter are forwarded to the electronic page number when the judge or magistrate leaves the place where he or she would normally receive such calls. [1991 c 363 § 9; 1989 c 271 § 203.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Additional notes found at www.leg.wa.gov

9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties. (1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves:

(i) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or

(ii) A party engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection (2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an additional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an ex parte review of the authorization and shall make a determination whether the requirements of subsection (1) of this section were met. Evidence obtained as a result of the interception, transmission, or recording need not be submitted to the court. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section provided that, if the confidential informant was a minor at the time of the recording or an alleged victim of commercial child sexual abuse under RCW 9.68A.100 through 9.68A.102 or 9[A].40.100, no such notice shall be given.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the administrative office of the courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communication in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section. [2011 c 241 § 2; 2005 c 282 § 17; 1989 c 271 § 204.]

Findings—2011 c 241: "The legislature finds increasing incidents of commercial sexual exploitation of children in our state, and further protection of victims require giving law enforcement agencies the tool to have a unified victim-centered police investigation approach to further protect victims by ensuring their safety by prosecuting traffickers. The one-party consent provision permitted for drug trafficking investigation passed in the comprehensive bill to facilitate police investigation and prosecution of drug trafficking crimes is a helpful tool to this end. The legislature also finds that exceptions should be allowed for minors employed for investigation when the minor is a victim and involves only electronic communication with the defendant." [2011 c 241 § 1.]

Effective date—2011 c 241: "This act takes effect August 1, 2011." [2011 c 241 § 5.]

Additional notes found at www.leg.wa.gov

9.73.240 Intercepting, transmitting, or recording conversations concerning controlled substances—Concurrent power of attorney general to investigate and prosecute. (1) The attorney general shall have concurrent authority and power with the prosecuting attorneys to investigate violations of RCW 9.73.200 through 9.73.230 or RCW 9.73.090 and initiate and conduct prosecutions of any violations upon request of any of the following:

(a) The person who was the nonconsenting party to the intercepted, transmitted, or recorded conversation or communication; or

(b) The county prosecuting attorney of the jurisdiction in which the offense has occurred.

(2) The request shall be communicated in writing to the attorney general. [1989 c 271 § 206.]

Additional notes found at www.leg.wa.gov

9.73.260 Pen registers, trap and trace devices, cell site simulator devices. (1) As used in this section:

(a) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of such connection in a switching station, furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications, and such term includes any electronic storage of such communication.

(b) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include:

(i) Any wire or oral communication;

(ii) Any communication made through a tone-only paging device; or

(iii) Any communication from a tracking device, but solely to the extent the tracking device is owned by the applicable law enforcement agency.

(c) "Electronic communication service" means any service that provides to users thereof the ability to send or receive wire or electronic communications.

(d) "Pen register" means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(e) "Trap and trace device" means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

(f) "Cell site simulator device" means a device that transmits or receives radio waves for the purpose of conducting one or more of the following operations: (i) Identifying, locating, or tracking the movements of a communications device; (ii) intercepting, obtaining, accessing, or forwarding the communications, stored data, or metadata of a communications device; (iii) affecting the hardware or software operations or functions of a communications device; (iv) forcing transmissions from or connections to a communications device; (v) denying a communications device access to other communications devices, communications protocols, or services; or (vi) spoofing or simulating a communications device, cell tower, cell site, or service, including, but not limited to, an international mobile subscriber identity catcher or other invasive cell phone or telephone surveillance or eavesdropping device that mimics a cell phone tower and sends out signals to cause cell phones in the area to transmit their locations, identifying information, and communications content, or a passive interception device or digital analyzer that does not send signals to a communications device under surveillance. A cell site simulator device does not include any

device used or installed by an electric utility, as defined in RCW 19.280.020, solely to the extent such device is used by that utility to measure electrical usage, to provide services to customers, or to operate the electric grid.

(2) No person may install or use a pen register, trap and trace device, or cell site simulator device without a prior court order issued under this section except as provided under subsection (6) of this section or RCW 9.73.070.

(3) A law enforcement officer may apply for and the superior court may issue orders and extensions of orders authorizing the installation and use of pen registers, trap and trace devices, and cell site simulator devices as provided in this section. The application shall be under oath and shall include the identity of the officer making the application and the identity of the law enforcement agency conducting the investigation. The applicant must certify that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

(4) If the court finds that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation and finds that there is probable cause to believe that the pen register, trap and trace device, or cell site simulator device will lead to obtaining evidence of a crime, contraband, fruits of crime, things criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed, or will lead to learning the location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause, the court shall enter an ex parte order authorizing the installation and use of a pen register, trap and trace device, or cell site simulator device. The order shall specify:

(a)(i) In the case of a pen register or trap and trace device, the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached; or

(ii) In the case of a cell site simulator device, the identity, if known, of (A) the person to whom is subscribed or in whose name is subscribed the electronic communications service utilized by the device to which the cell site simulator device is to be used and (B) the person who possesses the device to which the cell site simulator device is to be used;

(b) The identity, if known, of the person who is the subject of the criminal investigation;

(c)(i) In the case of a pen register or trap and trace device, the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; or

(ii) In the case of a cell site simulator device: (A) The telephone number or other unique subscriber account number identifying the wire or electronic communications service account used by the device to which the cell site simulator device is to be attached or used; (B) if known, the physical location of the device to which the cell site simulator device is to be attached or used; (C) the type of device, and the communications protocols being used by the device, to which the cell site simulator device is to be attached or used; (D) the geographic area that will be covered by the cell site simulator device; (E) all categories of metadata, data, or information to be collected by the cell site simulator device from the tar-

geted device including, but not limited to, call records and geolocation information; (F) whether or not the cell site simulator device will incidentally collect metadata, data, or information from any parties or devices not specified in the court order, and if so, what categories of information or metadata will be collected; and (G) any disruptions to access or use of a communications or internet access network that may be created by use of the device; and

(d) A statement of the offense to which the information likely to be obtained by the pen register, trap and trace device, or cell site simulator device relates.

The order shall direct, if the applicant has requested, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register, trap and trace device, or cell site simulator device. An order issued under this section shall authorize the installation and use of a: (i) Pen register or a trap and trace device for a period not to exceed sixty days; and (ii) a cell site simulator device for sixty days. An extension of the original order may only be granted upon: A new application for an order under subsection (3) of this section; and a showing that there is a probability that the information or items sought under this subsection are more likely to be obtained under the extension than under the original order. No extension beyond the first extension shall be granted unless: There is a showing that there is a high probability that the information or items sought under this subsection are much more likely to be obtained under the second or subsequent extension than under the original order; and there are extraordinary circumstances such as a direct and immediate danger of death or serious bodily injury to a law enforcement officer. The period of extension shall be for a period not to exceed sixty days.

An order authorizing or approving the installation and use of a pen register, trap and trace device, or cell site simulator device shall direct that the order be sealed until otherwise ordered by the court and that the person owning or leasing the line to which the pen register, trap and trace device, and cell site simulator devices is attached or used, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register, trap and trace device, or cell site simulator device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the court.

(5) Upon the presentation of an order, entered under subsection (4) of this section, by an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in subsection (4) of this section.

Upon the request of an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such law enforcement officer all additional

information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in subsection (4) of this section. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this subsection shall be reasonably compensated by the law enforcement agency that requests the facilities or assistance for such reasonable expenses incurred in providing such facilities and assistance.

No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this section. A good faith reliance on a court order under this section, a request pursuant to this section, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

(6)(a) Notwithstanding any other provision of this chapter, a law enforcement officer and a prosecuting attorney or deputy prosecuting attorney who jointly and reasonably determine that there is probable cause to believe that an emergency situation exists that involves immediate danger of death or serious bodily injury to any person that requires the installation and use of a pen register, trap and trace device, or cell site simulator device before an order authorizing such installation and use can, with due diligence, be obtained, and there are grounds upon which an order could be entered under this chapter to authorize such installation and use, may have installed and use a pen register, trap and trace device, or cell site simulator device if, within forty-eight hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accordance with subsection (4) of this section. In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register, trap and trace device, or cell site simulator device, whichever is earlier. If an order approving the installation or use is not obtained within forty-eight hours, any information obtained is not admissible as evidence in any legal proceeding. The knowing installation or use by any law enforcement officer of a pen register, trap and trace device, or cell site simulator device pursuant to this subsection without application for the authorizing order within forty-eight hours of the installation shall constitute a violation of this chapter and be punishable as a gross misdemeanor. A provider of a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this subsection shall be reasonably compensated by the law enforcement agency that requests the facilities or assistance for such reasonable expenses incurred in providing such facilities and assistance.

(b) A law enforcement agency that authorizes the installation of a pen register, trap and trace device, or cell site simulator device under this subsection (6) shall file a monthly report with the administrator for the courts. The report shall indicate the number of authorizations made, the date and time of each authorization, whether a court authorization was sought within forty-eight hours, and whether a subsequent court authorization was granted.

(c) A law enforcement agency authorized to use a cell site simulator device in accordance with this section must: (i) Take all steps necessary to limit the collection of any information or metadata to the target specified in the applicable court order; (ii) take all steps necessary to permanently delete any information or metadata collected from any party not specified in the applicable court order immediately following such collection and must not transmit, use, or retain such information or metadata for any purpose whatsoever; and (iii) must delete any information or metadata collected from the target specified in the court order within thirty days if there is no longer probable cause to support the belief that such information or metadata is evidence of a crime. [2015 c 222 § 2; 1998 c 217 § 1.]

Effective date—2015 c 222: See note following RCW 9.73.270.

Local government reimbursement claims: RCW 4.92.280.

9.73.270 Collecting, using electronic data or meta-data—Cell site simulator devices—Requirements. The state and its political subdivisions shall not, by means of a cell site simulator device, collect or use a person's electronic data or metadata without (1) that person's informed consent, (2) a warrant, based upon probable cause, that describes with particularity the person, place, or thing to be searched or seized, or (3) acting in accordance with a legally recognized exception to the warrant requirements. [2015 c 222 § 1.]

Effective date—2015 c 222: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2015]." [2015 c 222 § 4.]

Chapter 9.81 RCW

SUBVERSIVE ACTIVITIES

Sections

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9.81.010 Definitions. (1) "Organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

(2) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington, or of any political subdivision of either of them, by revolution, force or violence.

(3) "Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of Washington, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(4) "Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

(5) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington, or any political subdivision of either of them by revolution, force, or violence; or who with knowledge that the organization is an organization as described in subsections (2) and (3) hereof, becomes or remains a member of a subversive organization or a foreign subversive organization. [1953 c 142 § 1; 1951 c 254 § 1.]

Additional notes found at www.leg.wa.gov

9.81.020 Subversive activities made felony—Penalty.

(1) It is a class B felony for any person knowingly and willfully to:

(a) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington or any political subdivision of either of them, by revolution, force or violence; or

(b) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of Washington or of any political subdivision of either of them; or

(c) Conspire with one or more persons to commit any such act; or

(d) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing the organization to be a subversive organization or a foreign subversive organization; or

(e) Destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing the organization to be such.

(2) Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than ten thousand dollars, or imprisoned for not more than ten years, or both, at the discretion of the court. [2003 c 53 § 44; 1951 c 254 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.81.030 Membership in subversive organization is felony—Penalty. It is a class C felony for any person after June 1, 1951, to become, or after September 1, 1951, to remain a member of a subversive organization or a foreign subversive organization knowing the organization to be a subversive organization or foreign subversive organization. Any person upon a plea of guilty or upon conviction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court. [2003 c 53 § 45; 1951 c 254 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.81.040 Disqualification from voting or holding public office. Any person who shall be convicted or shall plead guilty of violating any of the provisions of RCW 9.81.020 and 9.81.030, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(1) Holding any office, elective or appointive, or any other position of profit or trust in, or employment by the government of the state of Washington or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(2) Filing or standing for election to any public office in the state of Washington; or

(3) Voting in any election held in this state. [1951 c 254 § 4.]

9.81.050 Dissolution of subversive organizations—Disposition of property. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of Washington and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of Washington a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be

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seized by and for the state of Washington, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of Washington. [1951 c 254 § 5.]

9.81.060 Public employment—Subversive person ineligible. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government, or in the administration of the business, of this state, or of any county, municipality, or other political subdivision of this state. [1951 c 254 § 11.]

9.81.070 Public employment—Determining eligibility—Inquiries—Oath. Every person and every board, commission, council, department, court or other agency of the state of Washington or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain whether any person is a subversive person. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury. Every such person, board, commission, council, department, court, or other agency shall require every employee or applicant for employment to state under oath whether or not he or she is a member of the Communist party or other subversive organization, and refusal to answer on any grounds shall be cause for immediate termination of such employee's employment or for refusal to accept his or her application for employment. [1955 c 377 § 1; 1951 c 254 § 12.]

Reviser's note: As to the constitutionality of this section, see *Baggett v. Bullitt*, 377 U.S. 360, 84 S. Ct. 1316, 12 L.Ed.2d 377 (1964).

Application forms, licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Discrimination in employment: Chapter 49.60 RCW.

9.81.080 Public employment—Inquiries may be dispensed with, when. The inquiries prescribed in preceding sections, other than the written statement to be executed by an applicant for employment and the requirement set forth in RCW 9.81.070, relative to membership in the communist party or other subversive organization, shall not be required as a prerequisite to the employment of any persons in any case in which the employing authority may determine, and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of such persons will not be dangerous to the health of the citizens or the security of the governments of the United States, the state of Washington, or any political subdivision thereof. [1955 c 377 § 2; 1951 c 254 § 13.]

9.81.082 Membership in subversive organization described. For the purpose of *this act, membership in a subversive organization shall be membership in any organization after it has been placed on the list of organizations designated by the attorney general of the United States as being

subversive pursuant to executive order No. 9835. [1955 c 377 § 3.]

Reviser's note: *(1) The term "this act" as used in RCW 9.81.082 appeared in 1955 c 377 § 3 which did not contain any language incorporating it as part of 1951 c 254 nor as part of chapter 9.81 RCW.

(2) As to the constitutionality of this section, see *Nostrand v. Balmer*, 53 Wn.2d 460, 335 P.2d 10 (1959) and *Nostrand v. Little*, 58 Wn.2d 111, 361 P.2d 551 (1961).

9.81.083 Communist party declared a subversive organization. The Communist party is a subversive organization within the purview of chapter 9.81 RCW and membership in the Communist party is a subversive activity thereunder. [1955 c 377 § 4.]

9.81.090 Public employees—Discharge of subversive persons—Procedure—Hearing—Appeal. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The attorney general and the personnel director, and the civil service commission of any county, city, or other political subdivision of this state, shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall have the right of reasonable notice, date, time, and place of hearing, opportunity to be heard by himself or herself and witnesses on his or her behalf, to be represented by counsel, to be confronted by witnesses against him or her, the right to cross-examination, and such other rights which are in accordance with the procedures prescribed by law for the discharge of such person for other reasons. Every person and every board, commission, council, department, or other agency of the state of Washington or any political subdivision thereof having responsibility for the appointment, employment, or supervision of public employees not covered by the classified service in this section referred to, shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter, shall promptly report to the special assistant attorney general in charge of subversive activities the fact of and the circumstances surrounding such discharge. Any person discharged under the provisions of this chapter shall have the right within thirty days thereafter to appeal to the superior court of the county wherein said person may reside or wherein he or she may have been employed for determination by said court as to whether or not the discharge appealed from was justified under the provisions of this chapter. The court shall regularly hear and determine such appeals and the decision of the superior court may be appealed to the supreme court or the court of appeals of the state of Washington as in civil cases. Any person appealing to the superior court may be entitled to trial by jury if he or she so elects. [2011 c 336 § 328; 1971 c 81 § 44; 1951 c 254 § 15.]

[Title 9 RCW—page 112]

9.81.110 Misstatements are punishable as perjury—Penalty. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee, shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who wilfully makes a material misstatement of fact (1) in any such written statement, or (2) in any affidavit made pursuant to the provisions of this chapter, or (3) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions pursuant to this chapter, or (4) in any written statement by an applicant for appointment or employment or by an employee in any state aid or private institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury, shall be subject to the penalties of perjury, as prescribed in chapter 9.41 RCW. [1951 c 254 § 17.]

9.81.120 Constitutional rights—Censorship or infringement. Nothing in this chapter shall be construed to authorize, require or establish any military or civilian censorship or in any way to limit or infringe upon freedom of the press or freedom of speech or assembly within the meaning and the manner as guaranteed by the Constitution of the United States or of the state of Washington and no regulation shall be promulgated hereunder having that effect. [1951 c 254 § 19.]

Chapter 9.82 RCW TREASON

Sections

9.82.010	Defined—Penalty.
9.82.020	Levying war.
9.82.030	Misprision of treason.

Anarchy and sabotage: Chapter 9.05 RCW.

Subversive activities: Chapter 9.81 RCW.

9.82.010 Defined—Penalty. (1) Treason against the people of the state consists in—

- Levying war against the people of the state, or
- Adhering to its enemies, or
- Giving them aid and comfort.

(2) Treason is a class A felony and punishable by death.

(3) No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court. [2003 c 53 § 46; 1909 c 249 § 65; RRS § 2317.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Treason defined and evidence required: State Constitution Art. 1 § 27.

9.82.020 Levying war. To constitute levying war against the state an actual act of war must be committed. To conspire to levy war is not enough. When persons arise in insurrection with intent to prevent, in general, by force and intimidation, the execution of a statute of this state, or to force its repeal, they shall be guilty of levying war. But an endeavor, although by numbers and force of arms, to resist

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the execution of a law in a single instance, and for a private purpose, is not levying war. [1909 c 249 § 66; RRS § 2318.]

9.82.030 Misprision of treason. Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a justice of the supreme court or a judge of either the court of appeals or the superior court, shall be guilty of misprision of treason and punished by a fine of not more than one thousand dollars, or by imprisonment in a state correctional facility for not more than five years or in a county jail for up to three hundred sixty-four days. [2011 c 96 § 9; 1992 c 7 § 16; 1971 c 81 § 45; 1909 c 249 § 67; RRS § 2319.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 9.86 RCW FLAGS, CRIMES RELATING TO

Sections

9.86.010	"Flag," etc., defined.
9.86.020	Improper use of flag prohibited.
9.86.030	Desecration of flag.
9.86.040	Application of provisions.

Display of flags: RCW 1.20.015.

Flag exercises in schools: RCW 28A.230.140.

State flag: RCW 1.20.010.

9.86.010 "Flag," etc., defined. The words flag, standard, color, ensign or shield, as used in this chapter, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this state, or a copy, picture or representation thereof. [1919 c 107 § 1; RRS § 2675-1.]

9.86.020 Improper use of flag prohibited. (1) No person shall, in any manner, for exhibition or display:

(a) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or of this state; or

(b) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

(c) Expose to public view for sale, manufacture, or otherwise, or to sell, give, or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 47; 1919 c 107 § 2; 1909 c 249 § 423; 1901 c 154 § 1; RRS § 2675-2.]

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Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.86.030 Desecration of flag. (1) No person shall knowingly cast contempt upon any flag, standard, color, ensign or shield, as defined in RCW 9.86.010, by publicly mutilating, defacing, defiling, burning, or trampling upon the flag, standard, color, ensign or shield.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 48; 1969 ex.s. c 110 § 1; 1919 c 107 § 3; 1909 c 249 § 423; RRS § 2675-3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.86.040 Application of provisions. This chapter shall not apply to any act permitted by the statutes of the United States or of this state, or by the United States army and navy regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. [1919 c 107 § 4; RRS § 2675-4.]

Chapter 9.91 RCW MISCELLANEOUS CRIMES

Sections

9.91.010	Denial of civil rights—Terms defined.
9.91.020	Operating railroad, steamboat, vehicle, etc., while intoxicated.
9.91.025	Unlawful transit conduct.
9.91.060	Leaving children unattended in parked automobile.
9.91.130	Disposal of trash in charity donation receptacle.
9.91.140	Food stamps—Unlawful sale.
9.91.142	Food stamps—Trafficking.
9.91.144	Food stamps—Unlawful redemption.
9.91.150	Tree spiking.
9.91.155	Tree spiking—Action for damages.
9.91.160	Personal protection spray devices.
9.91.170	Interfering with dog guide or service animal.
9.91.175	Interfering with search and rescue dog.
9.91.180	Violent video or computer games.

Accountancy practice laws, penalty: RCW 18.04.370.

Aeronautics laws and rules, penalty: RCW 47.68.240.

Agriculture

agricultural enabling act, penalties: RCW 15.66.210.

apple advertising laws and rules, penalty: RCW 15.24.200.

farm labor contractors, violations, penalty: RCW 19.30.150.

fertilizers, minerals, and limes, penalty: RCW 15.54.470.

honey, penalty for violation of law regulating: RCW 69.28.180, 69.28.185.

horticultural plants and certification act, prohibited acts: Chapter 15.13 RCW.

marketing act, penalties: RCW 15.66.210.

peaches, standards of grades and packs, inspections, penalty for violations: RCW 15.17.290.

soft tree fruits, penalty: RCW 15.28.270.

standards of grades and packs, penalties: Chapter 15.17 RCW.

Aircraft and airman licensing violations: RCW 14.16.060.

Airport zoning violations: RCW 14.12.210.

Alcoholic beverages, violations and penalties: Chapter 66.44 RCW.

All-terrain vehicles

additional violations, penalty: RCW 46.09.480.

operating violations, penalty: RCW 46.09.470, 46.09.490.

Ambulances and drivers, first aid requirements, penalty: RCW 70.54.060, 70.54.065.

Animals: Title 16 RCW.

Antitrust, consumer protection: Chapter 19.86 RCW.

Architects licensing laws, penalty: RCW 18.08.460.

- Assisted living facilities' licensing act, violations of: Chapter 18.20 RCW.*
- Auctioneering, county licensing laws, penalty: RCW 36.71.070.*
- Ballots (see also Elections)*
counterfeiting or unlawful possession, penalty: RCW 29A.84.540.
divulging ballot count, penalty: RCW 29A.84.730.
tampering with, penalty: RCW 29A.84.420.
unlawful printing or distribution of official ballots, penalty: RCW 29A.84.410.
- Banks and trust companies*
advertising legal services, penalty: RCW 30A.04.260.
certification of checks, penalty for violation of regulations: RCW 30A.16.010.
commission, etc., to officer or employee to procure loan prohibited, penalty: RCW 30A.12.110.
companies, commingling trust property, penalty: RCW 30A.04.240.
examinations, penalty for falsification: RCW 30A.04.060.
false entries or statements, penalty: RCW 30A.12.090.
general penalties for violation of laws concerning: RCW 30A.12.190.
general penalty for violation of rules and regulations: RCW 30A.04.050.
holding companies regulations, penalty: RCW 30A.04.230.
loans from trust funds prohibited, penalty: RCW 30A.12.120.
preferential transfers in contemplation of insolvency, penalty: RCW 30A.44.110.
receiving deposits when insolvent prohibited, penalty: RCW 30A.44.120.
records, destroying or secreting, penalty: RCW 30A.12.100.
unlawful use of words indicating, penalty: RCW 30A.04.020.
- Barbering licensing regulations, penalty: RCW 18.16.210.*
- Baseball*
minors, penalty for violations concerning: RCW 67.04.150.
penalties for bribery or fraud concerning: RCW 67.04.010, 67.04.020, 67.04.050.
- Beauty culture licensing laws, penalty: RCW 18.16.210.*
- Bicycles, bicycle paths, operation of vehicles on prohibited: RCW 35.75.020.*
- Birthing centers licensing, penalty for unlicensed operation: RCW 18.46.120.*
- Blind made products, false advertising: RCW 19.06.030, 19.06.040.*
- Bodies (see Human remains)*
- Boilers or unfired pressure vessels, inspection certificate required, penalty: RCW 70.79.320.*
- Bonds issued by state, etc., fraud of engraver, penalty: RCW 39.44.101.*
- Boxing, wrestling, and martial arts, penalties for violations of provisions relating to: RCW 67.08.130, 67.08.140, 67.08.150.*
- Brands and marks on animals, obliteration, etc., penalty: RCW 16.57.120, 16.57.320, 16.57.360.*
- Building permit, issuance to person not complying with industrial insurance payroll estimate requirement: RCW 51.12.070.*
- Buildings, public*
doors, safety requirements, penalty: RCW 70.54.070.
earthquake standards for construction, penalty: RCW 70.86.040.
- Capitol grounds traffic regulations, penalty for violations: RCW 46.08.170.*
- Caustic poisons act, penalty for violation: RCW 69.36.060.*
- Cemeteries*
embalmers and funeral director laws, penalty: RCW 18.39.220.
endowment care cemeteries, penalties: RCW 68.40.085, 68.40.090.
establishment in violation of laws regulating, penalty: RCW 68.56.040.
mausoleums and columbariums, penalty for violation of construction laws: RCW 68.28.060.
property, penalties for violations concerning: RCW 68.24.130, 68.24.140, 68.24.150, 68.24.190, 68.56.010.
- Charitable trusts, penalty for violations: RCW 11.110.140.*
- Children (see Minors)*
- Chiropractic licensing laws, penalty: RCW 18.25.090.*
- Cities and towns*
budgets in cities over 300,000, penalty for violation of regulations: RCW 35.32A.090.
cities of the first class, powers to prescribe crimes by ordinance: RCW 35.22.280.
cities of the second class, powers to prescribe penalties for violation of ordinances: RCW 35.23.440.
city firefighters, city police, civil service provisions, penalty for violations: RCW 41.08.210.
commission form, free services to officers and employees prohibited, penalty: RCW 35.17.150.
operation of vehicles, etc., on bicycle paths prohibited, penalty: RCW 35.75.020.
pollution of water supply, penalty: RCW 35.88.040.
towns, power to prescribe penalties for violation of ordinances: RCW 35.27.370.
unclassified cities, powers to prescribe penalties for violation of ordinances: RCW 35.30.010.
- Civil defense, enforcement of orders, rules, and regulations, penalty: RCW 38.52.150.*
- Civil service for sheriff's office employees, penalty: RCW 41.14.220.*
- Collection agency and out-of-state collection agency laws, penalty: RCW 19.16.430, 19.16.450.*
- Colleges*
interfering by force or violence with any administrator, faculty member or student unlawful—Penalty: RCW 28B.10.570, 28B.10.572.
intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty: RCW 28B.10.571 and 28B.10.572.
- Commercial feed law, crimes against: Chapter 15.53 RCW.*
- Commercial sprayers and dusters, violations, penalty: Chapter 17.21 RCW.*
- Commission merchants, violations, penalty: RCW 20.01.460.*
- Consumer protection, crimes and penalties relating to: Chapter 19.86 RCW.*
- Control of pet animals infested with diseases communicable to humans, violation, penalty: RCW 16.70.050.*
- Controlled atmosphere storage, penalty: RCW 15.30.250.*
- Controlled substances: Chapter 69.50 RCW.*
- Cosmetology laws, penalty: RCW 18.16.210.*
- Counties*
budget laws, penalty for violation: RCW 36.40.240.
building codes and fire regulations, penalty for violation: RCW 36.43.040.
dog license tax violation, penalty: RCW 36.49.070.
garbage disposal regulations, penalty for violations: RCW 36.58.020.
hawkers and auctioneers, penalty for selling without license: RCW 36.71.060.
officers failing to pay over fees, penalty: RCW 36.18.170.
officers taking illegal fees, penalty: RCW 36.18.160.
parks, playgrounds, or other recreational facilities, violation of rules and regulations adopted by county commissioners, penalty: RCW 36.68.080.
roads and bridges
general penalty for violation of provisions concerning: RCW 36.75.290.
use of oil or other material restricted, penalty: RCW 36.86.060.
trading stamp licenses, penalty: RCW 19.83.050.
violation of regulations for taking of census for classification of counties: RCW 36.13.070.
- Credit unions: Chapter 31.12 RCW.*
- Cruelty to animals, penalties: Chapter 16.52 RCW.*
- Dental hygienist licensing laws, penalties: RCW 18.29.100.*
- Dentistry practice laws, penalties: RCW 18.32.390, 18.32.675, 18.32.735, 18.32.745, 18.32.755.*
- Diking and drainage improvement districts, damaging improvements, penalty: RCW 85.08.690.*
- Discrimination, interference with human rights commission, penalty: RCW 49.60.310.*
- Diseased domestic animals, quarantine, penalty: RCW 16.36.110.*
- Diseases, dangerous, contagious, or infectious, penalty for violations concerning control of: RCW 70.05.120, 70.24.080, 70.54.050.*
- Disposal of dead animals, violations, penalty: RCW 16.68.180.*
- Dog law: Chapter 16.08 RCW.*
- Doors of buildings used by public, safety requirements, penalty: RCW 70.54.070.*

- Drugs: Chapters 69.41, 69.50 RCW.*
- Earthquake standards for construction for public buildings, penalty: RCW 70.86.040.*
- Elections*
bribery or coercion of voters, penalty: RCW 29A.84.620.
canvassing of votes law, penalty for violations: RCW 29A.60.200.
counterfeiting or unlawful possession of ballots, penalty: RCW 29A.84.540.
destroying or defacing election supplies and notices, etc., penalty: RCW 29A.84.550.
divulging ballot count, penalty: RCW 29A.84.730.
exit polling: RCW 29A.84.510.
general penalty for violations: Chapter 29A.84 RCW.
influencing voters to vote or not to vote by unlawful means, penalty: RCW 29A.84.630.
initiative and referendum law, penalties for violations: RCW 29A.84.230, 29A.84.210, 29A.84.250.
officer tampering with ballots, penalty: RCW 29A.84.420.
printing or distributing official ballots unlawfully, penalty: RCW 29A.84.410.
recall petition law, penalties for violations: RCW 29A.84.240, 29A.84.020, 29A.84.220.
registration law violations, penalties: RCW 29A.84.110, 29A.84.130.
repeating or voting twice, penalties concerning: RCW 29A.84.650, 29A.84.655.
solicitation of bribe by voter in primary election, penalty: RCW 29A.84.640.
unqualified voter voting, penalty: RCW 29A.84.660.
violations by officers generally, penalty: RCW 29A.84.720.
voting by mail law, penalty for violations: RCW 29A.84.680.
voting machines, penalty for tampering with: RCW 29A.84.560.
- Electrical construction, penalty: RCW 19.29.060.*
- Electricians and electrical installation laws, schedule of penalties—Appeal: RCW 19.28.131.*
- Embalmer and funeral director laws, penalty: RCW 18.39.220.*
- Endowment care cemeteries, penalties for violations of laws: RCW 68.40.085, 68.40.090.*
- Engineer and land surveyor laws, penalty: RCW 18.43.120.*
- Escrow agent, unlicensed: RCW 18.44.171.*
- Explosives and devices regulated, penalties: Chapter 70.74 RCW.*
- Facsimile signatures and seals, fraud in use of: RCW 39.62.040.*
- Family abandonment, penalty: RCW 26.20.030.*
- Family nonsupport, penalty: RCW 26.20.035.*
- Farm labor contractors regulations, penalty: RCW 19.30.150.*
- Filing false or forged instruments, penalty: RCW 40.16.030.*
- Fire department vehicles and firefighters' private cars lighting and identification, penalty: RCW 46.37.188.*
- Fire protection districts, burning permits, penalty for violation: RCW 52.12.101, 52.12.105.*
- Firearms in vehicle, penalty: RCW 77.15.460.*
- Fires, actions for spreading and kindling: RCW 4.24.040, 4.24.050.*
- Firewood on state lands, permit required to remove, penalty: RCW 79.15.440.*
- Fireworks*
laws or rules, penalty: RCW 70.77.540.
unlawful acts relating to: Chapter 70.77 RCW.
- Fish, shellfish, and wildlife*
false or misleading information and reports, penalty: RCW 77.15.270.
trafficking in, prohibited: RCW 77.15.260.
- Flood control districts, interest in contracts, penalty: RCW 86.09.286.*
- Food and beverage workers' permit required, penalty: RCW 69.06.060.*
- Food, drugs, and cosmetics, penalties for violations of act: RCW 69.04.040, 69.04.060, 69.04.070.*
- Food fish and shellfish*
fish guards required on diversion devices, penalties, remedies for failure: RCW 77.57.010.
fishways required over dams, etc., penalties: RCW 77.57.030.
hatchery or cultural facility to be provided if fishways impractical, penalty: RCW 77.57.050.
required licenses—Exemption: RCW 77.65.010.
- Forcible entry and detainer, penalty: RCW 59.12.230.*
- Forest products, false or forged brands, etc., penalties: RCW 76.36.110, 76.36.120.*
- Forest protection: Chapter 76.04 RCW.*
- Gambling, civil action: RCW 4.24.070.*
- Game and game fish, unlawful acts: Chapter 77.50 RCW.*
- Gas or stink bombs, etc., prohibited, penalty: RCW 70.74.310.*
- Girls' training school (see Maple Lane School)*
- Grain and terminal warehouses, commodity inspections, laws and regulations, penalties for violations: RCW 22.09.310, 22.09.770, 22.09.890.*
- Healing professions, rebating: RCW 19.68.010.*
- Health care services, prohibited acts: Chapter 48.44 RCW.*
- Highways*
closure violations, penalty: RCW 47.48.040.
county or city road funds, illegal use of, penalty: RCW 47.08.110.
limited access facilities, violations concerning, penalty: RCW 47.52.120.
littering with glass, debris, etc., penalty, removal: RCW 46.61.645.
permitting escape of load from vehicle: RCW 46.61.655.
pipe lines, etc., across or on highways, penalties for construction without franchise or permit: RCW 47.44.060.
removal of native flora, etc., penalty: RCW 47.40.080.
traffic control devices violations: Chapter 47.36 RCW.
traffic signs, etc., penalty for defacing, etc.: RCW 46.61.080.
- Highways and toll bridges, general penalty for violations of title: RCW 47.04.090.*
- Honey*
penalty for violation of law regulating: RCW 69.28.180.
prohibited acts: RCW 69.28.080, 69.28.090.
- Horse racing, penalty for violations of laws and regulations: RCW 67.16.060.*
- Hospital licensing required, penalty: RCW 70.41.170.*
- Hotels*
fraud in obtaining accommodations, etc., penalty: RCW 19.48.110.
sanitation and safety requirements, penalty: RCW 70.62.280.
- Human remains, penalties for violations concerning: RCW 68.64.150, 68.64.160.*
- Individuals with mental illness, private establishments for, licensing violations: RCW 71.12.460.*
- Industrial insurance, attorney's fees: RCW 51.52.120, 51.52.132.*
- Initiative and referendum laws, penalties: RCW 29A.84.230, 29A.84.210, 29A.84.250.*
- Insane (see Individuals with mental illness)*
- Insect pest control rules, violations: RCW 17.24.100.*
- Insurance code*
destruction or injury of property to defraud or prejudice the insurer, penalty: RCW 48.30.220.
domestic insurers
corrupt practices as to votes relative to shareholders meetings, etc., penalty: RCW 48.07.060.
illegal dividends or reductions, penalty: RCW 48.08.040.
impairment of capital, penalty: RCW 48.08.050.
penalty for exhibiting false account, etc.: RCW 48.06.190.
solicitation permit required, penalty: RCW 48.06.030.
false claims or proof, etc., penalty: RCW 48.30.230.
fraud and unfair practices violations: Chapter 48.30 RCW.
general penalty for violations: RCW 48.01.080.
health care services, penalty for violation: RCW 48.44.060.
illegal dealing in premiums, penalty: RCW 48.30.190.
insurance producers, title insurance agents, and adjusters, license required: RCW 48.17.060.
insurance producers, title insurance agents, and adjusters, reporting and accounting premiums, penalty: RCW 48.17.480.
misrepresentation in application for insurance, penalty: RCW 48.30.210.
mutual insurers, impairment of surplus, penalty: RCW 48.09.340.
political contributions, penalty: RCW 48.30.110.

- premiums to be specified in the policy, penalty for violation: RCW 48.18.180.
- Insurance, destruction, secretion, abandonment, etc., of property: RCW 48.30.220.
- Intoxicating liquor (see Liquor control)
- Ionizing radiation, prohibited acts: Chapter 70.98 RCW.
- Irrigation and rehabilitation districts, violation of rules: RCW 87.84.090.
- Judges or justices, addressing persons in unfit, etc., language, penalty: RCW 42.20.110.
- Labor and industries
- disobeying subpoena to appear before officer, penalty: RCW 43.22.300.
 - hotel inspections, penalty for falsifying or hindering, etc.: RCW 70.62.280.
 - misuse of reports of employers, penalty: RCW 43.22.290.
 - refusal of entry to factory, etc., penalty: RCW 43.22.310.
- Labor disputes, obtaining out-of-state personnel for certain purposes: RCW 49.44.100.
- Labor laws
- blacklisting prohibited, penalty: RCW 49.44.010.
 - bribery of labor representative, penalties: RCW 49.44.020, 49.44.030.
 - female and child labor, penalties for violations: RCW 26.28.070, 49.58.020.
 - hours of labor, penalties for violations: Chapter 49.28 RCW.
 - minimum wage and hours act violations, penalty: RCW 49.46.100.
 - obtaining labor by false recommendation, penalty: RCW 49.44.040.
 - prohibited practices, penalties for violations: Chapter 49.44 RCW.
 - prosecution, etc., for forming or joining labor union, etc., prohibited: RCW 49.36.030.
 - seasonal labor, fraud by employees to secure advances, penalty: RCW 49.40.030.
 - underground workers safety and health, penalties: RCW 49.24.060, 49.24.380.
 - wage payment and collection, penalties for violations: RCW 49.48.020, 49.48.040, 49.48.060, 49.52.050, 49.52.090.
- Land title registration, penalties for violations: RCW 65.12.730, 65.12.740, 65.12.750, 65.12.760.
- Legislative hearings, failure of subpoenaed witness to attend or testify, etc., penalties: RCW 44.16.120 through 44.16.150.
- Lie detector and similar tests as condition of employment—Penalty: RCW 49.44.120.
- Limited access facilities (see Highways)
- Liquor control
- consumption or serving in clubs, penalty: RCW 66.24.481.
 - penalties for violations of laws or regulations: Chapter 66.44 RCW.
 - purchase, attempt, by minor: RCW 66.44.280 through 66.44.292.
 - transfer of identification card prohibited, penalties: RCW 66.20.200.
- Littering, depositing glass, debris, etc., on highways, beaches, waters, penalty, removal: RCW 46.61.645.
- Livestock—Removal from common range, duty, penalty: RCW 16.24.230.
- Logs, transporting without county log tolerance permit: RCW 46.44.047.
- Maple Lane School, unauthorized entrance to grounds or enticing girls away, etc., penalty: RCW 72.20.065.
- Marine biological preserve, penalty for violation: RCW 28B.20.320.
- Marriage
- certificates, penalty for failure to record: RCW 26.04.110.
 - license requirements, penalty for violations: RCW 26.04.200, 26.04.210, 26.04.240.
- Mausoleums and columbariums, penalty for violation of laws concerning construction of: RCW 68.28.060.
- Military affairs offenses defined, penalties: Chapter 38.32 RCW, RCW 38.40.040, 38.40.050, 38.40.110, 38.40.120.
- Milk and milk products used for animal food, prohibited acts: Chapter 15.37 RCW.
- Mining leases and contracts, disclosure of information obtained through state's right of entry: RCW 79.14.440.
- Minors
- child labor prohibited, penalty: RCW 26.28.070 (see also Labor laws).
 - enforcement of support for: RCW 74.20.060.
 - firearms: RCW 9.41.040, 9.41.042, 9.41.240.
 - juvenile offenders: Chapter 13.04 RCW.
 - procuring or possessing tobacco, penalties: RCW 26.28.080, 70.155.080.
- Motor vehicles: RCW 46.63.020.
- Municipal corporations
- approving or paying false claim against: RCW 42.24.110.
 - making false claim against: RCW 42.24.100.
- Municipal officers, violation of code of ethics, penalty: RCW 42.23.050.
- Mutual savings banks
- concealing or destroying evidence, penalty: RCW 32.04.110.
 - falsification of books, etc., penalty: RCW 32.04.100.
 - general penalty when penalty not specifically provided: RCW 32.04.130.
 - specific penalties of RCW 9.24.030, 9.24.040, and 9.24.050 invoked: RCW 32.04.120.
 - transfer of property or assets due to insolvency or in contemplation of insolvency, penalty for violation of regulation: RCW 32.24.080.
- Narcotic drugs: Chapter 69.50 RCW.
- Native flora on state lands or on land adjoining highways and parks, penalty for removal, etc.: RCW 47.40.080.
- Navigation
- Pilotage Act: RCW 88.16.120, 88.16.130, 88.16.150.
 - violations generally: Chapter 88.08 RCW.
- Nuisances, civil remedies: Chapter 7.48 RCW.
- Nursing homes, penalty for unlicensed operation: RCW 18.51.150.
- Occupational motor vehicle operators' licenses, violation of restrictions: RCW 46.20.410.
- Offering false or forged instruments for filing: RCW 40.16.030.
- Oil and gas conservation, general penalty for violations of laws or regulations: RCW 78.52.550.
- Optometry laws, penalty for violations: RCW 18.53.150.
- Osteopathy violations, penalties: RCW 18.57.160.
- Parks and recreation, violations in parks specified, penalty: RCW 79A.05.165.
- Party line telephones, refusal to yield in emergency, penalty: RCW 70.85.020, 70.85.030.
- Patent medicine peddlers licensing, penalty for unlicensed sales: RCW 18.64.047.
- Pawnbrokers and secondhand dealers laws, penalties: RCW 19.60.066.
- Peaches, standards, inspection, penalty for violations: RCW 15.17.290.
- Peddlers, penalty for selling without license: RCW 36.71.060.
- Persons infected with disease, exposure to others, penalty: RCW 70.54.050.
- Pesticides, prohibited acts: Chapter 15.58 RCW.
- Pharmacy licensing laws and regulations, penalties: RCW 18.64.140, 18.64.250.
- Physical therapy practice regulations, penalties: RCW 18.74.090.
- Podiatric medicine and surgery, general penalty: RCW 18.22.220.
- Poisons: Chapters 69.36, 69.40 RCW.
- Pollution of water (see Water pollution)
- Pool tables or billiard tables or bowling alley for hire, license required, penalty: RCW 67.14.060.
- Port district regulations adopted by city or county, violations, penalty: RCW 53.08.220.
- Port districts, violations of rules relating to toll tunnels and bridges, penalty: RCW 53.34.190.
- Psychologists licensing and practice law, violations, penalty: RCW 18.83.180.
- Public assistance
- falsification of application, etc., penalty: RCW 74.08.055.
 - fraudulent practices: RCW 74.08.331.
 - records to be confidential, etc., penalty: RCW 74.04.060.
- Public libraries, penalties for injuring property or retaining books: RCW 27.12.330, 27.12.340.
- Public officers, misconduct, penalties: Chapter 42.20 RCW.
- Public records, etc., crimes concerning, penalties: Chapter 40.16 RCW.

- Public service companies*
auto and transport companies, penalty for violation: RCW 81.68.080.
motor freight carriers, penalties for violations: RCW 81.80.230, 81.80.355.
passengers for hire, failure to file bond or insurance policy, penalty: RCW 46.72.100.
railroads
employee requirements, penalties for violations: Chapter 81.40 RCW.
equipment, penalties for violations: RCW 81.44.085.
operating requirements, penalties for violations: RCW 81.48.020, 81.48.060.
property damaged, sabotaged or stolen, penalties: RCW 81.60.070, 81.60.080.
rights-of-way and crossings, etc., penalties: RCW 81.53.210, 81.54.030.
regulatory fees, penalty: RCW 81.24.080.
securities, penalty: RCW 81.08.120.
street railways, penalties for violations: RCW 81.64.130, 81.64.150.
transfers of property, penalty: RCW 81.12.060.
violations of laws and regulations, general penalties: RCW 81.04.380, 81.04.390.
- Public utilities*
regulatory fees, penalty: RCW 80.24.050.
transfers of property, penalty: RCW 80.12.060.
violations of laws and regulations, general penalties: RCW 80.04.380, 80.04.390.
- Public works, falsification of records, etc., penalty: RCW 39.04.110, 39.12.050.*
- Real estate*
brokers and salesperson laws, penalty: RCW 18.85.411.
mortgages, removal of property from mortgaged premises, penalty: RCW 61.12.030.
- Rebating, etc., by practitioners of healing professions, penalty: RCW 19.68.010.*
- Recall petition laws, penalties: RCW 29A.84.240, 29A.84.020, 29A.84.220.*
- Recreational devices, inspection of, penalty: RCW 79A.40.020, 79A.40.040.*
- Referendum and initiative laws, penalties: RCW 29A.84.230, 29A.84.210, 29A.84.250.*
- Rules of the road: Chapter 46.61 RCW.*
- Savings and loan associations*
advertising as without license: RCW 33.08.010.
concealing facts or destroying evidence, etc., penalty: RCW 33.36.060.
false statements concerning financial standings, penalty: RCW 33.36.050.
falsification of books, etc., penalty: RCW 33.36.040.
making prohibited loans or investments, penalty: RCW 33.36.010.
preferential transfer of property due to insolvency, penalty: RCW 33.36.030.
purchase at discount prohibited to officers, etc., penalty: RCW 33.36.020.
- Schools*
compulsory attendance, penalties: RCW 28A.225.090.
disclosing examination questions, penalty: RCW 28A.635.040.
disturbing meetings, penalty: RCW 28A.635.030.
failure to deliver books, etc., to successor, penalty: RCW 28A.635.070.
grafting by school officials, penalty: RCW 28A.635.050.
interfering by force or violence with any administrator, faculty member, or student unlawful—Penalty: RCW 28B.10.570, 28B.10.572.
intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty: RCW 28B.10.571 and 28B.10.572.
- Securities act violations, penalty: RCW 21.20.400 through 21.20.420.*
- Sexual psychopaths: Chapter 71.06 RCW.*
- Sexually transmitted diseases, penalty for violation of control of: RCW 70.24.080.*
- Shellfish, sanitary control, penalties for violation of law regulating: RCW 69.30.140.*
- Sheriff's office employees, civil service for, penalty: RCW 41.14.220.*
- Ski lifts and other recreational conveyances: RCW 79A.40.040.*
- Snowmobile act*
additional violations—Penalty: RCW 46.10.495.
operating violations, general penalty: RCW 46.10.490, 46.10.500.
- Solid waste collection, unlawful acts: Chapter 81.77 RCW.*
- Sporting contest, fraud, penalty: RCW 67.24.010.*
- State bonds, fraud by engraver: RCW 39.44.101.*
- State employees' retirement, falsification of statements, etc., penalty: RCW 41.40.055.*
- State lands*
firewood removal, permit required, penalty: RCW 79.15.440.
removing flora, etc., penalty: RCW 47.40.080.
trespass, etc.: Chapter 79.02 RCW.
- State treasurer, penalty for embezzlement: RCW 43.08.140.*
- Steam boilers, safety requirements, penalty: RCW 70.54.080.*
- Stink or gas bombs prohibited, penalty: RCW 70.74.310.*
- Support of dependent children—Alternative method—1971 act: Chapter 74.20A RCW.*
- Swimming pools, violation of health laws and regulations: RCW 70.90.205.*
- Taxation*
cigarette tax, penalties: RCW 82.24.100, 82.24.110.
general penalties: RCW 82.32.290.
personal property, disclosure of information unlawful: RCW 84.40.340.
property taxes
listing of property: RCW 84.40.120.
removal of property to avoid collection of, penalties: RCW 84.56.120, 84.56.200.
retail sales tax, penalties: RCW 82.08.050, 82.08.120.
use tax, penalty: RCW 82.12.040.
- Teachers*
abuse of a misdemeanor: RCW 28A.635.010.
retirement, falsification of statements, etc., penalty: RCW 41.32.055.
- Telephones, party line, refusal to yield in emergency, penalty: RCW 70.85.020, 70.85.030.*
- Television reception improvement districts, penalty for false statement as to tax exemption: RCW 36.95.190.*
- Tires*
pneumatic, passenger car, selling or offering for sale if under prescribed standards, penalty: RCW 46.37.423.
regrooved, selling or offering for sale if under prescribed standards, penalty: RCW 46.37.424.
selling or operating vehicle with tires not meeting standards of state patrol, penalty: RCW 46.37.425.
- Tobacco, etc., minors procuring or possessing, penalties: RCW 26.28.080, 70.155.080.*
- Toll facilities, operation of motor vehicle on, prohibited acts: RCW 46.61.690.*
- Trading stamps and premiums, penalty for violations: RCW 19.84.040.*
- Unclaimed Property Act, penalties for violations: RCW 63.29.340, 63.29.350.*
- Unemployment compensation, penalties for violations: Chapter 50.36 RCW.*
- Use of lists of registered voters, violations relating to, penalty: RCW 29A.08.720.*
- Veterinarian laws and rules, penalty: RCW 18.92.230, 18.92.240.*
- Vital statistics requirements, penalty for violation: RCW 70.58.280.*
- Vouchers, public, false certification, penalty: RCW 42.24.100.*
- Wages (see Labor laws)*
- Warehouses, grain and terminal, commodity inspections, penalties for violation: RCW 22.09.310, 22.09.340, 22.09.890.*
- Warehousing deposits, general penalties: Chapter 22.32 RCW.*
- Washington Caustic Poison Act of 1929: Chapter 69.36 RCW.*
- Washington Criminal Code: Title 9A RCW.*
- Washington fresh fruit sales limitation act, violations: RCW 15.21.060.*
- Washington state patrol retirement fund, falsification of records, etc., to defraud, penalty: RCW 43.43.320.*
- Water pollution*
control, penalty for violations: RCW 90.48.140.
drinking water pollution, etc.: Chapter 70.54 RCW.
pollution of water supply in cities and towns, penalty: RCW 35.88.040.
- Weed districts, prevention of agent's right of entry, penalty: RCW 17.04.280.*

Weights and measures law and rules, penalties for violations: RCW 19.94.490 through 19.94.510.

Wills, failing to deliver, penalty: RCW 11.20.010.

Workers' compensation, penalties for violations of regulations concerning: Chapter 51.48 RCW, RCW 51.16.140.

X-rays, use in shoe fitting prohibited: RCW 70.98.170.

9.91.010 Denial of civil rights—Terms defined.

Terms used in this section shall have the following definitions:

(1)(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage, or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his or her agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed, or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, or color, to be treated as not welcome, accepted, desired, or solicited.

(d) "Any place of public resort, accommodation, assemblage, or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation, or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of

special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in *loco parentis* to direct the education and upbringing of a child under his or her control is hereby affirmed.

(2) Every person who denies to any other person because of race, creed, or color, the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, shall be guilty of a misdemeanor. [2011 c 336 § 329; 1953 c 87 § 1; 1909 c 249 § 434; RRS § 2686.]

Application forms, licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Interference with board against discrimination: RCW 49.60.310.

9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.

Every person who, being employed upon any railway, as engineer, motor operator, grip operator, conductor, switch tender, fire tender, bridge tender, flagger, or signal operator, or having charge of stations, starting, regulating, or running trains upon a railway, or being employed as captain, engineer, or other officer of a vessel propelled by steam, or being the driver of any animal or vehicle upon any public highway, street, or other public place, is intoxicated while engaged in the discharge of any such duties, shall be guilty of a gross misdemeanor. [2013 c 23 § 4; 2000 c 239 § 3; 1915 c 165 § 2; 1909 c 249 § 275; RRS § 2527.]

Reviser's note: Caption for 1915 c 165 § 2 reads as follows: "Section 2527 [Rem. & Bal.] Intoxication of employees." See *State v. Crothers*, 118 Wash. 226, 203 P. 74 (1922).

Hunting while intoxicated—Penalty: RCW 77.15.675.

Operating vehicle under influence of intoxicants or drugs: RCW 46.20.285, 46.61.502.

Operating vessel in reckless manner or while under influence of alcohol or drugs: RCW 79A.60.040.

Railroads, employees, equipment, operations: Chapters 81.40, 81.44, 81.48 RCW.

Additional notes found at www.leg.wa.gov

9.91.025 Unlawful transit conduct. (1) A person is guilty of unlawful transit conduct if, while on or in a transit vehicle or in or at a transit station, he or she knowingly:

(a) Smokes or carries a lighted or smoldering pipe, cigar, or cigarette, unless he or she is smoking in an area designated and authorized by the transit authority;

(b) Discards litter other than in designated receptacles;

(c) Dumps or discards, or both, any materials on or at a transit facility including, but not limited to, hazardous substances and automotive fluids;

(d) Plays any radio, recorder, or other sound-producing equipment, except that nothing herein prohibits the use of the equipment when connected to earphones or an ear receiver that limits the sound to an individual listener. The use of public address systems or music systems that are authorized by a transit agency is permitted. The use of communications

devices by transit employees and designated contractors or public safety officers in the line of duty is permitted, as is the use of private communications devices used to summon, notify, or communicate with other individuals, such as pagers and cellular phones;

(e) Spits, expectorates, urinates, or defecates, except in appropriate plumbing fixtures in restroom facilities;

(f) Carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others, except that nothing herein prevents a person from carrying a cigarette, cigar, or pipe lighter or carrying a firearm or ammunition in a way that is not otherwise prohibited by law;

(g) Consumes an alcoholic beverage or is in possession of an open alcoholic beverage container, unless authorized by the transit authority and required permits have been obtained;

(h) Obstructs or impedes the flow of transit vehicles or passenger traffic, hinders or prevents access to transit vehicles or stations, or otherwise unlawfully interferes with the provision or use of public transportation services;

(i) Unreasonably disturbs others by engaging in loud, raucous, unruly, harmful, or harassing behavior;

(j) Destroys, defaces, or otherwise damages property in a transit vehicle or at a transit facility;

(k) Throws an object in a transit vehicle, at a transit facility, or at any person at a transit facility with intent to do harm;

(l) Possesses an unissued transfer or fare media or tenders an unissued transfer or fare media as proof of fare payment;

(m) Falsely claims to be a transit operator or other transit employee or through words, actions, or the use of clothes, insignia, or equipment resembling department-issued uniforms and equipment, creates a false impression that he or she is a transit operator or other transit employee;

(n) Engages in gambling or any game of chance for the winning of money or anything of value;

(o) Skates on roller skates or in-line skates, or rides in or upon or by any means a coaster, skateboard, toy vehicle, or any similar device. However, a person may walk while wearing skates or carry a skateboard while on or in a transit vehicle or in or at a transit station if that conduct is not otherwise prohibited by law; or

(p) Engages in other conduct that is inconsistent with the intended use and purpose of the transit facility, transit station, or transit vehicle and refuses to obey the lawful commands of an agent of the transit authority or a peace officer to cease such conduct.

(2) For the purposes of this section:

(a) "Transit station" or "transit facility" means all passenger facilities, structures, stops, shelters, bus zones, properties, and rights-of-way of all kinds that are owned, leased, held, or used by a transit authority for the purpose of providing public transportation services.

(b) "Transit vehicle" means any motor vehicle, streetcar, train, trolley vehicle, ferry boat, or any other device, vessel, or vehicle that is owned or operated by a transit authority or an entity providing service on behalf of a transit authority that is used for the purpose of carrying passengers on a regular schedule.

(c) "Transit authority" means a city transit system under RCW 35.58.2721 or chapter 35.95A RCW, a county transportation authority under chapter 36.57 RCW, a metropolitan

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municipal corporation transit system under chapter 36.56 RCW, a public transportation benefit area under chapter 36.57A RCW, an unincorporated transportation benefit area under RCW 36.57.100, a regional transportation authority under chapter 81.112 RCW, or any special purpose district formed to operate a public transportation system.

(3) Any person who violates this section is guilty of a misdemeanor. [2009 c 279 § 3; 2004 c 118 § 1; 1994 c 45 § 4; 1992 c 77 § 1; 1984 c 167 § 1.]

Findings—Declaration—Severability—1994 c 45: See notes following RCW 7.48.140.

Drinking in public conveyance: RCW 66.44.250.

9.91.060 Leaving children unattended in parked automobile. Every person having the care and custody, whether temporary or permanent, of minor children under the age of twelve years, who shall leave such children in a parked automobile unattended by an adult while such person enters a tavern or other premises where vinous, spirituous, or malt liquors are dispensed for consumption on the premises shall be guilty of a gross misdemeanor. [1999 c 143 § 9; 1951 c 270 § 17.]

Leaving children unattended in standing vehicle with motor running: RCW 46.61.685.

9.91.130 Disposal of trash in charity donation receptacle. (1) It is unlawful for any person to throw, drop, deposit, discard, or otherwise dispose of any trash, including, but not limited to items that have deteriorated to the extent that they are no longer of monetary value or of use for the purpose they were intended; garbage, including any organic matter; or litter, in or around a receptacle provided by a charitable organization, as defined in RCW 19.09.020(2), for the donation of clothing, property, or other thing of monetary value to be used for the charitable purposes of such organization.

(2) Charitable organizations must post a clearly visible notice on the donation receptacles warning of the existence and content of this section and the penalties for violation of its provisions, as well as a general identification of the items which are appropriate to be deposited in the receptacle.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor, and the fine for such violation shall be not less than fifty dollars for each offense.

(4) Nothing in this section shall preclude a charitable organization which maintains the receptacle from pursuing a civil action and seeking whatever damages were sustained by reason of the violation of the provisions of this section. For a second or subsequent violation of this section, such person shall be liable for treble the amount of damages done by the person, but in no event less than two hundred dollars, and such damages may be recovered in a civil action before any district court judge. [1987 c 385 § 1.]

Additional notes found at www.leg.wa.gov

9.91.140 Food stamps—Unlawful sale. A person who sells food stamps obtained through the program established under RCW 74.04.500 or food stamp benefits transferred electronically, or food purchased therewith, is guilty of the following:

(1) A gross misdemeanor if the value of the stamps, benefits, or food transferred exceeds one hundred dollars; or

(2) A misdemeanor if the value of the stamps, benefits, or food transferred is one hundred dollars or less. [2003 c 53 § 49; 1998 c 79 § 1; 1996 c 78 § 1; 1988 c 62 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.142 Food stamps—Trafficking. A person who purchases, or who otherwise acquires and sells, or who traffics in, food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, is guilty of the following:

(1) A class C felony punishable according to chapter 9A.20 RCW if the face value of the stamps or benefits exceeds one hundred dollars; or

(2) A gross misdemeanor if the face value of the stamps or benefits is one hundred dollars or less. [2003 c 53 § 50.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.144 Food stamps—Unlawful redemption. A person who, in violation of 7 U.S.C. Sec. 2024(c), obtains and presents food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, for redemption or causes such stamps or benefits to be presented for redemption through the program established under RCW 74.04.500 is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 51.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.150 Tree spiking. (1) Any person who maliciously drives or places in any tree, forest material, forest debris, or other wood material any iron, steel, ceramic, or other substance sufficiently hard to injure saws or wood processing or manufacturing equipment, for the purpose of hindering logging or timber harvesting activities, is guilty of a class C felony under chapter 9A.20 RCW.

(2) Any person who, with the intent to use it in a violation of subsection (1) of this section, possesses any iron, steel, ceramic, or other substance sufficiently hard to injure saws or wood processing or manufacturing equipment is guilty of a gross misdemeanor under chapter 9A.20 RCW.

(3) As used in this section the terms "forest debris" and "forest material" have the same meanings as under RCW 76.04.005. [1988 c 224 § 1.]

9.91.155 Tree spiking—Action for damages. Any person who is damaged by any act prohibited in RCW 9.91.150 may bring a civil action to recover damages sustained, including a reasonable attorney's fee. A party seeking civil damages under this section may recover upon proof of a violation of the provisions of RCW 9.91.150 by a preponderance of the evidence. [1988 c 224 § 2.]

9.91.160 Personal protection spray devices. (1) It is unlawful for a person under eighteen years old, unless the person is at least fourteen years old and has the permission of a parent or guardian to do so, to purchase or possess a per-

sonal protection spray device. A violation of this subsection is a misdemeanor.

(2) No town, city, county, special purpose district, quasi-municipal corporation or other unit of government may prohibit a person eighteen years old or older, or a person fourteen years old or older who has the permission of a parent or guardian to do so, from purchasing or possessing a personal protection spray device or from using such a device in a manner consistent with the authorized use of force under RCW 9A.16.020. No town, city, county, special purpose district, quasi-municipal corporation, or other unit of government may prohibit a person eighteen years old or older from delivering a personal protection spray device to a person authorized to possess such a device.

(3) For purposes of this section:

(a) "Personal protection spray device" means a commercially available dispensing device designed and intended for use in self-defense and containing a nonlethal sternutator or lacrimator agent, including but not limited to:

(i) Tear gas, the active ingredient of which is either chloracetophenone (CN) or O-chlorobenzylidene malonotrile (CS); or

(ii) Other agent commonly known as mace, pepper mace, or pepper gas.

(b) "Delivering" means actual, constructive, or attempted transferring from one person to another.

(4) Nothing in this section authorizes the delivery, purchase, possession, or use of any device or chemical agent that is otherwise prohibited by state law. [1994 sp.s. c 7 § 514.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

9.91.170 Interfering with dog guide or service animal. (1)(a) Any person who has received notice that his or her behavior is interfering with the use of a dog guide or service animal who continues with reckless disregard to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(2)(a) Any person who, with reckless disregard, allows his or her dog to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(3) Any person who, with reckless disregard, injures, disables, or causes the death of a dog guide or service animal is guilty of a gross misdemeanor.

(4) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of a dog guide or service animal is guilty of a gross misdemeanor.

(5) Any person who intentionally injures, disables, or causes the death of a dog guide or service animal is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(6) Any person who wrongfully obtains or exerts unauthorized control over a dog guide or service animal with the intent to deprive the dog guide or service animal user of his or her dog guide or service animal is guilty of theft in the first degree, RCW 9A.56.030.

(7)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the dog guide or service animal user and the dog guide or service animal which arise out of or are related to the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog guide or service animal, the training of a replacement dog guide or service animal, or retraining of the affected dog guide or service animal and all related veterinary and care expenses; and

(ii) Medical expenses of the dog guide or service animal user, training of the dog guide or service animal user, and compensation for wages or earned income lost by the dog guide or service animal user.

(8) Nothing in this section shall affect any civil remedies available for violation of this section.

(9) For purposes of this section, the following definitions apply:

(a) "Dog guide" means a dog that is trained or in training for the purpose of guiding blind persons or a dog trained or in training for the purpose of assisting hearing impaired persons.

(b) "Service animal" means an animal that is trained or in training for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

(c) "Notice" means a verbal or otherwise communicated warning prescribing the behavior of another person and a request that the person stop their behavior.

(d) "Value" means the value to the dog guide or service animal user and does not refer to cost or fair market value. [2017 c 170 § 1; 2003 c 53 § 52; 2001 c 112 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.91.175 Interfering with search and rescue dog.

(1)(a)(i) Any person who has received notice that his or her behavior is interfering with the use of an on-duty search and rescue dog who continues with reckless disregard to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except when (a)(ii) of this subsection applies.

(ii) A second or subsequent violation of (a)(i) of this subsection is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b)(i) Any person who, with reckless disregard, allows his or her dog to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor

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punishable according to chapter 9A.20 RCW, except when (b)(ii) of this subsection applies.

(ii) A second or subsequent violation of (b)(i) of this subsection is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(2)(a) Any person who, with reckless disregard, injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Any person who intentionally injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a class C felony.

(4) Any person who wrongfully obtains or exerts unauthorized control over an on-duty search and rescue dog with the intent to deprive the dog user of his or her search and rescue dog is guilty of theft in the first degree under RCW 9A.56.030.

(5)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the search and rescue dog user and the dog that arise out of, or are related to, the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog, the training of a replacement search and rescue dog, or retraining of the affected dog and all related veterinary and care expenses; and

(ii) Medical expenses of the search and rescue dog user, training of the dog user, and compensation for any wages or earned income lost by the search and rescue dog user as a result of a violation of subsection (1), (2), (3), or (4) of this section.

(6) Nothing in this section affects any civil remedies available for violation of this section.

(7) For purposes of this section, "search and rescue dog" means a dog that is trained for the purpose of search and rescue of persons lost or missing. [2005 c 212 § 1.]

9.91.180 Violent video or computer games. (1) A person who sells, rents, or permits to be sold or rented, any video or computer game they know to be a violent video or computer game to any minor has committed a class 1 civil infraction as provided in RCW 7.80.120.

(2) "Minor" means a person under seventeen years of age.

(3) "Person" means a retailer engaged in the business of selling or renting video or computer games including any individual, partnership, corporation, or association who is subject to the tax on retailers under RCW 82.04.250.

(4) "Violent video or computer game" means a video or computer game that contains realistic or photographic-like depictions of aggressive conflict in which the player kills, injures, or otherwise causes physical harm to a human form in the game who is depicted, by dress or other recognizable

symbols, as a public law enforcement officer. [2003 c 365 § 2.]

Reviser's note: As to the constitutionality of this section, see *Video Software Dealers Ass'n v. Maleng*, 325 F. Supp. 2d 1180 (W.D. Wash. 2004).

Findings—2003 c 365: "The legislature finds that there has been an increase in studies showing a correlation between exposure to violent video and computer games and various forms of hostile and antisocial behavior. The entertainment software industry's ratings and content descriptors of video and computer games reflect that some video and computer games are suitable only for adults due to graphic depictions of sex and/or violence. Furthermore, some video and computer games focus on violence specifically against public law enforcement officers such as police and firefighters. The legislature encourages retailers and parents to utilize the rating system.

In addition, the legislature finds there is a compelling interest to curb hostile and antisocial behavior in Washington's youth and to foster respect for public law enforcement officers." [2003 c 365 § 1.]

Chapter 9.92 RCW PUNISHMENT

Sections

9.92.005	Penalty assessments in addition to fine or bail forfeiture—Crime victims compensation account.
9.92.010	Punishment of felony when not fixed by statute.
9.92.020	Punishment of gross misdemeanor when not fixed by statute.
9.92.030	Punishment of misdemeanor when not fixed by statute.
9.92.040	Punishment for contempt.
9.92.060	Suspending sentences.
9.92.062	Suspended sentence—Termination date—Application.
9.92.064	Suspended sentence—Termination date, establishment—Modification of terms.
9.92.066	Termination of suspended sentence—Restoration of civil rights—Vacation of conviction.
9.92.070	Payment of fine and costs in installments.
9.92.080	Sentence on two or more convictions or counts.
9.92.090	Habitual criminals.
9.92.100	Prevention of procreation.
9.92.110	Convicts protected—Forfeitures abolished.
9.92.120	Conviction of public officer forfeits trust.
9.92.130	City jail prisoners may be compelled to work.
9.92.140	County jail prisoners may be compelled to work.
9.92.151	Early release for good behavior.
9.92.200	Chapter not to affect dispositions under juvenile justice act.
9.92.900	RCW 9.92.050 through 9.92.090 inapplicable to felonies committed on or after July 1, 1984.

Court to fix maximum sentence: RCW 9.95.010.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

Juvenile offenders—Commitment: Chapter 13.04 RCW.

9.92.005 Penalty assessments in addition to fine or bail forfeiture—Crime victims compensation account. See RCW 7.68.035.

9.92.010 Punishment of felony when not fixed by statute. Every person convicted of a felony for which no maximum punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such confinement and fine and the offense shall be classified as a class B felony. [1996 c 44 § 2; 1982 1st ex.s. c 47 § 5; 1909 c 249 § 13; RRS § 2265.]

Classification of crimes: Chapter 9A.20 RCW.

Additional notes found at www.leg.wa.gov

9.92.020 Punishment of gross misdemeanor when not fixed by statute. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine. [2011 c 96 § 10; 1982 1st ex.s. c 47 § 6; 1909 c 249 § 15; RRS § 2267.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Additional notes found at www.leg.wa.gov

9.92.030 Punishment of misdemeanor when not fixed by statute. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine. [1982 1st ex.s. c 47 § 7; 1909 c 249 § 14; Code 1881 § 785; RRS § 2266.]

Additional notes found at www.leg.wa.gov

9.92.040 Punishment for contempt. A criminal act which at the same time constitutes contempt of court, and has been punished as such, may also be punished as a crime, but in such case the punishment for contempt may be considered in mitigation. [1909 c 249 § 21; RRS § 2273.]

Contempt: Chapter 7.21 RCW.

9.92.060 Suspending sentences. (1) Whenever any person is convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, rape of a child, or rape, the superior court may, in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by the superior court, and, upon such terms as the superior court may determine, that the sentenced person be placed under the charge of:

(a) A community corrections officer employed by the department of corrections, if the person is subject to supervision under RCW 9.94A.501 or *9.94A.5011; or

(b) A probation officer employed or contracted for by the county, if the county has elected to assume responsibility for the supervision of superior court misdemeanant probationers.

(2) As a condition to suspension of sentence, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. In addition, the superior court may require the convicted person to make such monetary payments, on such terms as the superior court deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay any fine imposed and not suspended and the

court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required; and (d) to contribute to a county or interlocal drug fund.

(3) As a condition of the suspended sentence, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(4) If restitution to the victim has been ordered under subsection (2)(b) of this section and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If the superior court has ordered supervision and restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence. [2011 1st sp.s. c 40 § 5; 2005 c 362 § 2; 1996 c 298 § 5; 1995 1st sp.s. c 19 § 30; 1987 c 202 § 142; 1982 1st ex.s. c 47 § 8; 1982 1st ex.s. c 8 § 4; 1979 c 29 § 1; 1967 c 200 § 7; 1957 c 227 § 1; 1949 c 76 § 1; 1921 c 69 § 1; 1909 c 249 § 28; 1905 c 24 § 1; Rem. Supp. 1949 § 2280.]

*Reviser's note: RCW 9.94A.5011 expired August 1, 2014.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Intent—1987 c 202: See note following RCW 2.04.190.

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Probation: RCW 9.95.200 through 9.95.250.

Probation and parole services, provision by counties: RCW 36.01.070.

Restitution

alternative to fine: RCW 9A.20.030.

condition of probation: RCW 9.95.210.

disposition when victim not found or dead: RCW 7.68.290.

Additional notes found at www.leg.wa.gov

9.92.062 Suspended sentence—Termination date—Application. In all cases prior to August 9, 1971, wherein the execution of sentence has been suspended pursuant to RCW 9.92.060, such person may apply to the court by which he or she was convicted and sentenced to establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. [2011 c 336 § 330; 1971 ex.s. c 188 § 1.]

Additional notes found at www.leg.wa.gov

9.92.064 Suspended sentence—Termination date, establishment—Modification of terms. In the case of a person granted a suspended sentence under the provisions of RCW 9.92.060, the court shall establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. Prior to the entry of an order formally terminating a suspended sentence the court may modify the terms and conditions of the suspension or extend the period of the suspended sentence. [1982 1st ex.s. c 47 § 9; 1971 ex.s. c 188 § 2.]

Additional notes found at www.leg.wa.gov

9.92.066 Termination of suspended sentence—Restoration of civil rights—Vacation of conviction. (1) Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his or her civil rights not already restored by RCW 29A.08.520. Thereupon the court may in its discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted.

(2)(a) Upon termination of a suspended sentence under RCW 9.92.060 or 9.95.210, the person may apply to the sentencing court for a vacation of the person's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the person has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2009 c 325 § 2; 2003 c 66 § 2; 1971 ex.s. c 188 § 3.]

Additional notes found at www.leg.wa.gov

9.92.070 Payment of fine and costs in installments. Hereafter whenever any judge of any superior court or a district or municipal judge shall sentence any person to pay any fines, penalties, assessments, fees, and costs, the judge may, in the judge's discretion, provide that such fines, penalties, assessments, fees, and costs may be paid in certain designated installments, or within certain designated period or periods. If the court finds that the defendant is indigent as defined in RCW 10.101.010(3) (a) through (c), the court shall allow for payment in certain designated installments or within certain designated periods. If such fines, penalties, assessments, fees, and costs shall be paid by the defendant in accordance with such order no commitment or imprisonment of the defendant shall be made for failure to pay such fine or

costs. PROVIDED, that the provisions of this section shall not apply to any sentence given for the violation of any of the liquor laws of this state. [2018 c 269 § 11; 1987 c 3 § 4; 1923 c 15 § 1; RRS § 2280-1.]

Construction—2018 c 269: See note following RCW 10.82.090.

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Payment of fine and costs in installments: RCW 10.01.170.

Additional notes found at www.leg.wa.gov

9.92.080 Sentence on two or more convictions or counts. (1) Whenever a person while under sentence of felony shall commit another felony and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms: PROVIDED, That any person granted probation pursuant to the provisions of RCW 9.95.210 and/or 9.92.060 shall not be considered to be under sentence of a felony for the purposes of this subsection.

(2) Whenever a person is convicted of two or more offenses which arise from a single act or omission, the sentences imposed therefor shall run concurrently, unless the court, in pronouncing sentence, expressly orders the service of said sentences to be consecutive.

(3) In all other cases, whenever a person is convicted of two or more offenses arising from separate and distinct acts or omissions, and not otherwise governed by the provisions of subsections (1) and (2) of this section, the sentences imposed therefor shall run consecutively, unless the court, in pronouncing the second or other subsequent sentences, expressly orders concurrent service thereof.

(4) The sentencing court may require the secretary of corrections, or his or her designee, to provide information to the court concerning the existence of all prior judgments against the defendant, the terms of imprisonment imposed, and the status thereof. [2011 c 336 § 331; 1981 c 136 § 35; 1971 ex.s. c 295 § 1; 1925 ex.s. c 109 § 2; 1909 c 249 § 33; RRS § 2285.]

Additional notes found at www.leg.wa.gov

9.92.090 Habitual criminals. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been twice convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in a state correctional facility for not less than ten years.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in a state correctional facility for life. [1992 c 7 § 18; 1909 c 249 § 34; 1903 c 86 §§ 1, 2; RRS § 2286.]

[Title 9 RCW—page 124]

Additional notes found at www.leg.wa.gov

9.92.100 Prevention of procreation. Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation. [1909 c 249 § 35; RRS § 2287.]

9.92.110 Convicts protected—Forfeitures abolished. Every person sentenced to imprisonment in any penal institution shall be under the protection of the law, and any unauthorized injury to his or her person shall be punished in the same manner as if he or she were not so convicted or sentenced. A conviction of crime shall not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in case of suicide or where a person flees from justice, are abolished. [2011 c 336 § 332; 1909 c 249 § 36; RRS § 2288.]

Inheritance rights of slayers or abusers: Chapter 11.84 RCW.

9.92.120 Conviction of public officer forfeits trust. The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his or her office, and shall disqualify him or her from ever afterward holding any public office in this state. [2011 c 336 § 333; 1909 c 249 § 37; RRS § 2289.]

Forfeiture or impeachment, rights preserved: RCW 42.04.040.

Misconduct of public officers: Chapter 42.20 RCW.

Vacancy of public office, causes: RCW 42.12.010.

9.92.130 City jail prisoners may be compelled to work. When a person has been sentenced by any municipal or district judge in this state to a term of imprisonment in a city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city. [1987 c 202 § 144; Code 1881 § 2075; RRS § 10189.]

Intent—1987 c 202: See note following RCW 2.04.190.

9.92.140 County jail prisoners may be compelled to work. When a person has been sentenced by a district judge or a judge of the superior court to a term of imprisonment in the county jail, whether in default of payment of a fine, or costs or otherwise; such person may be compelled to work eight hours, each day of such term, in and about the county buildings, public roads, streets and grounds: PROVIDED, This section and RCW 9.92.130 shall not apply to persons committed in default of bail. [1987 c 202 § 145; Code 1881 § 2076; 1867 p 56 § 24; 1858 p 10 § 1; RRS § 10190.]

Intent—1987 c 202: See note following RCW 2.04.190.

Employment of prisoners: RCW 36.28.100.

Working out fine: Chapter 10.82 RCW.

9.92.151 Early release for good behavior. (1) Except as provided in subsection (2) of this section, the sentence of a prisoner confined in a county jail facility for a felony, gross

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misdeemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(2) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section.

(3) If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the number of days of early release credits lost or not earned. [2013 2nd sp.s. c 14 § 3; 2009 c 28 § 3; 2004 c 176 § 5; 1990 c 3 § 201; 1989 c 248 § 1.]

Application—Recalculation of earned release date—Compilation of sentencing information—Report—Effective date—2013 2nd sp.s. c 14: See notes following RCW 9.94A.517.

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.92.200 Chapter not to affect dispositions under juvenile justice act. No provision of this chapter shall authorize a court to suspend or defer the imposition or the execution of a disposition under chapter 13.40 RCW, as now law or hereafter amended. [1981 c 299 § 21.]

9.92.900 RCW *9.92.050 through 9.92.090 inapplicable to felonies committed on or after July 1, 1984. The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW *9.92.050, 9.92.060, 9.92.062, 9.92.064, 9.92.066, 9.92.070, 9.92.080, and 9.92.090. [1984 c 209 § 2; 1981 c 137 § 31.]

*Reviser's note: RCW 9.92.050 was repealed by 1992 c 7 § 64.

Additional notes found at www.leg.wa.gov

Chapter 9.94 RCW

PRISONERS—CORRECTIONAL INSTITUTIONS

Sections

9.94.010	Prison riot—Penalty.
9.94.030	Holding person hostage—Interference with officer's duties.
9.94.040	Weapons—Possession, etc., by prisoner prohibited—Penalty.
9.94.041	Narcotic drugs, controlled substances, alcohol, marijuana, other intoxicant, cell phone, or other form of electronic telecommunications device—Possession, etc., by prisoners—Penalty.
9.94.043	Deadly weapons—Possession on premises by person not a prisoner—Penalty.
9.94.045	Narcotic drugs or controlled substances—Possession by person not a prisoner—Penalty.
9.94.047	Posting of perimeter of premises of institutions covered by RCW 9.94.040 through 9.94.049.
9.94.049	"Correctional institution" and "state correctional institution" defined.

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9.94.050 Correctional employees.

9.94.070 Persistent prison misbehavior.

Convict-made goods, restriction on sale of: Chapter 72.60 RCW.

Obstructing governmental operation: Chapter 9A.76 RCW.

State institutions: Title 72 RCW.

9.94.010 Prison riot—Penalty. (1) Whenever two or more inmates of a correctional institution assemble for any purpose, and act in such a manner as to disturb the good order of the institution and contrary to the commands of the officers of the institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot.

(2) Every inmate of a correctional institution who is guilty of prison riot or of voluntarily participating therein by being present at, or by instigating, aiding, or abetting the same, is guilty of a class B felony and shall be punished by imprisonment in a state correctional institution for not less than one year nor more than ten years, which shall be in addition to the sentence being served. [2003 c 53 § 53; 1995 c 314 § 1; 1955 c 241 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.94.030 Holding person hostage—Interference with officer's duties. Whenever any inmate of a correctional institution shall hold, or participate in holding, any person as a hostage, by force or violence, or the threat thereof, or shall prevent, or participate in preventing an officer of such institution from carrying out his or her duties, by force or violence, or the threat thereof, he or she shall be guilty of a class B felony and upon conviction shall be punished by imprisonment in a state correctional institution for not less than one year nor more than ten years. [2003 c 53 § 54; 1995 c 314 § 3; 1992 c 7 § 20; 1957 c 112 § 1; 1955 c 241 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Interfering with public officer: Chapter 9A.76 RCW.

Kidnapping: Chapter 9A.40 RCW.

9.94.040 Weapons—Possession, etc., by prisoner prohibited—Penalty. (1) Every person serving a sentence in any state correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another, is guilty of a class B felony.

(2) Every person confined in a county or local correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or has under his or her control any weapon, firearm, or any instrument that, if used, could produce serious bodily injury to the person of another, is guilty of a class C felony.

[Title 9 RCW—page 125]

(3) The sentence imposed under this section shall be in addition to any sentence being served. [2005 c 361 § 1; 1995 c 314 § 4; 1979 c 121 § 1; 1977 ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 38 § 18. Prior: 1955 c 241 § 4.]

Additional notes found at www.leg.wa.gov

9.94.041 Narcotic drugs, controlled substances, alcohol, marijuana, other intoxicant, cell phone, or other form of electronic telecommunications device—Possession, etc., by prisoners—Penalty. (1) Every person serving a sentence in any state correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, alcohol, marijuana, or other intoxicant, or a cell phone or other form of an electronic telecommunications device, is guilty of a class C felony.

(2) Every person confined in a county or local correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, alcohol, marijuana, or other intoxicant, or a cell phone or other form of an electronic telecommunications device, is guilty of a class C felony.

(3) The sentence imposed under this section shall be in addition to any sentence being served. [2016 c 199 § 1; 1995 c 314 § 5; 1979 c 121 § 2.]

9.94.043 Deadly weapons—Possession on premises by person not a prisoner—Penalty. A person, other than a person serving a sentence in a penal institution of this state, is guilty of possession of contraband on the premises of a state correctional institution in the first degree if, without authorization to do so, the person knowingly possesses or has under his or her control a deadly weapon on or in the buildings or adjacent grounds subject to the care, control, or supervision of a state correctional institution. Deadly weapon is used as defined in RCW 9A.04.110: PROVIDED, That such correctional buildings, grounds, or property are properly posted pursuant to RCW 9.94.047, and such person has knowingly entered thereon: PROVIDED FURTHER, That the provisions of this section do not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the correctional institution premises, proceeds directly along an access road to the administration building and promptly checks his or her firearm(s) with the appropriate authorities. The person may reclaim his or her firearm(s) upon leaving, but he or she must immediately and directly depart from the premises.

Possession of contraband on the premises of a state correctional institution in the first degree is a class B felony. [1979 c 121 § 3.]

9.94.045 Narcotic drugs or controlled substances—Possession by person not a prisoner—Penalty. A person, other than a person serving a sentence in a penal institution of this state, is guilty of possession of contraband on the premises of a state correctional institution in the second degree if, without authorization to do so, the person knowingly possesses or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, on or in the buildings, grounds, or any other real property subject to the care, control, or supervision of a state correctional institution.

Possession of contraband on the premises of a state correctional institution in the second degree is a class C felony. [1979 c 121 § 4.]

9.94.047 Posting of perimeter of premises of institutions covered by RCW 9.94.040 through 9.94.049. The perimeter of the premises of correctional institutions covered by RCW 9.94.040 through 9.94.049 shall be posted at reasonable intervals to alert the public as to the existence of RCW 9.94.040 through 9.94.049. [1979 c 121 § 5.]

9.94.049 "Correctional institution" and "state correctional institution" defined. (1) For the purposes of this chapter, the term "correctional institution" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including state prisons, county and local jails, and other facilities operated by the department of corrections or local governmental units primarily for the purposes of punishment, correction, or rehabilitation following conviction of a criminal offense.

(2) For the purposes of RCW 9.94.043 and 9.94.045, "state correctional institution" means all state correctional facilities under the supervision of the secretary of the department of corrections used solely for the purpose of confinement of convicted felons. [1995 c 314 § 6; 1992 c 7 § 21; 1985 c 350 § 3; 1979 c 121 § 6.]

9.94.050 Correctional employees. Any correctional employee, while acting in the supervision and transportation of prisoners, and in the apprehension of prisoners who have escaped, shall have the powers and duties of a peace officer. [1992 c 7 § 22; 1955 c 241 § 5.]

9.94.070 Persistent prison misbehavior. (1) An inmate of a state correctional institution who is serving a sentence for an offense committed on or after August 1, 1995, commits the crime of persistent prison misbehavior if the inmate knowingly commits a serious infraction, that does not constitute a class A or class B felony, after losing all potential earned early release time credit.

(2) "Serious infraction" means misconduct that has been designated as a serious infraction by department of corrections rules adopted under RCW 72.09.130.

(3) "State correctional institution" has the same meaning as in RCW 9.94.049.

(4) The crime of persistent prison misbehavior is a class C felony punishable as provided in RCW 9A.20.021. The sentence imposed for this crime must be served consecutive to any sentence being served at the time the crime is committed. [1995 c 385 § 1.]

Chapter 9.94A RCW

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- 9.94A.921 Effective date—2000 c 28.
- 9.94A.923 Nonentitlement.
- 9.94A.925 Application—2003 c 379 §§ 13-27.
- 9.94A.926 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.
- 9.94A.930 Recodification.

9.94A.010 Purpose. The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve himself or herself;
- (6) Make frugal use of the state's and local governments' resources; and
- (7) Reduce the risk of reoffending by offenders in the community. [2011 c 336 § 334; 1999 c 196 § 1; 1981 c 137 § 1.]

Report on Sentencing Reform Act of 1981: "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

Additional notes found at www.leg.wa.gov

9.94A.015 Finding—Intent—2000 c 28. The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to adopt clarifying amendments to make the act easier to use and understand.

The legislature does not intend chapter 28, Laws of 2000 to make, and no provision of chapter 28, Laws of 2000 shall be construed as making, a substantive change in the sentencing reform act.

The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement. [2000 c 28 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.020 Short title. This chapter may be known and cited as the sentencing reform act of 1981. [1981 c 137 § 2.]

9.94A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

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

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

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

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

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

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

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

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

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity pursuant to RCW 9.97.020.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon. However, when a defendant is charged with a recidivist offense, "criminal history" includes a vacated prior conviction for the sole purpose of establishing that such

vacated prior conviction constitutes an element of the present recidivist offense as provided in RCW 9.94A.640(3)(b) and 9.96.060(5)(c).

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

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

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

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

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

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

(22) "Drug offense" means:

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

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

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

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Electronic monitoring" means tracking the location of an individual, whether pretrial or posttrial, through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location.

(25) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (*RCW 72.66.060), willful failure to return from work release (*RCW 72.65.070), or willful failure to be

available for supervision by the department while in community custody (RCW 72.09.310); or

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

(26) "Felony traffic offense" means:

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

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

(27) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(28) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(29) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is confined in a private residence twenty-four hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic monitoring.

(30) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

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

(32) "Minor child" means a biological or adopted child of the offender who is under age eighteen at the time of the offender's current offense.

(33) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Sexual exploitation;

(p) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(q) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(r) Any other class B felony offense with a finding of sexual motivation;

(s) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(t) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(u)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(v) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(34) "Nonviolent offense" means an offense which is not a violent offense.

(35) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and **9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(36) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program or the graduated reentry program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

(37) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Hate Crime (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

- (xix) Extortion 1 (RCW 9A.56.120);
- (xx) Extortion 2 (RCW 9A.56.130);
- (xxi) Intimidating a Witness (RCW 9A.72.110);
- (xxii) Tampering with a Witness (RCW 9A.72.120);
- (xxiii) Reckless Endangerment (RCW 9A.36.050);
- (xxiv) Coercion (RCW 9A.36.070);
- (xxv) Harassment (RCW 9A.46.020); or
- (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(38) "Persistent offender" is an offender who:

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

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

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (38)(b)(i); and

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

(39) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in

any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(40) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(41) "Public school" has the same meaning as in RCW 28A.150.010.

(42) "Recidivist offense" means a felony offense where a prior conviction of the same offense or other specified offense is an element of the crime including, but not limited to:

(a) Assault in the fourth degree where domestic violence is pleaded and proven, RCW 9A.36.041(3);

(b) Cyberstalking, RCW 9.61.260(3)(a);

(c) Harassment, RCW 9A.46.020(2)(b)(i);

(d) Indecent exposure, RCW 9A.88.010(2)(c);

(e) Stalking, RCW 9A.46.110(5)(b) (i) and (iii);

(f) Telephone harassment, RCW 9.61.230(2)(a); and

(g) Violation of a no-contact or protection order, RCW 26.50.110(5).

(43) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, **26.10, 26.26A, 26.26B, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

(44) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(45) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(46) "Serious traffic offense" means:

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

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

(47) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;
- (viii) Assault of a child in the first degree; or
- (ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

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

(48) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(v) A felony violation of RCW 9A.44.132(1) (failure to register as a sex offender) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130 prior to June 10, 2010, on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(49) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(50) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(51) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(52) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(53) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(54) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(55) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(56) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

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

(57) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(58) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(59) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2019 c 331

§ 5; 2019 c 271 § 6; 2019 c 187 § 1; 2019 c 46 § 5007; 2018 c 166 § 3; 2016 c 81 § 16. Prior: 2015 c 287 § 1; 2015 c 261 § 12; 2012 c 143 § 1; prior: 2011 1st sp.s. c 40 § 8; 2011 c 87 § 2; prior: 2010 c 274 § 401; 2010 c 267 § 9; 2010 c 227 § 11; 2010 c 224 § 1; 2009 c 375 § 4; (2009 c 375 § 3 expired August 1, 2009); 2009 c 28 § 4; prior: 2008 c 276 § 309; 2008 c 231 § 23; 2008 c 230 § 2; 2008 c 7 § 1; prior: 2006 c 139 § 5; (2006 c 139 § 4 expired July 1, 2006); 2006 c 124 § 1; 2006 c 122 § 7; (2006 c 122 § 6 expired July 1, 2006); 2006 c 73 § 5; 2005 c 436 § 1; 2003 c 53 § 55; prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

** (2) RCW 9.94A.5011 expired August 1, 2014.

*** (3) Chapter 26.10 RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

(4) This section was amended by 2019 c 46 § 5007, 2019 c 187 § 1, 2019 c 271 § 6, and by 2019 c 331 § 5, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(5) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Short title—2019 c 331: See note following RCW 9.94A.637.

Finding—Conflict with federal requirements—2016 c 81: See notes following RCW 9.97.010.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent—2010 c 274: See note following RCW 10.31.100.

Application—2010 c 267: See note following RCW 9A.44.128.

Expiration date—2009 c 375 §§ 1, 3, and 13: See note following RCW 9.94A.501.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—2002 c 107: "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be

"revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Finding—Intent—2001 c 7: "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Purpose—1989 c 252: "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

State preemption of criminal street gang definitions: Chapter 9.101 RCW.

Additional notes found at www.leg.wa.gov

9.94A.035 Classification of felonies not in Title 9A RCW. For a felony defined by a statute of this state that is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this chapter;

(2) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this chapter;

(3) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this chapter. [1996 c 44 § 1.]

9.94A.171 Tolling of term of confinement, supervision. (1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial con-

finement shall be tolled during any period of time spent in total confinement pursuant to a new conviction.

(2) Any term of community custody shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3)(a) For offenders other than sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the offender is in confinement for any reason unless the offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 for the period of time prior to the hearing or for confinement pursuant to sanctions imposed for violation of sentence conditions, in which case, the period of community custody shall not toll. However, sanctions that result in the imposition of the remaining sentence or the original sentence will continue to toll the period of community custody. In addition, inpatient treatment ordered by the court in lieu of jail time shall not toll the period of community custody.

(b) For sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the sex offender is in confinement for any reason.

(4) For terms of confinement or community custody, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

(5) For the purposes of this section, "tolling" means the period of time in which community custody or confinement time is paused and for which the offender does not receive credit towards the term ordered. [2011 1st sp.s. c 40 § 1; 2008 c 231 § 28; 2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.625, 9.94A.170.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.190 Terms of more than one year or less than one year—Where served—Reimbursement of costs. (1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state, or in home detention pursuant to RCW 9.94A.6551 or the graduated reentry program under RCW 9.94A.733. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsec-

tion. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state.

(5) Sentences imposed pursuant to RCW 9.94A.507 shall be served in a facility or institution operated, or utilized under contract, by the state. [2018 c 166 § 5; 2010 c 224 § 10; (2011 c 96 § 11 repealed by 2011 1st sp.s. c 40 § 43); 2009 c 28 § 5; 2001 2nd sp.s. c 12 § 313; 2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.340 Equal application. The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant. [1983 c 115 § 5.]

9.94A.345 Timing. Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed. [2000 c 26 § 2.]

Intent—2000 c 26: "RCW 9.94A.345 is intended to cure any ambiguity that might have led to the Washington supreme court's decision in *State v. Cruz*, Cause No. 67147-8 (October 7, 1999). A decision as to whether a prior conviction shall be included in an individual's offender score should be determined by the law in effect on the day the current offense was committed. RCW 9.94A.345 is also intended to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives." [2000 c 26 § 1.]

PROSECUTORIAL STANDARDS

9.94A.401 Introduction. These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state. [1983 c 115 § 14. Formerly RCW 9.94A.430.]

9.94A.411 Evidentiary sufficiency. (1) Decision not to prosecute.

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

GUIDELINE/COMMENTARY:

Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Conviction in the pending prosecution is imminent;

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

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

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

(g) **Improper Motives of Complainant** - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose,

would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

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

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

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

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

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

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

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

Notification

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

(2) Decision to prosecute.

(a) **STANDARD:**

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

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

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder (RCW 10.95.020)

1st Degree Murder (RCW 9A.32.030)

2nd Degree Murder (RCW 9A.32.050)

1st Degree Manslaughter (RCW 9A.32.060)

2nd Degree Manslaughter (RCW 9A.32.070)

1st Degree Kidnapping (RCW 9A.40.020)

2nd Degree Kidnapping (RCW 9A.40.030)

1st Degree Assault (RCW 9A.36.011)

2nd Degree Assault (RCW 9A.36.021)

3rd Degree Assault (RCW 9A.36.031)

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

1st Degree Assault of a Child (RCW 9A.36.120)

2nd Degree Assault of a Child (RCW 9A.36.130)
 3rd Degree Assault of a Child (RCW 9A.36.140)
 1st Degree Rape (RCW 9A.44.040)
 2nd Degree Rape (RCW 9A.44.050)
 3rd Degree Rape (RCW 9A.44.060)
 1st Degree Rape of a Child (RCW 9A.44.073)
 2nd Degree Rape of a Child (RCW 9A.44.076)
 3rd Degree Rape of a Child (RCW 9A.44.079)
 1st Degree Robbery (RCW 9A.56.200)
 2nd Degree Robbery (RCW 9A.56.210)
 1st Degree Arson (RCW 9A.48.020)
 1st Degree Burglary (RCW 9A.52.020)
 1st Degree Identity Theft (RCW 9.35.020(2))
 2nd Degree Identity Theft (RCW 9.35.020(3))
 1st Degree Extortion (RCW 9A.56.120)
 2nd Degree Extortion (RCW 9A.56.130)
 1st Degree Criminal Mistreatment (RCW 9A.42.020)
 2nd Degree Criminal Mistreatment (RCW 9A.42.030)
 1st Degree Theft from a Vulnerable Adult (RCW 9A.56.400(1))
 2nd Degree Theft from a Vulnerable Adult (RCW 9A.56.400(2))
 Indecent Liberties (RCW 9A.44.100)
 Incest (RCW 9A.64.020)
 Vehicular Homicide (RCW 46.61.520)
 Vehicular Assault (RCW 46.61.522)
 1st Degree Child Molestation (RCW 9A.44.083)
 2nd Degree Child Molestation (RCW 9A.44.086)
 3rd Degree Child Molestation (RCW 9A.44.089)
 1st Degree Promoting Prostitution (RCW 9A.88.070)
 Intimidating a Juror (RCW 9A.72.130)
 Communication with a Minor (RCW 9.68A.090)
 Intimidating a Witness (RCW 9A.72.110)
 Intimidating a Public Servant (RCW 9A.76.180)
 Bomb Threat (if against person) (RCW 9.61.160)
 Unlawful Imprisonment (RCW 9A.40.040)
 Promoting a Suicide Attempt (RCW 9A.36.060)
 Criminal Mischief (if against person) (RCW 9A.84.010)
 Stalking (RCW 9A.46.110)
 Custodial Assault (RCW 9A.36.100)
 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, *26.10.220, 26.26B.050, 26.50.110, 26.52.070, or 74.34.145)
 Counterfeiting (if a violation of RCW 9.16.035(4))
 Felony Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.502 (6))
 Felony Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson (RCW 9A.48.030)
 1st Degree Escape (RCW 9A.76.110)
 2nd Degree Escape (RCW 9A.76.120)
 2nd Degree Burglary (RCW 9A.52.030)
 1st Degree Theft (RCW 9A.56.030)
 2nd Degree Theft (RCW 9A.56.040)
 1st Degree Perjury (RCW 9A.72.020)
 2nd Degree Perjury (RCW 9A.72.030)
 1st Degree Introducing Contraband (RCW 9A.76.140)

2nd Degree Introducing Contraband (RCW 9A.76.150)
 1st Degree Possession of Stolen Property (RCW 9A.56.150)
 2nd Degree Possession of Stolen Property (RCW 9A.56.160)
 Bribery (RCW 9A.68.010)
 Bribing a Witness (RCW 9A.72.090)
 Bribe received by a Witness (RCW 9A.72.100)
 Bomb Threat (if against property) (RCW 9.61.160)
 1st Degree Malicious Mischief (RCW 9A.48.070)
 2nd Degree Malicious Mischief (RCW 9A.48.080)
 1st Degree Reckless Burning (RCW 9A.48.040)
 Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and 9A.56.075)
 Forgery (RCW 9A.60.020)
 2nd Degree Promoting Prostitution (RCW 9A.88.080)
 Tampering with a Witness (RCW 9A.72.120)
 Trading in Public Office (RCW 9A.68.040)
 Trading in Special Influence (RCW 9A.68.050)
 Receiving/Granting Unlawful Compensation (RCW 9A.68.030)
 Bigamy (RCW 9A.64.010)
 Eluding a Pursuing Police Vehicle (RCW 46.61.024)
 Willful Failure to Return from Furlough
 Escape from Community Custody
 Criminal Mischief (if against property) (RCW 9A.84.010)
 1st Degree Theft of Livestock (RCW 9A.56.080)
 2nd Degree Theft of Livestock (RCW 9A.56.083)

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

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

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

(B) Will result in restitution to all victims.

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

(A) Charging a higher degree;

(B) Charging additional counts.

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

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

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

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

(B) The completion of necessary laboratory tests; and

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

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

(ii) Exceptions

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

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

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

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

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

(iii) Investigation Techniques

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

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

(iv) Prefiling Discussions with Defendant

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

(v) Prefiling Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions. [2019 c 46 § 5008. Prior: 2017 c 272 § 2; 2017 c 266 § 5; prior: 2006 c 271 § 1; 2006 c 73 § 13; prior: 2000 c 119 § 28; 2000 c 28 § 17; prior: 1999 c 322 § 6; 1999 c 196 § 11; 1996 c 93 § 2; 1995 c 288 § 3; prior: 1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15. Formerly RCW 9.94A.440.]

*Reviser's note: RCW 26.10.220 was repealed by 2019 c 437 § 801, effective January 1, 2021.

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Domestic violence risk assessment work group: RCW 10.99.800.

Additional notes found at www.leg.wa.gov

9.94A.421 Plea agreements—Discussions—Contents of agreements. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(1) Move for dismissal of other charges or counts;

(2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;

(3) Recommend a particular sentence outside of the sentence range;

(4) Agree to file a particular charge or count;

(5) Agree not to file other charges or counts; or

(6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

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

The court shall not participate in any discussions under this section. [1995 c 288 § 1; 1981 c 137 § 8. Formerly RCW 9.94A.080.]

Additional notes found at www.leg.wa.gov

9.94A.431 Plea agreements—Information to court—Approval or disapproval—Sentencing judge not bound.

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

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea. [1995 c 288 § 2; 1984 c 209 § 4; 1981 c 137 § 9. Formerly RCW 9.94A.090.]

Additional notes found at www.leg.wa.gov

9.94A.441 Plea agreements—Criminal history. The prosecuting attorney and the defendant shall each provide the court with their understanding of what the defendant's criminal history is prior to a plea of guilty pursuant to a plea agreement. All disputed issues as to criminal history shall be decided at the sentencing hearing. [1981 c 137 § 10. Formerly RCW 9.94A.100.]

Additional notes found at www.leg.wa.gov

9.94A.450 Plea dispositions. STANDARD: (1) Except as provided in subsection (2) of this section, a defendant will normally be expected to plead guilty to the charge or charges

which adequately describe the nature of his or her criminal conduct or go to trial.

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

(a) Evidentiary problems which make conviction on the original charges doubtful;

(b) The defendant's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;

(c) A request by the victim when it is not the result of pressure from the defendant;

(d) The discovery of facts which mitigate the seriousness of the defendant's conduct;

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

(f) The defendant's history with respect to criminal activity;

(g) The nature and seriousness of the offense or offenses charged;

(h) The probable effect on witnesses. [1983 c 115 § 16.]

9.94A.460 Sentence recommendations. STANDARD:

The prosecutor may reach an agreement regarding sentence recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement. [1983 c 115 § 17.]

9.94A.470 Armed offenders. Notwithstanding the current placement or listing of crimes in categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.411(2), any and all felony crimes involving any deadly weapon special verdict under *RCW 9.94A.602, any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, and any and all felony crimes as defined in RCW 9.94A.533 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancements shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.411(2) as crimes against persons. [2002 c 290 § 14; 1995 c 129 § 4 (Initiative Measure No. 159).]

***Reviser's note:** RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

Intent—2002 c 290: See note following RCW 9.94A.517.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Additional notes found at www.leg.wa.gov

9.94A.475 Plea agreements and sentences for certain offenders—Public records. Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:

(1) Any violent offense as defined in this chapter;

(2) Any most serious offense as defined in this chapter;

(3) Any felony with a deadly weapon special verdict under RCW 9.94A.825;

(4) Any felony with any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both;

(5) The felony crimes of possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun or bump-fire stock in a felony; or

(6) The felony crime of driving a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.502, and felony physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504. [2018 c 7 § 6; 2012 c 183 § 2; 2002 c 290 § 15; 1997 c 338 § 48; 1995 c 129 § 5 (Initiative Measure No. 159). Formerly RCW 9.94A.103.]

Effective dates—2018 c 7: See note following RCW 9.41.010.

Effective date—2012 c 183: "This act takes effect August 1, 2012." [2012 c 183 § 17.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Additional notes found at www.leg.wa.gov

9.94A.480 Judgment and sentence document—Delivery to caseload forecast council. (1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.475 shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.475. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The caseload forecast council shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section.

(3) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the caseload forecast council as required in subsection (2) of this section, the caseload forecast council shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the caseload forecast council. [2011 1st sp.s. c 40 § 27; 2002 c 290 § 16; 1997 c 338 § 49; 1995 c 129 § 6 (Initiative Measure No. 159). Formerly RCW 9.94A.105.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Additional notes found at www.leg.wa.gov

SENTENCING

9.94A.500 Sentencing hearing—Presentencing procedures—Disclosure of mental health services information. (Effective until January 1, 2021.) (1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW, a criminal solicitation to commit such a violation under chapter 9A.28 RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender

is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information and records related to mental health services, as described in RCW 71.05.445 and 70.02.250, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information and records relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information and records related to mental health services as authorized by RCW 71.05.445, 70.02.250, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services. [2013 c 200 § 33; 2008 c 231 § 2; 2006 c 339 § 303; 2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 § 2; 1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11. Formerly RCW 9.94A.110.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Intent—2008 c 231 §§ 2-4: "It is the legislature's intent to ensure that offenders receive accurate sentences that are based on their actual, complete criminal history. Accurate sentences further the sentencing reform act's goals of:

- (1) Ensuring that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Ensuring punishment that is just; and
- (3) Ensuring that sentences are commensurate with the punishment imposed on others for committing similar offenses.

Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005); *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature finds it is necessary to amend the provisions in RCW 9.94A.500, 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed accurately reflect the offender's actual, complete criminal history, whether imposed at sentencing or upon resentencing. These amendments are consistent with the United States supreme court holding in *Monge v. California*, 524 U.S. 721 (1998), that double jeopardy is not implicated at resentencing following an appeal or collateral attack." [2008 c 231 § 1.]

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Intent—2000 c 75: See note following RCW 71.05.445.

Intent—1998 c 260: "It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing:

- (1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and
- (2) Community corrections officers to work with community mental health providers to support participation in treatment by mentally ill offenders on community placement or community supervision." [1998 c 260 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.500 Sentencing hearing—Presentencing procedures—Disclosure of mental health services information. (Effective January 1, 2021.) (1) Before imposing a

sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW, a criminal solicitation to commit such a violation under chapter 9A.28 RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

Unless specifically waived by the court, the court shall order the department to complete a presentence investigation before imposing a drug offender sentencing alternative upon a defendant who has been convicted of a felony offense where domestic violence has been pleaded and proven.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents

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relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information and records related to mental health services, as described in RCW 71.05.445 and 70.02.250, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information and records relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information and records related to mental health services as authorized by RCW 71.05.445, 70.02.250, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services. [2019 c 263 § 501; 2013 c 200 § 33; 2008 c 231 § 2; 2006 c 339 § 303; 2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 § 2; 1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11. Formerly RCW 9.94A.110.]

Effective date—2019 c 263 §§ 501-504, 601, 602, and 701-708: "Sections 501 through 504, 601, 602, and 701 through 708 of this act take effect January 1, 2021." [2019 c 263 § 1004.]

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

Effective date—2013 c 200: See note following RCW 70.02.010.

Intent—2008 c 231 §§ 2-4: "It is the legislature's intent to ensure that offenders receive accurate sentences that are based on their actual, complete criminal history. Accurate sentences further the sentencing reform act's goals of:

- (1) Ensuring that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Ensuring punishment that is just; and
- (3) Ensuring that sentences are commensurate with the punishment imposed on others for committing similar offenses.

Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005); *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature finds it is necessary to amend the provisions in RCW 9.94A.500, 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed accurately reflect the offender's actual, complete criminal history, whether imposed at sentencing or upon resentencing. These amendments are consistent with the United States supreme court holding in *Monge v. California*, 524 U.S. 721 (1998), that double jeopardy is not implicated at resentencing following an appeal or collateral attack." [2008 c 231 § 1.]

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Intent—2000 c 75: See note following RCW 71.05.445.

Intent—1998 c 260: "It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing:

- (1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and
- (2) Community corrections officers to work with community mental health providers to support participation in treatment by mentally ill offenders on community placement or community supervision." [1998 c 260 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.501 Department must supervise specified offenders—Risk assessment of felony offenders. (1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

- (a) Offenders convicted of:
 - (i) Sexual misconduct with a minor second degree;
 - (ii) Custodial sexual misconduct second degree;
 - (iii) Communication with a minor for immoral purposes;
- and
- (iv) Violation of RCW 9A.44.132(2) (failure to register);

- and
- (b) Offenders who have:
 - (i) A current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and
 - (ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011.

(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e)(i) Has a current conviction for a domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence was pleaded and proven after August 1, 2011. This subsection (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

(ii) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an offender under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, 9.94A.670, or 9.94A.711;

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault),

RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control).

(5) The department shall supervise any offender who is released by the indeterminate sentence review board and who was sentenced to community custody or subject to community custody under the terms of release.

(6) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or *RCW 9.94A.5011.

(7) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or *RCW 9.94A.5011.

(8) The period of time the department is authorized to supervise an offender under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through (8), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535. [2019 c 191 § 2; 2016 sp.s. c 28 § 1. Prior: 2015 c 290 § 1; 2015 c 134 § 1; 2013 2nd sp.s. c 35 § 15; 2011 1st sp.s. c 40 § 2; prior: 2010 c 267 § 10; 2010 c 224 § 3; 2009 c 376 § 2; (2009 c 376 § 1 expired August 1, 2009); 2009 c 375 § 2; (2009 c 375 § 1 expired August 1, 2009); 2008 c 231 § 24; 2005 c 362 § 1; 2003 c 379 § 3.]

*Reviser's note: RCW 9.94A.5011 expired August 1, 2014.

Effective date—2015 c 134: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2015]." [2015 c 134 § 9.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: "(1) Except as otherwise provided in this section, the provisions of this act apply to persons convicted before, on, or after June 15, 2011.

(2) By January 1, 2012, consistent with RCW 9.94A.171, 9.94A.501, and section 3 of this act, the department of corrections shall recalculate the term of community custody for offenders currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject.

(3) By January 1, 2012, consistent with the provisions of RCW 9.94A.650, the department of corrections shall recalculate the term of community custody for each offender sentenced to a first-time offender waiver under RCW 9.94A.650 and currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject." [2011 1st sp.s. c 40 § 42.]

Effective date—2011 1st sp.s. c 40 §§ 1-9 and 42: "Sections 1 through 9 and 42 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 15, 2011]." [2011 1st sp.s. c 40 § 44.]

Application—2010 c 267: See note following RCW 9A.44.128.

Expiration date—2009 c 376 § 1: "Section 1 of this act expires August 1, 2009." [2009 c 376 § 4.]

Expiration date—2009 c 375 §§ 1, 3, and 13: "Sections 1, 3, and 13 of this act expire August 1, 2009." [2009 c 375 § 19.]

Application—2009 c 375: "This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after July 26, 2009." [2009 c 375 § 20.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Conditions of probation: RCW 9.95.210.

Misdemeanant probation services—County supervision: RCW 9.95.204.

Suspending sentences: RCW 9.92.060.

Additional notes found at www.leg.wa.gov

9.94A.502 Domestic violence risk assessment tool.

(1) The Washington State University department of criminal justice shall develop a tool to be used in conjunction with the Washington one risk assessment that would specifically predict whether the offender will commit domestic violence in the future. The domestic violence tool may incorporate relevant court records into the prediction modeling, if practical within the resources allocated. The tool will be used by the department as part of the current risk, needs, and responsivity assessment process.

(2) The Washington State University department of criminal justice shall make the domestic violence risk assessment tool available for use by the department no later than July 1, 2020. Subject to funds appropriated for this specific purpose, the department shall start to implement the domestic violence risk assessment tool by July 1, 2020, and by July 1, 2021, the department shall use the domestic violence risk assessment tool when conducting a Washington one risk assessment for an offender with a current conviction where domestic violence was pleaded and proven.

(3) The harborview center for sexual assault and traumatic stress shall develop a training curriculum for domestic violence perpetrator treatment providers that incorporates evidence-based practices and treatment modalities consistent with the Washington Administrative Code provisions adopted by the department of social and health services. The harborview center for sexual assault and traumatic stress shall complete the training curriculum and make it available for provider training no later than June 30, 2020. [2019 c 263 § 401.]

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

9.94A.505 Sentences. (1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

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(ix) RCW 9.94A.507, relating to certain sex offenses;

(x) RCW 9.94A.535, relating to exceptional sentences;

(xi) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xii) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug;

(xiii) RCW 9.94A.711, relating to the theft or taking of a motor vehicle.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

(8) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. "Crime-related prohibitions" may include a prohibition on the use or possession of alcohol or

controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

(10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention. [2019 c 191 § 3. Prior: 2015 c 287 § 10; 2015 c 81 § 1; 2010 c 224 § 4; 2009 c 389 § 1; 2009 c 28 § 6; 2008 c 231 § 25; 2006 c 73 § 6; prior: 2002 c 290 § 17; 2002 c 289 § 6; 2002 c 175 § 6; 2001 2nd sp.s. c 12 § 312; 2001 c 10 § 2; prior: 2000 c 226 § 2; 2000 c 43 § 1; 2000 c 28 § 5; prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12. Formerly RCW 9.94A.120.]

Effective date—2009 c 389 §§ 1 and 3-5: "Sections 1 and 3 through 5 of this act take effect August 1, 2009." [2009 c 389 § 8.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Intent—2001 c 10: "It is the intent of the legislature to incorporate into the reorganization of chapter 9.94A RCW adopted by chapter 28, Laws of 2000 amendments adopted to RCW 9.94A.120 during the 2000 legislative session that did not take cognizance of the reorganization. In addition, it is the intent of the legislature to correct any additional incorrect cross-references and to simplify the codification of provisions within chapter 9.94A RCW.

The legislature does not intend to make, and no provision of this act may be construed as making, a substantive change in the sentencing reform act." [2001 c 10 § 1.]

Finding—Intent—2000 c 226: "The legislature finds that supervision of offenders in the community and an offender's payment of restitution enhances public safety, improves offender accountability, is an important component of providing justice to victims, and strengthens the community. The legislature intends that all terms and conditions of an offender's supervision in the community, including the length of supervision and payment of legal financial obligations, not be curtailed by an offender's absence from supervision for any reason including confinement in any correctional institution. The legislature, through this act, revises the results of *In re Sappenfield*, 980 P.2d 1271 (1999) and declares that an offender's absence from supervision or subsequent incarceration acts to toll the jurisdiction of the court or department over an offender for the purpose of enforcing legal financial obligations." [2000 c 226 § 1.]

Drug offender options—Report: "The Washington state institute for public policy, in consultation with the sentencing guidelines commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit a final report to the legislature by December 1, 2004. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates." [1999 c 197 § 12.]

Intent—1998 c 260: See note following RCW 9.94A.500.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Finding—1996 c 275: "The legislature finds that improving the supervision of convicted sex offenders in the community upon release from incarceration is a substantial public policy goal, in that effective supervision accomplishes many purposes including protecting the community, supporting crime victims, assisting offenders to change, and providing important information to decision makers." [1996 c 275 § 1.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.506 Standard sentence ranges—Limitations.

The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(1) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(2) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(3) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021. [2011 1st sp.s. c 40 § 26.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.94A.507 Sentencing of sex offenders. (1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); or

(b) Has a prior conviction for an offense listed in *RCW 9.94A.030(31)(b), and is convicted of any sex offense other than failure to register.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.95.420 through 9.95.435.

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440. [2008 c 231 § 33. Prior: 2006 c 124 § 3; (2006 c 124 § 2 expired July 1, 2006); 2006 c 122 § 5; (2006 c 122 § 4 expired July 1, 2006); 2005 c 436 § 2; 2004 c 176 § 3; prior: 2001 2nd sp.s. c 12 § 303. Formerly RCW 9.94A.712.]

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Reviser's note: *(1) The reference to RCW 9.94A.030(31)(b) was apparently in error.

(2) This section was recodified pursuant to the direction found in section 56(4), chapter 231, Laws of 2008.

(3) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.510 Table 1—Sentencing grid.

TABLE 1
Sentencing Grid

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVI Life sentence without parole/death penalty for offenders at or over the age of eighteen. For offenders under the age of eighteen, a term of twenty-five years to life.										
XV 23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m36y	40y		
240-320	250-333	261-347	271-361	281-374	291-388	312-416	338-450	370-493	411-548	
XIV 14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y	
123-220	134-234	144-244	154-254	165-265	175-275	195-295	216-316	257-357	298-397	
XIII 12y	13y	14y	15y	16y	17y	19y	21y	25y	29y	
123-164	134-178	144-192	154-205	165-219	175-233	195-260	216-288	257-342	298-397	
XII 9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m	
93-123	102-136	111-147	120-160	129-171	138-184	162-216	178-236	209-277	240-318	
XI 7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m	
78-102	86-114	95-125	102-136	111-147	120-158	146-194	159-211	185-245	210-280	
X 5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m	
51-68	57-75	62-82	67-89	72-96	77-102	98-130	108-144	129-171	149-198	
IX 3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m	
31-41	36-48	41-54	46-61	51-68	57-75	77-102	87-116	108-144	129-171	
VIII 2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m	
21-27	26-34	31-41	36-48	41-54	46-61	67-89	77-102	87-116	108-144	
VII 18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m	
15-20	21-27	26-34	31-41	36-48	41-54	57-75	67-89	77-102	87-116	
VI 13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m	
12+-14	15-20	21-27	26-34	31-41	36-48	46-61	57-75	67-89	77-102	
V 9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y	
6-12	12+-14	13-17	15-20	22-29	33-43	41-54	51-68	62-82	72-96	
IV 6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m	
3-9	6-12	12+-14	13-17	15-20	22-29	33-43	43-57	53-70	63-84	
III 2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y	
1-3	3-8	4-12	9-12	12-16	17-22	22-29	33-43	43-57	51-68	
II 0-90 Days	4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m	
	2-6	3-9	4-12	12+-14	14-18	17-22	22-29	33-43	43-57	

SERIOUSNESS

LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent standard sentence ranges in months, or in days if so designated. 12+ equals one year and one day. [2014 c 130 § 1; 2002 c 290 § 10. Prior: 2000 c 132 § 2; 2000 c 28 § 11; prior: 1999 c 352 § 2; 1999 c 324 § 3; prior: 1998 c 235 § 1; 1998 c 211 § 3; prior: 1997 c 365 § 3; 1997 c 338 § 50; 1996 c 205 § 5; 1995 c 129 § 2 (Initiative Measure No. 159); (1994 sp.s. c 7 § 512 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701; prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2. Formerly RCW 9.94A.310.]

Application—2014 c 130: "Sections 1 through 9 of this act apply to all sentencing hearings conducted on or after June 1, 2014, regardless of the date of an offender's underlying offense." [2014 c 130 § 12.]

Effective date—2014 c 130: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2014." [2014 c 130 § 16.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings and intent—1995 c 129: "(1) The people of the state of Washington find and declare that:

(a) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.

(b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping.

(c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.

(d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.

(2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:

(a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.

(b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.

(c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.

(d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes." [1995 c 129 § 1 (Initiative Measure No. 159).]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

9.94A.515 Table 2—Crimes included within each seriousness level.

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
- XV Homicide by abuse (RCW 9A.32.055)
 - Malicious explosion 1 (RCW 70.74.280(1))
 - Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
 - Trafficking 1 (RCW 9A.40.100(1))
- XIII Malicious explosion 2 (RCW 70.74.280(2))
 - Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
 - Assault of a Child 1 (RCW 9A.36.120)
 - Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
 - Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
 - Rape 1 (RCW 9A.44.040)
 - Rape of a Child 1 (RCW 9A.44.073)
 - Trafficking 2 (RCW 9A.40.100(3))
- XI Manslaughter 1 (RCW 9A.32.060)
 - Rape 2 (RCW 9A.44.050)
 - Rape of a Child 2 (RCW 9A.44.076)
 - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- X Child Molestation 1 (RCW 9A.44.083)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 - Kidnapping 1 (RCW 9A.40.020)
 - Leading Organized Crime (RCW 9A.82.060(1)(a))
 - Malicious explosion 3 (RCW 70.74.280(3))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
 - Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)

- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- VII Air bag diagnostic systems (causing bodily injury or death) (RCW 46.37.660(2)(b))
- Air bag replacement requirements (causing bodily injury or death) (RCW 46.37.660(1)(b))
- Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Manufacture or import counterfeit, non-functional, damaged, or previously deployed air bag (causing bodily injury or death) (RCW 46.37.650(1)(b))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sell, install, or reinstall counterfeit, non-functional, damaged, or previously deployed airbag (RCW 46.37.650(2)(b))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun or Bump-fire Stock in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Theft from a Vulnerable Adult 1 (RCW 9A.56.400(1))
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Air bag diagnostic systems (RCW 46.37.660(2)(c))
- Air bag replacement requirements (RCW 46.37.660(1)(c))
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))

- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, *26.10.220, 26.26B.050, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Manufacture or import counterfeit, non-functional, damaged, or previously deployed air bag (RCW 46.37.650(1)(c))
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sell, install, or reinstall counterfeit, non-functional, damaged, or previously deployed airbag (RCW 46.37.650(2)(c))
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault 4 (third domestic violence offense) (RCW 9A.36.041(3))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Driving While Under the Influence (RCW 46.61.502(6))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hate Crime (RCW 9A.36.080)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
- Willful Failure to Return from Furlough (**RCW 72.66.060)

- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Manufacture of Untraceable Firearm with Intent to Sell (RCW 9.41.190)
- Manufacture or Assembly of an Undetectable Firearm or Untraceable Firearm (RCW 9.41.325)
- Mortgage Fraud (RCW 19.144.080)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun, Bump-Fire Stock, Undetectable Firearm, or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Special Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful Misbranding of Fish or Shellfish 1 (RCW 77.140.060(3))
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
- Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (**RCW 72.65.070)
- II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
- Computer Trespass 1 (RCW 9A.90.040)
- Counterfeiting (RCW 9.16.035(3))
- Electronic Data Service Interference (RCW 9A.90.060)
- Electronic Data Tampering 1 (RCW 9A.90.080)
- Electronic Data Theft (RCW 9A.90.100)
- Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
- Escape from Community Custody (RCW 72.09.310)
- Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010, and RCW 9A.44.132)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Organized Retail Theft 2 (RCW 9A.56.350(3))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Possession of a Stolen Vehicle (RCW 9A.56.068)

Retail Theft with Special Circumstances 2 (RCW 9A.56.360(3))	Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at seven hundred fifty dollars or more but less than five thousand dollars) (RCW 9A.56.096(5)(b))
Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (RCW 19.290.100)	Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
Theft 1 (RCW 9A.56.030)	Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
Theft of a Motor Vehicle (RCW 9A.56.065)	Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at five thousand dollars or more) (RCW 9A.56.096(5)(a))	Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
Theft with the Intent to Resell 2 (RCW 9A.56.340(3))	Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
Trafficking in Insurance Claims (RCW 48.30A.015)	Unlawful Possession of Payment Instruments (RCW 9A.56.320)
Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))	Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))	Unlawful Production of Payment Instruments (RCW 9A.56.320)
Unlawful Practice of Law (RCW 2.48.180)	Unlawful Releasing, Planting, Possessing, or Placing Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))	Unlawful Trafficking in Food Stamps (RCW 9.91.142)
Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))	Unlawful Use of Food Stamps (RCW 9.91.144)
Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))	Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))
Voyeurism 1 (RCW 9A.44.115)	Unlawful Use of Prohibited Aquatic Animal Species (**RCW 77.15.253(3))
I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)	Vehicle Prowl 1 (RCW 9A.52.095)
False Verification for Welfare (RCW 74.08.055)	Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))
Forgery (RCW 9A.60.020)	
Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)	
Malicious Mischief 2 (RCW 9A.48.080)	
Mineral Trespass (RCW 78.44.330)	
Possession of Stolen Property 2 (RCW 9A.56.160)	
Reckless Burning 1 (RCW 9A.48.040)	
Spotlighting Big Game 1 (RCW 77.15.450(3)(b))	
Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))	
Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)	
Theft 2 (RCW 9A.56.040)	
Theft from a Vulnerable Adult 2 (RCW 9A.56.400(2))	

[2019 c 271 § 7; 2019 c 243 § 5; 2019 c 64 § 3; 2019 c 46 § 5009. Prior: 2018 c 236 § 721; 2018 c 7 § 7; prior: 2017 c 335 § 4; 2017 c 292 § 3; 2017 c 272 § 10; 2017 c 266 § 8; prior: 2016 c 213 § 5; 2016 c 164 § 13; 2016 c 6 § 1; 2015 c 261 § 11; prior: 2013 c 322 § 26; 2013 c 290 § 8; 2013 c 267 § 2; 2013 c 153 § 2; prior: 2012 c 176 § 3; 2012 c 162 § 1; prior: 2010 c 289 § 11; 2010 c 227 § 9; prior: 2008 c 108 § 23; 2008 c 38 § 1; prior: 2007 c 368 § 14; 2007 c 199 § 10; prior: 2006 c 277 § 6; 2006 c 228 § 9; 2006 c 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12; prior: (2006 c 125 § 5 repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 § 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002

c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

Reviser's note: *(1) RCW 26.10.220 was repealed by 2019 c 437 § 801, effective January 1, 2021.

***(2) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

****(3) RCW 77.15.253 was repealed by 2014 c 202 § 310.

(4) This section was amended by 2019 c 46 § 5009, 2019 c 64 § 3, 2019 c 243 § 5, and by 2019 c 271 § 7, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2019 c 243: See note following RCW 9.41.010.

Explanatory statement—2019 c 64: See note following RCW 1.20.110.

Effective dates—2018 c 7: See note following RCW 9.41.010.

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Finding—Application of consumer protection act—2016 c 213: See note following RCW 46.37.640.

Findings—Intent—Short title—2016 c 164: See RCW 9A.90.010 and 9A.90.020.

Effective date—2013 c 153: See note following RCW 9A.56.360.

Findings—2008 c 108: See RCW 19.144.005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Severability—Effective date—2006 c 125: See notes following RCW 9A.44.190.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 224: See notes following RCW 9A.68.060.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Purpose—Effective date—2001 c 207: See notes following RCW 18.130.190.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—Effective dates—1994 sp.s. c 7: See notes following RCW 43.70.540.

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Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Domestic violence risk assessment work group: RCW 10.99.800.

Additional notes found at www.leg.wa.gov

9.94A.517 Table 3—Drug offense sentencing grid.

(1)

TABLE 3

DRUG OFFENSE SENTENCING GRID

Seriousness Level	Offender Score 0 to 2	Offender Score 3 to 5	Offender Score 6 to 9 or more
III	51 to 68 months	68+ to 100 months	100+ to 120 months
II	12+ to 20 months	20+ to 60 months	60+ to 120 months
I	0 to 6 months	6+ to 18 months	12+ to 24 months

References to months represent the standard sentence ranges. 12+ equals one year and one day.

(2) The court may utilize any other sanctions or alternatives as authorized by law, including but not limited to the special drug offender sentencing alternative under RCW 9.94A.660 or drug court under chapter 2.30 RCW.

(3) Nothing in this section creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment. [2015 c 291 § 9; (2015 c 291 § 8 expired July 1, 2018); (2013 2nd sp.s. c 14 § 1 expired July 1, 2018); 2002 c 290 § 8.]

Effective date—2015 c 291 § 9: "Section 9 of this act takes effect July 1, 2018." [2015 c 291 § 16.]

Expiration date—2015 c 291 § 8: "Section 8 of this act expires July 1, 2018." [2015 c 291 § 15.]

Conflict with federal requirements—2015 c 291: See note following RCW 2.30.010.

Application—Recalculation of earned release date—2013 2nd sp.s. c 14: "Pursuant to RCW 9.94A.729, the department shall recalculate the earned release date for any offender currently serving a term in a facility or institution either operated by the state or utilized under contract. The earned release date shall be recalculated whether the offender is currently incarcerated or is sentenced after July 1, 2013, and regardless of the offender's date of offense. For offenders whose offense was committed prior to July 1, 2013, the recalculation shall not extend a term of incarceration beyond that to which an offender is currently subject." [2013 2nd sp.s. c 14 § 4.]

Declaration—2013 2nd sp.s. c 14 § 4: "The legislature declares that section 4 of this act does not create any liberty interest. The department is authorized to take the time reasonably necessary to complete the recalculations of section 4 of this act after July 1, 2013." [2013 2nd sp.s. c 14 § 6.]

Compilation of sentencing information—Report—2013 2nd sp.s. c 14: "(1)(a) The department must, in consultation with the caseload forecast council, compile the following information in summary form for the two years prior to and after July 1, 2013: For offenders sentenced under RCW 9.94A.517 for a seriousness level I offense where the offender score is three to five: (A) The total number of sentences and the average length of sentence imposed, sorted by sentences served in state versus local correctional facilities; (B) the number of current and prior felony convictions for each offender; (C) the estimated cost or cost savings, total and per offender, to the state and local governments from the change to the maximum sentence pursuant to RCW 9.94A.517(1); and (D) the number of offenders who were sentenced to community custody, the number of violations committed on community custody, and any sanctions imposed for such violations.

(b) The department must submit a report with its findings to the office of financial management and the appropriate fiscal and policy committees of the house of representatives and the senate by January 1, 2015, and January 1, 2018.

(2) For purposes of this section, "department" means the department of corrections." [2013 2nd sp.s. c 14 § 5.]

Effective date—2013 2nd sp.s. c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 14 § 9.]

Applicability—2013 2nd sp.s. c 14 § 1: "Section 1 of this act applies to sentences imposed on or after July 1, 2013, regardless of the date of offense." [2013 2nd sp.s. c 14 § 7.]

Expiration date—2013 2nd sp.s. c 14 §§ 1 and 5: "Sections 1 and 5 of this act expire July 1, 2018." [2013 2nd sp.s. c 14 § 10.]

Intent—2002 c 290: "It is the intent of the legislature to increase the use of effective substance abuse treatment for defendants and offenders in Washington in order to make frugal use of state and local resources, thus reducing recidivism and increasing the likelihood that defendants and offenders will become productive and law-abiding persons. The legislature recognizes that substance abuse treatment can be effective if it is well planned and involves adequate monitoring, and that substance abuse and addiction is a public safety and public health issue that must be more effectively addressed if recidivism is to be reduced. The legislature intends that sentences for drug offenses accurately reflect the adverse impact of substance abuse and addiction on public safety, that the public must have protection from violent offenders, and further intends that such sentences be based on policies that are supported by research and public policy goals established by the legislature." [2002 c 290 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.518 Table 4—Drug offenses seriousness level.

TABLE 4
DRUG OFFENSES
INCLUDED WITHIN EACH SERI-
OUSNESS LEVEL

- III Any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under *RCW 9.94A.602
- Controlled Substance Homicide (RCW 69.50.415)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Involving a minor in drug dealing (RCW 69.50.4015)
- Manufacture of methamphetamine (RCW 69.50.401(2)(b))
- Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (**RCW 69.50.440)

- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- II Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.4011)
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(2)(b))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.4012)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(1)(f))
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(2)(b))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(2)(a))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(2) (c) through (e))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- I Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(2)(c))
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (RCW 69.50.4013)
- Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.4013)
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)

[2003 c 53 § 57; 2002 c 290 § 9.]

Reviser's note: *(1) RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

** (2) cf. 2002 c 134 § 1.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

9.94A.520 Offense seriousness level. The offense seriousness level is determined by the offense of conviction. [1990 c 3 § 703; 1983 c 115 § 6. Formerly RCW 9.94A.350.]

Additional notes found at www.leg.wa.gov

9.94A.525 Offender score. The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile

violent felony conviction, one point for each prior adult non-violent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

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

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

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

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

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

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

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

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile

prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

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

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

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

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

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

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for any of the following offenses: A felony violation of a no-contact or protection order RCW 26.50.110, felony Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

(b) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017, for any of the following offenses: Assault of a child in the first degree, RCW 9A.36.120; Assault of a child in the second degree, RCW 9A.36.130; Assault of a child in the third degree, RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW 9A.42.020; or Criminal Mistreatment in the second degree, RCW 9A.42.030;

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

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

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence. [2017 c 272 § 3; 2013 2nd sp.s. c 35 § 8; 2011 c 166 § 3; 2010 c 274 § 403; 2008 c 231 § 3. Prior: 2007 c 199 § 8; 2007 c 116 § 1; prior: 2006 c 128 § 6; 2006 c 73 § 7; prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

***Reviser's note:** 2010 c 267 removed from RCW 9A.44.130 provisions relating to the crime of "failure to register" as a sex offender or kidnapping offender, and placed similar provisions in RCW 9A.44.132.

Intent—2010 c 274: See note following RCW 10.31.100.

Intent—2008 c 231 §§ 2-4: See note following RCW 9.94A.500.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Application—2002 c 107: See notes following RCW 9.94A.030.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Domestic violence risk assessment work group: RCW 10.99.800.

Additional notes found at www.leg.wa.gov

9.94A.530 Standard sentence range. (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.510, (Table 1) and RCW 9.94A.517, (Table 3)). The additional time for deadly weapon findings or for other adjustments as specified in RCW 9.94A.533 shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgment includes not objecting to information stated in the

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presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537. On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented.

(3) In determining any sentence above the standard sentence range, the court shall follow the procedures set forth in RCW 9.94A.537. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard sentence range except upon stipulation or when specifically provided for in RCW 9.94A.535(3)(d), (e), (g), and (h). [2008 c 231 § 4; 2005 c 68 § 2; 2002 c 290 § 18; 2000 c 28 § 12; 1999 c 143 § 16; 1996 c 248 § 1; 1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8. Formerly RCW 9.94A.370.]

Reviser's note: As to the constitutionality of subsection (2) of this section, see *State v. Hunley*, 175 Wn.2d 901, 287 P.3d 584 (2012).

Intent—2008 c 231 §§ 2-4: See note following RCW 9.94A.500.

Intent—Severability—Effective date—2005 c 68: See notes following RCW 9.94A.537.

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

9.94A.533 Adjustments to standard sentences. (1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at

least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the

felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Notwithstanding any other provision of law, all impaired driving enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under this chapter.

An offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c).

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (a)(i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including

other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives

notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(14) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.832. [2018 c 7 § 8; 2016 c 203 § 7; 2015 c 134 § 2; 2013 c 270 § 2; 2012 c 42 § 3; 2011 c 293 § 9; 2009 c 141 § 2. Prior: 2008 c 276 § 301; 2008 c 219 § 3; 2007 c 368 § 9; prior: 2006 c 339 § 301; 2006 c 123 § 1; 2003 c 53 § 58; 2002 c 290 § 11.]

Effective dates—2018 c 7: See note following RCW 9.41.010.

Effective date—2015 c 134: See note following RCW 9.94A.501.

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

9.94A.535 Departures from the guidelines. The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(k) The defendant was convicted of vehicular homicide, by the operation of a vehicle in a reckless manner and has committed no other previous serious traffic offenses as defined in RCW 9.94A.030, and the sentence is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was

a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

(dd) The current offense involved a felony crime against persons, except for assault in the third degree pursuant to RCW 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This subsection shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the offense.

(ee) During the commission of the current offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater.

(ff) The current offense involved the assault of a utility employee of any publicly or privately owned utility company or agency, who is at the time of the act engaged in official duties, including: (i) The maintenance or repair of utility poles, lines, conduits, pipes, or other infrastructure; or (ii) connecting, disconnecting, or recording utility meters. [2019 c 219 § 1; 2016 c 6 § 2; 2013 2nd sp.s. c 35 § 37. Prior: 2013 c 256 § 2; 2013 c 84 § 26; 2011 c 87 § 1; prior: 2010 c 274 § 402; 2010 c 227 § 10; 2010 c 9 § 4; prior: 2008 c 276 § 303; 2008 c 233 § 9; 2007 c 377 § 10; 2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4; prior: 1996 c 248 § 2; 1996 c

121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

Intent—2010 c 274: See note following RCW 10.31.100.

Intent—2010 c 9: See note following RCW 69.50.315.

Intent—Severability—Effective date—2005 c 68: See notes following RCW 9.94A.537.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.537 Aggravating circumstances—Sentences above standard range. (1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) In any case where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.

(3) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(4) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the jury has been impaneled solely for resentencing, or unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(5) If the superior court conducts a separate proceeding to determine the existence of aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(6) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence. [2007 c 205 § 2; 2005 c 68 § 4.]

Intent—2007 c 205: "In *State v. Pillatos*, 150 P.3d 1130 (2007), the Washington supreme court held that the changes made to the sentencing reform act concerning exceptional sentences in chapter 68, Laws of 2005 do not apply to cases where the trials had already begun or guilty pleas had already been entered prior to the effective date of the act on April 15, 2005. The legislature intends that the superior courts shall have the authority to impanel juries to find aggravating circumstances in all cases that come before the courts for trial or sentencing, regardless of the date of the original trial or sentencing." [2007 c 205 § 1.]

Intent—2005 c 68: "The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision." [2005 c 68 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.540 Mandatory minimum terms. (1) Except to the extent provided in subsection (3) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced to a minimum term of total confinement not less than sixty months.

(e) An offender convicted of the crime of aggravated first degree murder for a murder that was committed prior to the offender's eighteenth birthday shall be sentenced to a term of total confinement not less than twenty-five years.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment

to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under *RCW 9.94A.728(3).

(3)(a) Subsection (1)(a) through (d) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).

(b) This subsection (3) applies only to crimes committed on or after July 24, 2005. [2014 c 130 § 2; 2005 c 437 § 2; 2001 2nd sp.s. c 12 § 315; 2000 c 28 § 7. Formerly RCW 9.94A.590.]

*Reviser's note: RCW 9.94A.728 was amended by 2015 c 156 § 1, changing subsection (3) to subsection (1)(c).

Application—Effective date—2014 c 130: See notes following RCW 9.94A.510.

Findings—Intent—2005 c 437: "(1) The legislature finds that emerging research on brain development indicates that adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to take these differences into consideration when sentencing juveniles tried as adults. The legislature further finds that applying mandatory minimum sentences for juveniles tried as adults prevents trial court judges from taking these differences into consideration in appropriate circumstances.

(2) The legislature intends to eliminate the application of mandatory minimum sentences under RCW 9.94A.540 to juveniles tried as adults, and to continue to apply all other adult sentencing provisions to juveniles tried as adults." [2005 c 437 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.550 Fines. Unless otherwise provided by a statute of this state, on all sentences under this chapter the court may impose fines on adult offenders according to the following ranges:

Class A felonies	\$0 - 50,000
Class B felonies	\$0 - 20,000
Class C felonies	\$0 - 10,000

[2015 c 265 § 15; 2003 c 53 § 59; 1984 c 209 § 23. Formerly RCW 9.94A.386.]

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.94A.555 Findings and intent—1994 c 1. (1) The people of the state of Washington find and declare that:

(a) Community protection from persistent offenders is a priority for any civilized society.

(b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.

(c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.

(d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

(a) Improve public safety by placing the most dangerous criminals in prison.

(b) Reduce the number of serious, repeat offenders by tougher sentencing.

(c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.

(d) Restore public trust in our criminal justice system by directly involving the people in the process. [1994 c 1 § 1 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.392.]

Additional notes found at www.leg.wa.gov

9.94A.561 Offender notification and warning. A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties. [1994 c 1 § 4 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.393.]

Additional notes found at www.leg.wa.gov

9.94A.562 Court-ordered treatment—Required notices. When any person is convicted in a superior court, the judgment and sentence shall include a statement that if the offender is or becomes subject to court-ordered mental health or chemical dependency treatment, the offender must notify the department and the offender's treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by an offender who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety is not enhanced by the sharing of this offender's information. [2004 c 166 § 11.]

Additional notes found at www.leg.wa.gov

9.94A.565 Governor's powers. (1) Nothing in chapter 1, Laws of 1994 shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender. [1994 c 1 § 5 (Initia-

ive Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.394.]

Additional notes found at www.leg.wa.gov

9.94A.570 Persistent offenders. Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under *RCW 9.94A.728 (1), (2), (3), (4), (6), (8), or (9), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) In the case of an offender in need of emergency medical treatment; or (2) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree. [2000 c 28 § 6. Formerly RCW 9.94A.560.]

***Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, deleting subsections (1) and (2) and changing subsections (3), (4), (6), (8), and (9) to subsections (2), (3), (5), (7), and (8), respectively. RCW 9.94A.728 was subsequently amended by 2015 c 156 § 1, changing subsections (2), (3), (5), (7), and (8) to subsection (1)(b), (c), (e), (g), and (h), respectively. RCW 9.94A.728 was subsequently amended by 2018 c 166 § 2, changing subsection (1)(g) and (h) to subsection (1)(h) and (i), respectively.

Additional notes found at www.leg.wa.gov

9.94A.575 Power to defer or suspend sentences abolished—Exceptions. The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.670, the special sex offender sentencing alternative, whose sentence may be suspended. [2000 c 28 § 9; 1999 c 143 § 12; 1984 c 209 § 7; 1981 c 137 § 13. Formerly RCW 9.94A.130.]

Additional notes found at www.leg.wa.gov

9.94A.580 Specialized training. The department is authorized to determine whether any person subject to the confines of a correctional facility would substantially benefit from successful participation in: (1) Literacy training, (2) employment skills training, or (3) educational efforts to identify and control sources of anger and, upon a determination that the person would, may require such successful participation as a condition for eligibility to obtain early release from the confines of a correctional facility.

The department shall adopt rules and procedures to administer this section. [1994 sp.s. c 7 § 533. Formerly RCW 9.94A.132.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

9.94A.585 Which sentences appealable—Procedure—Grounds for reversal—Written opinions. (1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-

time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted. [2002 c 290 § 19; 2000 c 28 § 10; 1989 c 214 § 1; 1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21. Formerly RCW 9.94A.210.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

9.94A.589 Consecutive or concurrent sentences.

(1)(a) Except as provided in (b), (c), or (d) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under this subsection (1)(b) shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6), or 46.61.5055(4) shall be served consecutively to any sentences imposed under RCW 46.20.740 and 46.20.750.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences.

Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months. [2015 2nd sp.s. c 3 § 13; 2002 c 175 § 7; 2000 c 28 § 14; 1999 c 352 § 11; 1998 c 235 § 2; 1996 c 199 § 3; 1995 c 167 § 2; 1990 c 3 § 704. Prior: 1988 c 157 § 5; 1988 c 143 § 24; 1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11. Formerly RCW 9.94A.400.]

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Additional notes found at www.leg.wa.gov

9.94A.595 Anticipatory offenses. For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent. [2000 c 28 § 16; 1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12. Formerly RCW 9.94A.410.]

Additional notes found at www.leg.wa.gov

9.94A.599 Presumptive ranges that exceed the statutory maximum. If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. If the addition of a firearm or deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. [1998 c 235 § 3; 1983 c 115 § 13. Formerly RCW 9.94A.420.]

9.94A.603 Felony alcohol violators—Treatment during incarceration—Conditions. (1) When sentencing an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the provisions of this chapter, shall order the offender to undergo alcohol or chemical dependency treatment services during incarceration. The offender shall be liable for the cost of treatment unless the court finds the offender indigent and no third-party insurance coverage is available.

(2) The provisions under *RCW 46.61.5055 (8) and (9) regarding the suspension, revocation, or denial of the offender's license, permit, or nonresident privilege to drive shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

(3) The provisions under RCW 46.20.720 and *46.61.5055(5) regarding ignition interlock devices shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6). [2006 c 73 § 4.]

***Reviser's note:** RCW 46.61.5055 was amended by 2008 c 282 § 14, changing subsections (5), (8), and (9) to subsections (6), (9), and (10), respectively, effective January 1, 2009.

Additional notes found at www.leg.wa.gov

9.94A.607 Chemical dependency. (1) Where the court finds that the offender has any chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the

offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender. A rehabilitative program may include a directive that the offender obtain an evaluation as to the need for chemical dependency treatment related to the use of alcohol or controlled substances, regardless of the particular substance that contributed to the commission of the offense. The court may also impose a prohibition on the use or possession of alcohol or controlled substances regardless of whether a chemical dependency evaluation is ordered.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, including suspended sentences. [2015 c 81 § 2; 1999 c 197 § 2. Formerly RCW 9.94A.129.]

Additional notes found at www.leg.wa.gov

9.94A.631 Violation of condition or requirement of sentence—Security searches authorized—Arrest by community corrections officer—Confinement in county jail.

(1) If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court or by the department. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to submit to a search and seizure of the offender's person, residence, automobile, or other personal property.

(2) For the safety and security of department staff, an offender may be required to submit to pat searches, or other limited security searches, by community corrections officers, correctional officers, and other agency approved staff, without reasonable cause, when in or on department premises, grounds, or facilities, or while preparing to enter department premises, grounds, facilities, or vehicles. Pat searches of offenders shall be conducted only by staff who are the same gender as the offender, except in emergency situations.

(3) A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court, local law enforcement, or local prosecution for consideration of new charges. The community corrections officer's report shall serve as the notice that the department will hold the offender for not more than three days from the time of such notice for the new crime, except if the offender's underlying offense is a felony offense listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest or until a prosecuting attorney charges the offender with a crime, whichever occurs first. This does not affect the department's authority under RCW 9.94A.737.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the

community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court or authorized department staff, pursuant to a written order. [2012 1st sp.s. c 6 § 1; 2009 c 390 § 1; 1984 c 209 § 11. Formerly RCW 9.94A.195.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: "Sections 1, 3 through 9, and 11 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2012." [2012 1st sp.s. c 6 § 15.]

Application—2012 1st sp.s. c 6: "This act applies retroactively and prospectively regardless of the date of an offender's underlying offense." [2012 1st sp.s. c 6 § 12.]

Additional notes found at www.leg.wa.gov

9.94A.633 Violation of condition or requirement—Offender charged with new offense—Sanctions—Procedures. (1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned by the court with up to sixty days' confinement for each violation or by the department with up to thirty days' confinement as provided in RCW 9.94A.737.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other community-based sanctions.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the parenting sentencing alternative set out in RCW 9.94A.655, the offender may be sanctioned in accordance with that section.

(d) If the offender was sentenced under the special sex offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

(e) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(f) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a

warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) The parole or probation of an offender who is charged with a new felony offense may be suspended and the offender placed in total confinement pending disposition of the new criminal charges if:

(a) The offender is on parole pursuant to RCW 9.95.110 (1); or

(b) The offender is being supervised pursuant to RCW 9.94A.745 and is on parole or probation pursuant to the laws of another state. [2012 1st sp.s. c 6 § 2. Prior: 2010 c 258 § 1; 2010 c 224 § 12; 2009 c 375 § 12; 2009 c 28 § 7; 2008 c 231 § 15.]

Effective date—2012 1st sp.s. c 6 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2012]." [2012 1st sp.s. c 6 § 14.]

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Application—2010 c 258 § 1: "Section 1 of this act applies to all offenders who committed their crimes before, on, or after June 10, 2010." [2010 c 258 § 2.]

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.6331 Sanctions—Where served. (1) If a sanction of confinement is imposed by the court, the following applies:

(a) If the sanction was imposed pursuant to RCW 9.94A.633(1), the sanction shall be served in a county facility.

(b) If the sanction was imposed pursuant to RCW 9.94A.633(2), the sanction shall be served in a state facility.

(2) If a sanction of confinement is imposed by the department, and if the offender is an inmate as defined by RCW 72.09.015, no more than eight days of the sanction, including any credit for time served, may be served in a county facility. The balance of the sanction shall be served in a state facility. In computing the eight-day period, weekends and holidays shall be excluded. The department may negotiate with local correctional authorities for an additional period of detention.

(3) If a sanction of confinement is imposed by the board, it shall be served in a state facility.

(4) Sanctions imposed pursuant to RCW 9.94A.670(3) shall be served in a county facility.

(5) As used in this section, "county facility" means a facility operated, licensed, or utilized under contract by the county, and "state facility" means a facility operated, licensed, or utilized under contract by the state. [2008 c 231 § 17.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.6332 Sanctions—Which entity imposes. The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sex offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.

(4) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(5) If the offender was released pursuant to RCW 9.94A.730, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(6) If the offender was sentenced pursuant to RCW 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(7) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

(8) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333. [2014 c 130 § 3; 2010 c 224 § 11; 2009 c 375 § 14; 2009 c 28 § 8; 2008 c 231 § 18.]

Application—Effective date—2014 c 130: See notes following RCW 9.94A.510.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.6333 Sanctions—Modification of sentence—Noncompliance hearing. (1) If an offender violates any condition or requirement of a sentence, and the offender is not being supervised by the department, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If an offender fails to comply with any of the non-financial conditions or requirements of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence;

(c) If the court finds that a violation has been proved, it may impose the sanctions specified in RCW 9.94A.633(1). Alternatively, the court may:

(i) Convert a term of partial confinement to total confinement; or

(ii) Convert community restitution obligation to total or partial confinement;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with a mental health status evaluation and/or outpatient mental health treatment, the court shall seek a recommendation from the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(3) If an offender fails to pay legal financial obligations as a requirement of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence;

(c) The court may not sanction the offender for failure to pay legal financial obligations unless the court finds, after a hearing and on the record, that the failure to pay is willful. A failure to pay is willful if the offender has the current ability to pay but refuses to do so. In determining whether the offender has the current ability to pay, the court shall inquire into and consider: (i) The offender's income and assets; (ii) the offender's basic living costs as defined by RCW 10.101.010 and other liabilities including child support and other legal financial obligations; and (iii) the offender's bona fide efforts to acquire additional resources. An offender who is indigent as defined by RCW 10.101.010(3) (a) through (c) is presumed to lack the current ability to pay;

(d) If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful non-compliance and shall not subject the offender to penalties;

(e) If the court finds that a failure to pay is willful non-compliance, it may impose the sanctions specified in RCW 9.94A.633(1); and

(f) If the court finds that the violation was not willful, the court may, and if the court finds that the defendant is indigent as defined in RCW 10.101.010(3) (a) through (c), the court shall modify the terms of payment of the legal financial obligations, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. The crime victim penalty

assessment under RCW 7.68.035 may not be reduced, waived, or converted to community restitution hours.

(4) Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement ordered by the court.

(5) Nothing in this section prohibits the filing of escape charges if appropriate. [2018 c 269 § 13; 2008 c 231 § 19.]

Construction—2018 c 269: See note following RCW 10.82.090.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Issuance, effect of no-contact order—Obligations, counseling after discharge. (1) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody or supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address. A certificate of discharge issued under this subsection (1) is effective on the date the offender completed all conditions of his or her sentence.

(2)(a) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all non-financial requirements of the sentence. The notice must list the specific sentence requirements that have been completed, so that it is clear to the sentencing court that the offender is entitled to discharge upon completion of the legal financial obligations of the sentence.

(b) When the department has provided the county clerk with notice under (a) of this subsection showing that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall promptly notify the sentencing court. Upon receipt of the notice under this subsection (2)(b), the court shall discharge the offender and provide the offender with a certificate of discharge. A certificate of discharge issued under this subsection (2) is effective on the date the offender completed all conditions of his or her sentence.

(3) In the absence of a certificate of discharge issued under subsection (1) or (2) of this section, the offender may file a motion with the sentencing court for a certificate of discharge. The sentencing court shall issue a certificate of discharge upon verification of completion of all sentencing conditions, including any and all legal financial obligations. A certificate of discharge issued under this subsection (3) is effective on the date the offender completed all conditions of his or her sentence.

(4) In the absence of a certificate of discharge issued under subsection (1), (2), or (3) of this section, the offender may file a motion with the sentencing court for a certificate of discharge and shall provide verification of completion of all nonfinancial conditions of his or her sentence, unless the court finds good cause to waive this requirement. A certifi-

cate of discharge issued under this subsection (4) is effective on the later of: (a) Five years after completion of community custody, or if the offender was not required to serve community custody, after the completion of full and partial confinement; or (b) the date any and all legal financial obligations were satisfied.

(5) The court shall issue a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(6)(a) A no-contact order is not a requirement of the offender's sentence. An offender who has completed all requirements of the sentence, including any and all legal financial obligations, is eligible for a certificate of discharge even if the offender has an existing no-contact order that excludes or prohibits the offender from having contact with a specified person or entity or coming within a set distance of any specified location.

In the case of an eligible offender who has a no-contact order as part of the judgment and sentence, the offender may petition the sentencing court to issue a certificate of discharge and a separate no-contact order, which must include paying the appropriate filing fee for the separate no-contact order. This filing fee does not apply to an offender seeking a certificate of discharge when the offender has a no-contact order separate from the judgment and sentence.

The court shall reissue the no-contact order separately under a new civil cause number for the remaining term and under the same conditions as contained in the judgment and sentence.

(b) The clerk of the court shall send a copy of the new no-contact order to the individuals or entities protected by the no-contact order, along with an explanation of the reason for the change, if there is an address available in the court file. If no address is available, the clerk of the court shall forward a copy of the order to the prosecutor, who shall send a copy of the no-contact order with an explanation of the reason for the change to the last known address of the protected individuals or entities.

(c) The clerk of the court shall forward a copy of the order to the appropriate law enforcement agency specified in the order on or before the next judicial day. The clerk shall also include a cover sheet that indicates the case number of the judgment and sentence that has been discharged. Upon receipt of the copy of the order and cover sheet, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in this system until it expires. The new order, and case number of the discharged judgment and sentence, shall be linked in the criminal intelligence information system for purposes of enforcing the no-contact order.

(d) A separately issued no-contact order may be enforced under chapter 26.50 RCW.

(e) A separate no-contact order issued under this subsection (6) is not a modification of the offender's sentence.

(7) Every signed certificate and order of discharge shall be filed with the county clerk of the sentencing county. In addition, the court shall send to the department a copy of every signed certificate and order of discharge for offender sentences under the authority of the department. The county

clerk shall enter into a database maintained by the administrator for the courts the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(8) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(9) The discharge shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(10) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(11) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [2019 c 331 § 2. Prior: 2009 c 325 § 3; 2009 c 288 § 2; 2007 c 171 § 1; 2004 c 121 § 2; 2003 c 379 § 19; 2002 c 16 § 2; 2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22. Formerly RCW 9.94A.220.]

Short title—2019 c 331: "This act may be known and cited as the new hope act." [2019 c 331 § 1.]

Findings—2009 c 288: "The legislature finds that restoration of the right to vote and serve on a jury, for individuals who have satisfied every other obligation of their sentence, best serves to reintegrate them into society, even if a no-contact order exists. Therefore, the legislature further finds clarification of the existing statute is desirable to provide clarity to the courts that a certificate of discharge shall be issued, while the no-contact order remains in effect, once other obligations are completed." [2009 c 288 § 1.]

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Intent—2002 c 16: "The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge." [2002 c 16 § 1.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9.94A.640 Vacation of offender's record of conviction. (1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a

vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if:

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

(b) The offense was a violent offense as defined in RCW 9.94A.030 or crime against persons as defined in RCW 43.43.830, except the following offenses may be vacated if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement: (i) Assault in the second degree under RCW 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when not committed against a law enforcement officer or peace officer; and (iii) robbery in the second degree under RCW 9A.56.210;

(c) The offense is a class B felony and the offender has been convicted of a new crime in this state, another state, or federal court in the ten years prior to the application for vacation;

(d) The offense is a class C felony and the offender has been convicted of a new crime in this state, another state, or federal court in the five years prior to the application for vacation;

(e) The offense is a class B felony and less than ten years have passed since the later of: (i) The applicant's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date;

(f) The offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than five years have passed since the later of: (i) The applicant's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date; or

(g) The offense was a felony described in RCW 46.61.502 or 46.61.504.

(3)(a) Except as otherwise provided, once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution, and nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

(b) A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense occurring on or after July 28, 2019, and may be used to establish an ongoing pattern of abuse for purposes of RCW 9.94A.535. [2019 c 331 § 3; 2012 c 183 § 3; 2006 c 73 § 8; 1987 c 486 § 7; 1981 c 137 § 23. Formerly RCW 9.94A.230.]

Short title—2019 c 331: See note following RCW 9.94A.637.

Effective date—2012 c 183: See note following RCW 9.94A.475.

Additional notes found at www.leg.wa.gov

9.94A.645 Civil actions against victims by persons convicted and confined for serious violent offenses—Authorization—Court may refuse—Considerations—Result of failure to obtain authorization. (1) A person convicted and confined for any of the offenses set forth in subsection (3) of this section must, prior to commencing any civil action in state court against the victim of such offense, or the victim's family, first obtain an order authorizing such action to proceed from the sentencing judge, if available, or the presiding judge in the county of conviction.

(2) This section does not apply to an action brought under Title 26 RCW.

(3) This section applies to persons convicted and confined for any serious violent offense as defined in RCW 9.94A.030.

(4) A court may refuse to authorize an action, or a claim contained therein, to proceed if the court finds that the action, or claim, is frivolous or malicious. In determining whether an action, or a claim asserted therein, is frivolous or malicious, the court may consider, among other things, whether:

(a) The claim's realistic chance of ultimate success is slight;

(b) The claim has no arguable basis in law or in fact;

(c) It is clear that the party cannot prove facts in support of the claim;

(d) The claim has been brought with the intent to harass the opposing party; or

(e) The claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

(5) For purposes of this section, "victim's family" includes a victim's spouse, domestic partner, children, parents, and siblings.

(6) Failure to obtain the authorization required by this section prior to commencing an action may result in loss of early release time or other privileges, or some combination thereof. The department may exercise discretion to determine whether and how the loss may be applied, and the amount of reduction of early release time, loss of other privileges, or some combination thereof. The department shall adopt rules to implement the provisions of this subsection. [2014 c 113 § 1.]

SENTENCING ALTERNATIVES

9.94A.650 First-time offender waiver. (1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of

deferred prosecution for a felony, and who are convicted of a felony that is not:

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2);

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana; or

(e) Felony driving while under the influence of intoxicating liquor or any drug or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses.

(3) The court may impose up to six months of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed one year.

(4) As a condition of community custody, in addition to any conditions authorized in RCW 9.94A.703, the court may order the offender to pay all court-ordered legal financial obligations and/or perform community restitution work. [2011 1st sp.s. c 40 § 9; 2008 c 231 § 29; 2006 c 73 § 9; 2002 c 175 § 9; 2000 c 28 § 18.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.655 Parenting sentencing alternative. (1) An offender is eligible for the parenting sentencing alternative if:

(a) The high end of the standard sentence range for the current offense is greater than one year;

(b) The offender has no prior or current conviction for a felony that is a sex offense or a violent offense;

(c) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(d) The offender signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with the department and the court; and

(e) The offender has physical custody of his or her minor child or is a legal guardian or custodian with physical custody of a child under the age of eighteen at the time of the current offense.

(2) To assist the court in making its determination, the court may order the department to complete either a risk

assessment report or a chemical dependency screening report as provided in RCW 9.94A.500, or both reports prior to sentencing.

(3) If the court is considering this alternative, the court shall request that the department contact the department of children, youth, and families to determine if the agency has an open child welfare case or prior substantiated referral of abuse or neglect involving the offender or if the agency is aware of any substantiated case of abuse or neglect with a tribal child welfare agency involving the offender.

(a) If the offender has an open child welfare case, the department will provide the release of information waiver and request that the department of children, youth, and families or the tribal child welfare agency provide a report to the court. The department of children, youth, and families shall provide a report within seven business days of the request that includes, at the minimum, the following:

- (i) Legal status of the child welfare case;
- (ii) Length of time the department of children, youth, and families has been involved with the offender;
- (iii) Legal status of the case and permanent plan;
- (iv) Any special needs of the child;
- (v) Whether or not the offender has been cooperative with services ordered by a juvenile court under a child welfare case; and

(vi) If the offender has been convicted of a crime against a child.

(b) If a report is required from a tribal child welfare agency, the department shall attempt to obtain information that is similar to what is required for the report provided by the department of children, youth, and families in a timely manner.

(c) If the offender does not have an open child welfare case with the department of children, youth, and families or with a tribal child welfare agency but has prior involvement, the department will obtain information from the department of children, youth, and families on the number and type of past substantiated referrals of abuse or neglect and report that information to the court. If the department of children, youth, and families has never had any substantiated referrals or an open case with the offender, the department will inform the court.

(4) If the sentencing court determines that the offender is eligible for a sentencing alternative under this section and that the sentencing alternative is appropriate and should be imposed, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of twelve months of community custody. The court shall consider the offender's criminal history when determining if the alternative is appropriate.

(5) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate.

(b) The department may impose conditions as authorized in RCW 9.94A.704 that may include, but are not limited to:

- (i) Parenting classes;
- (ii) Chemical dependency treatment;
- (iii) Mental health treatment;
- (iv) Vocational training;

(v) Offender change programs;

(vi) Life skills classes.

(c) The department shall report to the court if the offender commits any violations of his or her sentence conditions.

(6) The department shall provide the court with quarterly progress reports regarding the offender's progress in required programming, treatment, and other supervision conditions. When an offender has an open child welfare case, the department will seek to coordinate services with the department of children, youth, and families.

(7)(a) The court may bring any offender sentenced under this section back into court at any time during the period of community custody on its own initiative to evaluate the offender's progress in treatment, or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody, if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served in confinement under this section. [2018 c 58 § 45; 2010 c 224 § 2.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

9.94A.6551 Partial confinement as a part of a parenting program. For offenders not sentenced under RCW 9.94A.655, but otherwise eligible under this section, no more than the final twelve months of the offender's term of confinement may be served in partial confinement as home detention as part of the parenting program developed by the department.

(1) The secretary may transfer an offender from a correctional facility to home detention in the community if it is determined that the parenting program is an appropriate placement and when all of the following conditions exist:

(a) The offender is serving a sentence in which the high end of the range is greater than one year;

(b) The offender has no current conviction for a felony that is a sex offense or a violent offense;

(c) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(d) The offender signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with the department and the court;

(e) The offender:

(i) Has physical or legal custody of a minor child;

(ii) Has a proven, established, ongoing, and substantial relationship with his or her minor child that existed prior to the commission of the current offense; or

(iii) Is a legal guardian of a child that was under the age of eighteen at the time of the current offense; and

(f) The department determines that such a placement is in the best interests of the child.

(2) When the department is considering partial confinement as part of the parenting program for an offender, the department shall inquire of the individual and the department of children, youth, and families whether the agency has an open child welfare case or prior substantiated referral for abuse or neglect involving the offender. If the department of children, youth, and families or a tribal jurisdiction has an open child welfare case, the department will seek input from the department of children, youth, and families or the involved tribal jurisdiction as to: (a) The status of the child welfare case; and (b) recommendations regarding placement of the offender and services required of the department and the court governing the individual's child welfare case. The department and its officers, agents, and employees are not liable for the acts of offenders participating in the parenting program unless the department or its officers, agents, and employees acted with willful and wanton disregard.

(3) All offenders placed on home detention as part of the parenting program shall provide an approved residence and living arrangement prior to transfer to home detention.

(4) While in the community on home detention as part of the parenting program, the department shall:

(a) Require the offender to be placed on electronic home monitoring;

(b) Require the offender to participate in programming and treatment that the department determines is needed;

(c) Assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements; and

(d) If the offender has an open child welfare case with the department of children, youth, and families, collaborate and communicate with the identified social worker in the provision of services.

(5) The department has the authority to return any offender serving partial confinement in the parenting program to total confinement if the offender is not complying with sentence requirements. [2018 c 58 § 47; 2010 c 224 § 8.]

Effective date—2018 c 58: See note following RCW 28A.655.080.

9.94A.660 Drug offender sentencing alternative—Prison-based or residential alternative. (Effective until January 1, 2020.) (1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the

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offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the *department of social and health services; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine

if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 71.24.580. [2016 sp.s. c 29 § 524; 2009 c 389 § 3; (2009 c 389 § 2 expired August 1, 2009); 2008 c 231 § 30; 2006 c 339 § 302; 2006 c 73 § 10; 2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

***Reviser's note:** The powers, duties, and functions of the department of social and health services pertaining to licensing and certification of behavioral health provider agencies and facilities, except for state-run mental health institutions, were transferred to the department of health by chapter 201, Laws of 2018.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

Effective date—2009 c 389 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 389 § 7.]

Expiration date—2009 c 389 § 2: "Section 2 of this act expires August 1, 2009." [2009 c 389 § 9.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.660 Drug offender sentencing alternative—Prison-based or residential alternative. (Effective January 1, 2020, until January 1, 2021.) (1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential substance use disorder treatment-based alternative under RCW 9.94A.664. The residential substance use disorder treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a substance use disorder screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential substance use disorder treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the department of health; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 71.24.580. [2019 c 325 § 5002; 2016 sp.s. c 29 § 524; 2009 c 389 § 3; (2009 c 389 § 2 expired August 1, 2009); 2008 c 231 § 30; 2006 c 339 § 302; 2006 c 73 § 10; 2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

Effective date—2019 c 325: See note following RCW 71.24.011.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

Effective date—2009 c 389 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 389 § 7.]

Expiration date—2009 c 389 § 2: "Section 2 of this act expires August 1, 2009." [2009 c 389 § 9.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Intent—2002 c 290: See note following RCW 9.94A.517.

(2019 Ed.)

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.660 Drug offender sentencing alternative—Prison-based or residential alternative. (Effective January 1, 2021.) (1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential substance use disorder treatment-based alternative under RCW 9.94A.664. The residential substance use disorder treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4)(a) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a substance use disorder screening report as provided in RCW 9.94A.500.

(b) To assist the court in making its determination in domestic violence cases, the court shall order the department to complete a presentence investigation and a chemical dependency screening report as provided in RCW 9.94A.500, unless otherwise specifically waived by the court.

(5)(a) If the court is considering imposing a sentence under the residential substance use disorder treatment-based alternative, the court may order an examination of the

offender by the department. The examination shall, at a minimum, address the following issues:

- (i) Whether the offender suffers from drug addiction;
 - (ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;
 - (iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the department of health, and where applicable, whether effective domestic violence perpetrator treatment is available from a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW; and
 - (iv) Whether the offender and the community will benefit from the use of the alternative.
- (b) The examination report must contain:
- (i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and
 - (ii) Recommended crime-related prohibitions and affirmative conditions.
- (6) When a court imposes a sentence of community custody under this section:
- (a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances, or in cases of domestic violence for monitoring with global positioning system technology for compliance with a no-contact order.
 - (b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.
- (7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.
- (b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.
 - (c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.
 - (d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.
- (8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.
- (9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.
- (10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account

under RCW 71.24.580. [2019 c 325 § 5002; 2019 c 263 § 502; 2016 sp.s. c 29 § 524; 2009 c 389 § 3; (2009 c 389 § 2 expired August 1, 2009); 2008 c 231 § 30; 2006 c 339 § 302; 2006 c 73 § 10; 2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

Reviser's note: This section was amended by 2019 c 263 § 502 and by 2019 c 325 § 5002, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2019 c 325: See note following RCW 71.24.011.

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

Effective date—2019 c 263 §§ 501-504, 601, 602, and 701-708: See note following RCW 9.94A.500.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

Effective date—2009 c 389 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 389 § 7.]

Expiration date—2009 c 389 § 2: "Section 2 of this act expires August 1, 2009." [2009 c 389 § 9.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.662 Prison-based drug offender sentencing alternative. (Effective until January 1, 2021.) (1) A sentence for a prison-based special drug offender sentencing alternative shall include:

- (a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;
- (b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;
- (c) Crime-related prohibitions, including a condition not to use illegal controlled substances;
- (d) A requirement to submit to urinalysis or other testing to monitor that status; and
- (e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

(3) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

(4) If an offender sentenced to the prison-based alternative under this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence. [2009 c 389 § 4.]

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

9.94A.662 Prison-based drug offender sentencing alternative. (Effective January 1, 2021.) (1) A sentence for a prison-based special drug offender sentencing alternative shall include:

(a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;

(b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services, and for co-occurring drug and domestic violence cases, must also include an appropriate domestic violence treatment program by a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW;

(c) Crime-related prohibitions, including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2)(a) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The substance abuse treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

(b) When applicable for cases involving domestic violence, domestic violence treatment must be provided by a state-certified domestic violence treatment provider pursuant to chapter 26.50 RCW during the term of community custody.

(3) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be

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reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

(4) If an offender sentenced to the prison-based alternative under this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence. [2019 c 263 § 503; 2009 c 389 § 4.]

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

Effective date—2019 c 263 §§ 501-504, 601, 602, and 701-708: See note following RCW 9.94A.500.

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

9.94A.664 Residential chemical dependency treatment-based alternative. (Effective until January 1, 2020.)

(1) A sentence for a residential chemical dependency treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under *chapter 70.96A RCW for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential chemical dependency treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody.

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody. [2009 c 389 § 5.]

***Reviser's note:** Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, 601, and 701.

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

9.94A.664 Residential chemical dependency treatment-based alternative (as amended by 2019 c 263). (Effective January 1, 2021.) (1) A sentence for a residential chemical dependency treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under *chapter 70.96A RCW for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody, and within available resources, make domestic violence treatment services available to a domestic violence offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential chemical dependency treatment program and, when applicable, the domestic violence treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of (~~residential chemical dependency~~) substance use disorder treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody.

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody. [2019 c 263 § 504; 2009 c 389 § 5.]

***Reviser's note:** Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, 601, and 701.

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

Effective date—2019 c 263 §§ 501-504, 601, 602, and 701-708: See note following RCW 9.94A.500.

9.94A.664 Residential substance use disorder treatment-based alternative (as amended by 2019 c 325). (Effective January 1, 2020.) (1) A sentence for a residential (~~chemical dependency~~) substance use disorder treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, which-

ever is greater, conditioned on the offender entering and remaining in residential (~~chemical dependency~~) substance use disorder treatment certified (~~under chapter 70.96A RCW~~) by the department of health for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make (~~chemical dependency~~) substance use disorder assessment and treatment services available to the offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential (~~chemical dependency~~) substance use disorder treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of residential (~~chemical dependency~~) substance use disorder treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody.

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make (~~chemical dependency~~) substance use disorder assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody. [2019 c 325 § 5003; 2009 c 389 § 5.]

Reviser's note: RCW 9.94A.664 was amended twice during the 2019 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2019 c 325: See note following RCW 71.24.011.

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

9.94A.670 Special sex offender sentencing alternative. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense

that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination

ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

(6) As conditions of the suspended sentence, the court may impose one or more of the following:

- (a) Crime-related prohibitions;
- (b) Require the offender to devote time to a specific employment or occupation;
- (c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (d) Require the offender to report as directed to the court and a community corrections officer;
- (e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;
- (f) Require the offender to perform community restitution work; or
- (g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(8)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

minate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. [2009 c 28 § 9; 2008 c 231 § 31; 2006 c 133 § 1. Prior: 2004 c 176 § 4; 2004 c 38 § 9; 2002 c 175 § 11; 2001 2nd sp.s. c 12 § 316; 2000 c 28 § 20.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.680 Alternatives to total confinement. Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

(1) One day of partial confinement may be substituted for one day of total confinement;

(2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community restitution may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community restitution hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; and

(3) For offenders convicted of nonviolent and nonsex offenses, the court may credit time served by the offender before the sentencing in an available county supervised community option and may authorize county jails to convert jail confinement to an available county supervised community option, may authorize the time spent in the community option to be reduced by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used. [2009 c 227 § 1; 2002 c 175 § 12; 1999 c 197 § 6. Prior: 1988 c 157 § 4; 1988 c 155 § 3; 1984 c 209 § 21; 1983 c 115 § 9. Formerly RCW 9.94A.380.]

Additional notes found at www.leg.wa.gov

9.94A.685 Alien offenders. (1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and customs enforcement agency for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee has reached an agreement with the immigration and customs enforcement agency that the alien offender placed on conditional release status will be detained in total confinement at a facility operated by the immigration and customs enforcement agency pending the offender's return to the country of origin or other location designated in the final deportation or exclusion order.

No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030.

(3) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the

time the offender is released to the immigration and customs enforcement agency for deportation. Upon the release of an offender to the immigration and customs enforcement agency, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect indefinitely.

(4) Upon arrest of an offender, the department may seek extradition as necessary and the offender may be returned to the department for completion of the unserved portion of the offender's term of total confinement. If returned, the offender shall also be required to fully comply with all the terms and conditions of the sentence.

(5) Alien offenders released to the immigration and customs enforcement agency for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

(6) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

(7) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

(8) The provisions of this section apply to persons convicted before, on, or after April 29, 2011. [2011 c 206 § 1; 1993 c 419 § 1. Formerly RCW 9.94A.280.]

Effective date—2011 c 206: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2011]." [2011 c 206 § 4.]

9.94A.690 Work ethic camp program—Eligibility—Sentencing. (1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502 (6)), a violation of physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), a violation of the uniform controlled substances act, or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing court determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of community custody as authorized by

RCW 9.94A.703; and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training. [2008 c 231 § 32; 2006 c 73 § 11; 2000 c 28 § 21; 1999 c 197 § 5; 1995 1st sp.s. c 19 § 20; 1993 c 338 § 4. Formerly RCW 9.94A.137.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Findings—Intent—1993 c 338: See RCW 72.09.400.

Additional notes found at www.leg.wa.gov

SUPERVISION OF OFFENDERS IN THE COMMUNITY

9.94A.701 Community custody—Offenders sentenced to the custody of the department. (1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507; or

(b) A serious violent offense.

(2) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411 (2);

(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;

(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000; or

(d) A felony violation of RCW 9A.44.132(1) (failure to register) that is the offender's first violation for a felony failure to register.

(4) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

(5) If an offender is sentenced under the special sex offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(6) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(7) If an offender is sentenced under the parenting sentencing alternative, the court shall impose a term of community custody as provided in RCW 9.94A.655.

(8) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.

(9) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021. [2010 c 267 § 11; 2010 c 224 § 5; 2009 c 375 § 5; 2009 c 28 § 10; 2008 c 231 § 7.]

Reviser's note: This section was amended by 2010 c 224 § 5 and by 2010 c 267 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2010 c 267: See note following RCW 9A.44.128.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—2008 c 231: "The existing sentencing reform act contains numerous provisions for supervision of different types of offenders. This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences. The clarifications in this act are intended to support continued discussions by the sentencing guidelines commission with the courts and the criminal justice community to identify and propose policy changes that will further simplify and improve the sentencing reform act relating to the supervision of offenders. The sentencing guidelines commission shall submit policy change proposals to the legislature on or before December 1, 2008.

Sections 7 through 58 of this act are intended to simplify the supervision provisions of the sentencing reform act and increase the uniformity of its application. These sections are not intended to either increase or decrease the authority of sentencing courts or the department relating to supervision, except for those provisions instructing the court to apply the provisions of the current community custody law to offenders sentenced after July 1, 2009, but who committed their crime prior to August 1, 2009, to the extent that such application is constitutionally permissible.

This will effect a change for offenders who committed their crimes prior to the offender accountability act, chapter 196, Laws of 1999. These offenders will be ordered to a term of community custody rather than community placement or community supervision. To the extent constitutionally permissible, the terms of the offender's supervision will be as provided in current law. With the exception of this change, the legislature does not intend to make, and no provision of sections 7 through 58 of this act may be construed as making, a substantive change to the supervision provisions of the sentencing reform act." [2009 c 375 § 10; 2008 c 231 § 6.]

Additional notes found at www.leg.wa.gov

9.94A.702 Community custody—Offenders sentenced for one year or less. (1) If an offender is sentenced to a term of confinement for one year or less for one of the following offenses, the court may impose up to one year of community custody:

- (a) A sex offense;
- (b) A violent offense;
- (c) A crime against a person under RCW 9.94A.411;
- (d) A felony violation of chapter 69.50 or 69.52 RCW, or an attempt, conspiracy, or solicitation to commit such a crime; or

(e) A felony violation of RCW 9A.44.132(1) (failure to register).

(2) If an offender is sentenced to a first-time offender waiver, the court may impose community custody as provided in RCW 9.94A.650. [2010 c 267 § 12; 2008 c 231 § 8.]

Application—2010 c 267: See note following RCW 9A.44.128.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.703 Community custody—Conditions. When a court sentences a person to a term of community custody, the court shall impose conditions of community custody as provided in this section.

(1) **Mandatory conditions.** As part of any term of community custody, the court shall:

(a) Require the offender to inform the department of court-ordered treatment upon request by the department;

(b) Require the offender to comply with any conditions imposed by the department under RCW 9.94A.704;

(c) If the offender was sentenced under RCW 9.94A.507 for an offense listed in RCW 9.94A.507(1)(a), and the victim of the offense was under eighteen years of age at the time of the offense, prohibit the offender from residing in a community protection zone;

(d) If the offender was sentenced under RCW 9A.36.120, prohibit the offender from serving in any paid or volunteer capacity where he or she has control or supervision of minors under the age of thirteen.

(2) **Waivable conditions.** Unless waived by the court, as part of any term of community custody, the court shall order an offender to:

(a) Report to and be available for contact with the assigned community corrections officer as directed;

(b) Work at department-approved education, employment, or community restitution, or any combination thereof;

(c) Refrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions;

(d) Pay supervision fees as determined by the department; and

(e) Obtain prior approval of the department for the offender's residence location and living arrangements.

(3) **Discretionary conditions.** As part of any term of community custody, the court may order an offender to:

(a) Remain within, or outside of, a specified geographical boundary;

(b) Refrain from direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) Participate in crime-related treatment or counseling services;

(d) Participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;

(e) Refrain from possessing or consuming alcohol; or

(f) Comply with any crime-related prohibitions.

(4) **Special conditions.**

(a) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(b)(i) In sentencing an offender convicted of an alcohol or drug-related traffic offense, the court shall require the offender to complete a diagnostic evaluation by a substance use disorder treatment program approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the offense was pursuant to chapter 46.61 RCW, the report shall be forwarded to the department of licensing. If the offender is found to have an alcohol or drug problem that requires treatment, the offender shall complete treatment in an approved substance use disorder treatment program as defined in chapter 71.24 RCW. If the offender is found not to have an alcohol or drug problem that requires treatment, the offender shall complete a course in an alcohol and drug information school licensed or certified by the department of health under *chapter 70.96A RCW. The offender shall pay all costs for any evaluation, education, or treatment required by this section, unless the offender is eligible for an existing program offered or approved by the department of social and health services.

(ii) For purposes of this section, "alcohol or drug-related traffic offense" means the following: Driving while under the influence as defined by RCW 46.61.502, actual physical control while under the influence as defined by RCW 46.61.504, vehicular homicide as defined by RCW 46.61.520(1)(a), vehicular assault as defined by RCW 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050, or assault by watercraft as defined by RCW 79A.60.060.

(iii) This subsection (4)(b) does not require the department of social and health services to add new treatment or assessment facilities nor affect its use of existing programs and facilities authorized by law. [2018 c 201 § 9004; 2015 c 81 § 3. Prior: 2009 c 214 § 3; 2009 c 28 § 11; 2008 c 231 § 9.]

***Reviser's note:** Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, 601, and 701.

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Short title—2009 c 214: "This act shall be known as the Eryk Woodruff public safety act of 2009." [2009 c 214 § 1.]

Effective date—2009 c 214: "This act takes effect August 1, 2009." [2009 c 214 § 4.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.704 Community custody—Supervision by the department—Conditions. (Effective until January 1, 2021.) (1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions

of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment;

(d) Pay the supervision fee assessment; and

(e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may:

(a) Require the offender to refrain from direct or indirect contact with the victim of the crime or immediate family member of the victim of the crime. If a victim or an immediate family member of a victim has requested that the offender not contact him or her after notice as provided in RCW 72.09.340, the department shall require the offender to refrain from contact with the requestor. Where the victim is a minor, the parent or guardian of the victim may make a request on the victim's behalf. This subsection is not intended to reduce the preexisting authority of the department to impose no-contact conditions regardless of the offender's crime and regardless of who is protected by the no-contact condition, where such condition is based on risk to community safety.

(b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" has the same meaning as in RCW 9.94A.030.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

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

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

(9) The department may require offenders to pay for special services rendered including electronic monitoring, day

reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(10)(a) When an offender on community custody is under the authority of the board, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions. The board must impose a condition requiring the offender to refrain from contact with the victim or immediate family member of the victim as provided in subsection (5)(a) of this section.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

(i) The crime of conviction;

(ii) The offender's risk of reoffending;

(iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(11) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function. [2016 c 108 § 1. Prior: 2015 c 287 § 7; 2015 c 134 § 8; 2014 c 35 § 1; 2012 1st sp.s. c 6 § 3; 2009 c 375 § 6; 2009 c 28 § 12; 2008 c 231 § 10.]

Effective date—2015 c 134: See note following RCW 9.94A.501.

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.704 Community custody—Supervision by the department—Conditions. (Effective January 1, 2021.) (1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

- (a) Report as directed to a community corrections officer;
- (b) Remain within prescribed geographical boundaries;
- (c) Notify the community corrections officer of any change in the offender's address or employment;
- (d) Pay the supervision fee assessment; and
- (e) Disclose the fact of supervision to any mental health, chemical dependency, or domestic violence treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense or domestic violence, the department may:

(a) Require the offender to refrain from direct or indirect contact with the victim of the crime or immediate family member of the victim of the crime. If a victim or an immediate family member of a victim has requested that the offender not contact him or her after notice as provided in RCW 72.09.340, the department shall require the offender to refrain from contact with the requestor. Where the victim is a minor, the parent or guardian of the victim may make a request on the victim's behalf. This subsection is not intended to reduce the preexisting authority of the department to impose no-contact conditions regardless of the offender's crime and regardless of who is protected by the no-contact condition, where such condition is based on risk to community safety.

(b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" has the same meaning as in RCW 9.94A.030.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

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

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

(9) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the

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offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(10)(a) When an offender on community custody is under the authority of the board, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions. The board must impose a condition requiring the offender to refrain from contact with the victim or immediate family member of the victim as provided in subsection (5)(a) of this section.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

- (i) The crime of conviction;
- (ii) The offender's risk of reoffending;
- (iii) The safety of the community;
- (iv) The offender's risk of domestic violence reoffense.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(11) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function. [2019 c 263 § 601; 2016 c 108 § 1. Prior: 2015 c 287 § 7; 2015 c 134 § 8; 2014 c 35 § 1; 2012 1st sp.s. c 6 § 3; 2009 c 375 § 6; 2009 c 28 § 12; 2008 c 231 § 10.]

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

Effective date—2019 c 263 §§ 501-504, 601, 602, and 701-708: See note following RCW 9.94A.500.

Effective date—2015 c 134: See note following RCW 9.94A.501.

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.706 Community custody—Possession of firearms, ammunition, or explosives prohibited. (1) No offender sentenced to a term of community custody under the supervision of the department may own, use, or possess firearms, ammunition, or explosives. An offender's actual or

constructive possession of firearms, ammunition, or explosives shall be reported to local law enforcement or local prosecution for consideration of new charges and subject to sanctions under RCW 9.94A.633 or 9.94A.737.

(2) For the purposes of this section:

(a) "Constructive possession" means the power and intent to control the firearm, ammunition, or explosives.

(b) "Explosives" has the same definition as in RCW 46.04.170.

(c) "Firearm" has the same definition as in RCW 9.41.010. [2012 1st sp.s. c 6 § 4; 2008 c 231 § 11.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.707 Community custody—Commencement—Conditions. (1) Community custody shall begin: (a) Upon completion of the term of confinement; or (b) at the time of sentencing if no term of confinement is ordered.

(2) When an offender is sentenced to community custody, the offender is subject to the conditions of community custody as of the date of sentencing, unless otherwise ordered by the court. [2009 c 375 § 7; 2008 c 231 § 12.]

Application—2009 c 375: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.708 Community custody—Mental health information—Access by department. (1) When an offender is under community custody, the community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under *RCW 71.05.630.

(2) An offender under community custody who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department for the duration of his or her period of community custody. During any period of inpatient mental health treatment that falls within the period of community custody, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information. [2008 c 231 § 13.]

***Reviser's note:** RCW 71.05.630 was repealed by 2013 c 200 § 34, effective July 1, 2014.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.709 Community custody—Sex offenders—Conditions. (1) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the

conditions of community custody for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody.

(2) If a violation of a condition extended under this section occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(3) If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition. [2008 c 231 § 14.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.711 Community custody—Motor vehicle-related felonies—Sentencing—Report. (Expires June 30, 2026.) (1) Notwithstanding the provisions of RCW 9.94A.701 and 9.94A.702 and subject to the provisions of this section, a court may sentence an offender to community custody for a period of six to twelve months when the midpoint of the standard sentence range is greater than one year and the person is being sentenced for one of the following crimes:

(a) Theft of a motor vehicle (RCW 9A.56.065);

(b) Possession of a stolen vehicle (RCW 9A.56.068);

(c) Taking a motor vehicle without permission in the first degree (RCW 9A.56.070);

(d) Taking a motor vehicle without permission in the second degree (RCW 9A.56.075); or

(e) Attempt of (a) or (b) of this subsection.

(2) The department shall conduct an assessment of the offender and identify programming and services that would be appropriate to address the offender's needs. To the extent possible, the department shall make available the programming identified by the assessment while the offender is on community custody.

(3) For purposes of this section, the offender's sentence of incarceration may not exceed the midpoint of the standard sentence range reduced by one-third of the ordered term of community custody.

(4) An offender receiving a sentence under this section is not eligible for earned release time under RCW 9.94A.729 in excess of one-third of the total sentence.

(5) No later than November 1, 2025, the department shall submit a report to the governor and the appropriate committees of the legislature analyzing the effectiveness of supervision in reducing recidivism among offenders committing felonies relating to the theft or taking of a motor vehicle. The department shall consult with the Washington state institute for public policy in guiding its data tracking efforts and preparing the report.

(6) This section expires June 30, 2026. [2019 c 191 § 1.]

9.94A.714 Community custody—Violations—Electronic monitoring program—Immunity from civil liability. (1) The department may work with the Washington association of sheriffs and police chiefs to establish and operate

an electronic monitoring program for offenders who violate the terms of their community custody.

(2) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith. [2012 1st sp.s. c 6 § 5; 2008 c 231 § 16.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.716 Community custody—Violations—Arrest. (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation pursuant to RCW 9.94A.633.

(2) A community corrections officer, if he or she has reasonable cause to believe an offender has violated a condition of community custody, may suspend the person's community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community custody status.

(3) If an offender has been arrested by the department for a new felony offense while under community custody, the facts and circumstances of the conduct of the offender shall be reported by the community corrections officer to local law enforcement or local prosecution for consideration of new charges. The community corrections officer's report shall serve as notice that the department will hold the offender in total confinement for not more than three days from the time of such notice for the new crime, except if the offender's underlying offense is a felony offense listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest or until a prosecuting attorney charges the offender with a crime, whichever occurs first. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community custody.

(4) A violation of a condition of community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631. [2012 1st sp.s. c 6 § 6; 2008 c 231 § 21.]

(2019 Ed.)

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94A.718 Supervision of offenders—Peace officers have authority to assist. (1) Any peace officer has authority to assist the department with the supervisions of offenders.

(2) If a peace officer has reasonable cause to believe an offender is in violation of the terms of supervision, the peace officer may conduct a search as provided under RCW 9.94A.631, of the offender's person, automobile, or other personal property to search for evidence of the violation. A peace officer may assist a community corrections officer with a search of the offender's residence if requested to do so by the community corrections officer.

(3) Nothing in this section prevents a peace officer from arresting an offender for any new crime found as a result of the offender's arrest or search authorized by this section.

(4) Upon substantiation of a violation of the offender's conditions of community supervision, utilizing existing methods and systems, the peace officer should notify the department of the violation.

(5) For the purposes of this section, "peace officer" refers to a limited or general authority Washington peace officer as defined in RCW 10.93.020. [2016 c 234 § 1.]

9.94A.722 Court-ordered treatment—Required disclosures. (Effective until January 1, 2021.) When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, *70.96A.155, or 71.05.132, the offender must provide the mental health or chemical dependency treatment provider with a copy of the order granting the relief. [2004 c 166 § 9.]

***Reviser's note:** RCW 70.96A.155 was repealed by 2016 sp.s. c 29 § 301, effective April 1, 2018.

Additional notes found at www.leg.wa.gov

9.94A.722 Court-ordered treatment—Required disclosures. (Effective January 1, 2021.) When an offender receiving court-ordered mental health, chemical dependency, or domestic violence treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health, chemical dependency, or domestic violence treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562, *70.96A.155, or 71.05.132, the offender must provide the mental health, chemical dependency, or domestic violence treatment provider with a copy of the order granting the relief. [2019 c 263 § 602; 2004 c 166 § 9.]

*Reviser's note: RCW 70.96A.155 was repealed by 2016 sp.s. c 29 § 301.

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

Effective date—2019 c 263 §§ 501-504, 601, 602, and 701-708: See note following RCW 9.94A.500.

Additional notes found at www.leg.wa.gov

9.94A.723 Court-ordered treatment—Offender's failure to inform. An offender's failure to inform the department of court-ordered treatment upon request by the department is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions. [2004 c 166 § 7.]

Additional notes found at www.leg.wa.gov

9.94A.725 Offender work crews. Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules require the offender to work to the best of his or her abilities and provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.737, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crew projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW

82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010 (4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the agency administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payment.

(2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court. [2000 c 28 § 27; 1991 c 181 § 2. Formerly RCW 9.94A.135.]

Additional notes found at www.leg.wa.gov

9.94A.728 Release prior to expiration of sentence. (1) No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(a) An offender may earn early release time as authorized by RCW 9.94A.729;

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

(c)(i) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(A) The offender has a medical condition that is serious and is expected to require costly care or treatment;

(B) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

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

(iii) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function

of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offenders are not eligible for extraordinary medical placement;

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

(e) No more than the final twelve months of the offender's term of confinement may be served in partial confinement for aiding the offender with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5)(d);

(f) No more than the final six months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733;

(g) The governor may pardon any offender;

(h) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

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

(j) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540; and

(k) Any person convicted of one or more crimes committed prior to the person's eighteenth birthday may be released from confinement pursuant to RCW 9.94A.730.

(2) Offenders residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section. [2018 c 166 § 2. Prior: 2015 c 156 § 1; 2015 c 134 § 3; 2010 c 224 § 6; prior: 2009 c 455 § 2; (2009 c 455 § 1 expired August 1, 2009); 2009 c 441 § 1; 2009 c 399 § 1; 2008 c 231 § 34; 2007 c 483 § 304; 2004 c 176 § 6; 2003 c 379 § 1; prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

Effective date—2015 c 134: See note following RCW 9.94A.501.

Effective date—2009 c 455 § 2: "Section 2 of this act takes effect August 1, 2009." [2009 c 455 § 5.]

Expiration date—2009 c 455 § 1: "Section 1 of this act expires August 1, 2009." [2009 c 455 § 6.]

(2019 Ed.)

Effective date—2009 c 441: "This act takes effect August 1, 2009." [2009 c 441 § 2.]

Effective date—2009 c 399: "This act takes effect August 1, 2009." [2009 c 399 § 2.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Findings—2007 c 483: See RCW 72.78.005.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Additional notes found at www.leg.wa.gov

9.94A.7281 Legislative declaration—Earned release time not an entitlement. The legislature declares that the changes to the maximum percentages of earned release time in chapter 379, Laws of 2003 do not create any expectation that the percentage of earned release time cannot be revised and offenders have no reason to conclude that the maximum percentage of earned release time is an entitlement or creates any liberty interest. The legislature retains full control over the right to revise the percentages of earned release time available to offenders at any time. This section applies to persons convicted on or after July 1, 2003. [2003 c 379 § 2.]

Additional notes found at www.leg.wa.gov

9.94A.729 Earned release time—Risk assessments. (1)(a) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits.

(b) Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the number of days of early release credits lost or not earned. The department may approve a jail certification from a correctional agency that calculates early release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence. The department must adjust an offender's rate of early release listed on the jail certification to be consistent with the rate applicable to offenders in the department's facilities. However, the department is not authorized to adjust the

number of presentence early release days that the jail has certified as lost or not earned.

(2) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(3) An offender may earn early release time as follows:

(a) In the case of an offender sentenced pursuant to RCW 10.95.030(3) or 10.95.035, the offender may not receive any earned early release time during the minimum term of confinement imposed by the court; for any remaining portion of the sentence served by the offender, the aggregate earned release time may not exceed ten percent of the sentence.

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

(c) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(d) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

(ii) Is not confined pursuant to a sentence for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

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

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

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

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

(iii) Has no prior conviction for the offenses listed in (d)(ii) of this subsection;

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

(v) Has not committed a new felony after July 22, 2007, while under community custody.

(e) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(d) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)(d) of this section does not apply to offenders convicted after July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the

department pursuant to RCW 9.94A.501 or *9.94A.5011, shall be transferred to community custody in lieu of earned release time;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department is unable to approve the offender's release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in **RCW 9.94A.728(5);

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan.

A voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming;

(e) The department shall maintain a list of housing providers that meets the requirements of RCW 72.09.285. If more than two voucher recipients will be residing per dwelling unit, as defined in RCW 59.18.030, rental vouchers for those recipients may only be paid to a housing provider on the department's list;

(f) For each offender who is the recipient of a rental voucher, the department shall gather data as recommended by the Washington state institute for public policy in order to best demonstrate whether rental vouchers are effective in reducing recidivism.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. [2015 c 134 § 4; 2014 c 130 § 4. Prior: 2013 2nd sp.s. c 14 § 2; 2013 c 266 § 1; 2011 1st sp.s. c 40 § 4; 2010 c 224 § 7; 2009 c 455 § 3.]

Reviser's note: *(1) RCW 9.94A.5011 expired August 1, 2014.

***(2) RCW 9.94A.728 was amended by 2015 c 156 § 1, changing subsection (5) to subsection (1)(e).

Effective date—2015 c 134: See note following RCW 9.94A.501.

Application—Effective date—2014 c 130: See notes following RCW 9.94A.510.

Application—Recalculation of earned release date—Compilation of sentencing information—Report—Effective date—2013 2nd sp.s. c 14: See notes following RCW 9.94A.517.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Effective date—2009 c 455 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2009]." [2009 c 455 § 7.]

9.94A.730 Early release for persons convicted of one or more crimes committed prior to eighteenth birthday—Petition to indeterminate sentence review board—Conditions—Assessment, programming, and services—Examination—Hearing—Supervision—Denial of petition. (1) Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement, provided the person has not been convicted for any crime committed subsequent to the person's eighteenth birthday, the person has not committed a disqualifying serious infraction as defined by the department in the twelve months prior to filing the petition for early release, and the current sentence was not imposed under RCW 10.95.030 or 9.94A.507.

(2) No later than five years prior to the date the offender will be eligible to petition for release, the department shall conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(3) No later than one hundred eighty days from receipt of the petition for early release, the department shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input shall be provided by rule. To facilitate victim and survivor of victim involvement, county prosecutor's offices shall

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ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence.

(5) An offender released by the board is subject to the supervision of the department for a period of time to be determined by the board, up to the length of the court-imposed term of incarceration. The department shall monitor the offender's compliance with conditions of community custody imposed by the court or board and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

(6) An offender whose petition for release is denied may file a new petition for release five years from the date of denial or at an earlier date as may be set by the board.

(7) An offender released under the provisions of this section may be returned to the institution at the discretion of the board if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. If the board finds that the offender has committed a new violation, the board may return the offender to the institution for up to the remainder of the court-imposed term of incarceration. The offender may file a new petition for release five years from the date of return to the institution or at an earlier date as may be set by the board. [2015 c 134 § 6; 2014 c 130 § 10.]

Effective date—2015 c 134: See note following RCW 9.94A.501.

Effective date—2014 c 130: See note following RCW 9.94A.510.

9.94A.731 Term of partial confinement, work release, home detention. (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030 and 9.94A.725. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [2009 c 28 § 13; 2003 c 254 § 2; 2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18. Formerly RCW 9.94A.180.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.94A.733 Home detention—Graduated reentry program—Requirements for department. (1) No more than the final six months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department. However, an offender may not participate in the graduated reentry program under this section unless he or she has served at least twelve months in total confinement in a state correctional facility.

(2) The secretary of the department may transfer an offender from a department correctional facility to home detention in the community if it is determined that the graduated reentry program is an appropriate placement and must assist the offender's transition from confinement to the community.

(3) The department and its officers, agents, and employees are not liable for the acts of offenders participating in the graduated reentry program unless the department or its officers, agents, and employees acted with willful and wanton disregard.

(4) All offenders placed on home detention as part of the graduated reentry program must provide an approved residence and living arrangement prior to transfer to home detention.

(5) While in the community on home detention as part of the graduated reentry program, the department must:

(a) Require the offender to be placed on electronic home monitoring;

(b) Require the offender to participate in programming and treatment that the department shall assign based on an offender's assessed need; and

(c) Assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements.

(6) The department retains the authority to return any offender serving partial confinement in the graduated reentry program to total confinement for any reason including, but not limited to, the offender's noncompliance with any sentence requirement.

(7) The department may issue rental vouchers for a period not to exceed six months for those transferring to partial confinement under this section if an approved address cannot be obtained without the assistance of a voucher.

(8) In the selection of offenders to participate in the graduated reentry program, and in setting, modifying, and enforcing the requirements of the graduated release [reentry] program, the department is deemed to be performing a quasi-judicial function. [2018 c 166 § 1.]

9.94A.734 Home detention—Conditions. (1) Home detention may not be imposed for offenders convicted of the following offenses, unless imposed as partial confinement in the department's parenting program under RCW 9.94A.6551 or the graduated reentry program under RCW 9.94A.733:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:

(a) Successfully completing twenty-one days in a work release program;

(b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Home detention may be imposed for offenders convicted of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen motor vehicle as defined under RCW 9A.56.068 conditioned upon the offender:

(a) Having no convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle during the preceding five years and not more than two prior convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle;

(b) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(c) Having no prior charges of escape; and

(d) Fulfilling the other conditions of the home detention program.

(4) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations.

(5) The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

(6)(a) A sentencing court shall deny the imposition of home detention if the court finds that (i) the offender has previously and knowingly violated the terms of a home detention program and (ii) the previous violation is not a technical, minor, or nonsubstantive violation.

(b) A sentencing court may deny the imposition of home detention if the court finds that (i) the offender has previously and knowingly violated the terms of a home detention program and (ii) the previous violation or violations were technical, minor, or nonsubstantive violations.

(7) A home detention program must be administered by a monitoring agency that meets the conditions described in RCW 9.94A.736. [2018 c 166 § 4; 2015 c 287 § 2; 2010 c 224 § 9; 2007 c 199 § 9; 2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.94A.735 Home detention—Form order. (1) By December 1, 2015, the administrative office of the courts shall create a pattern form order for use by a court in cases where a court orders a person to comply with a home detention program.

(2) The court shall provide a copy of the form order to the person ordered to comply with a home detention program. The form order must include the following:

(a) In a conspicuous location, a notice of criminal penalties resulting for a violation of the terms and conditions of a home detention program; and

(b) Language stating that a person may leave his or her residence for specific purposes only as ordered by the court, with a list of common purposes, such as school, employment, treatment, counseling, programming, or other activities from which a court may select.

(3) When a court orders a person to comply with the terms of a home detention program, the court must, in addition to its order, complete the form order created pursuant to this section to notify the person of criminal penalties associated with violation of the terms and conditions of the program and of any express permission granted for absence from the residence. [2015 c 287 § 4.]

9.94A.736 Electronic monitoring—Supervising agency to establish terms and conditions—Duties of monitoring agency. (1) A supervising agency must establish terms and conditions of electronic monitoring for each individual subject to electronic monitoring under the agency's

jurisdiction. The supervising agency must communicate those terms and conditions to the monitoring agency. A supervising agency must also establish protocols for when and how a monitoring agency must notify the supervising agency when a violation of the terms and conditions occurs. A monitoring agency must comply with the terms and conditions as established by the supervising agency.

(2) A monitoring agency shall:

(a) Provide notification within twenty-four hours to the court or other supervising agency when the monitoring agency discovers that the monitored individual is unaccounted for, or is beyond an approved location, for twenty-four consecutive hours. Notification shall also be provided to the probation department, the prosecuting attorney, local law enforcement, the local detention facility, or the department, as applicable;

(b) Establish geographic boundaries consistent with court-ordered activities and report substantive violations of those boundaries;

(c) Verify the location of the offender through in-person contact on a random basis at least once per month; and

(d) Report to the supervising agency or other appropriate authority any known violation of the law or court-ordered condition.

(3) In addition, a private monitoring agency shall:

(a) Have detailed contingency plans for the monitoring agency's operation with provisions for power outage, loss of telephone service, fire, flood, malfunction of equipment, death, incapacitation or personal emergency of a monitor, and financial insolvency of the monitoring agency;

(b) Prohibit certain relationships between a monitored individual and a monitoring agency, including:

(i) Personal associations between a monitored individual and a monitoring agency or agency employee;

(ii) A monitoring agency or employee entering into another business relationship with a monitored individual or monitored individual's family during the monitoring; and

(iii) A monitoring agency or employee employing a monitored individual for at least one year after the termination of the monitoring;

(c) Not employ or be owned by any person convicted of a felony offense within the past four years; and

(d) Obtain a background check through the Washington state patrol for every partner, director, officer, owner, employee, or operator of the monitoring agency, at the monitoring agency's expense.

(4) A private monitoring agency that fails to comply with any of the requirements in this section may be subject to a civil penalty, as determined by a court of competent jurisdiction or a court administrator, in an amount of not more than one thousand dollars for each violation, in addition to any penalties imposed by contract. A court or court administrator may cancel a contract with a monitoring agency for any violation by the monitoring agency.

(5)(a) A court that receives notice of a violation by a monitored individual of the terms of electronic monitoring or home detention shall note and maintain a record of the violation in the court file.

(b)(i) The presiding judge of a court must notify the administrative office of the courts if:

(A) The court or court administrator decides it will not allow use of a particular monitoring agency by persons ordered to comply with an electronic monitoring or home detention program; and

(B) The court or court administrator, after previously deciding not to allow use of a particular monitoring agency, decides to resume allowing use of the monitoring agency by persons ordered to comply with a home detention program.

(ii) In either case, the court or court administrator must include in its notice the reasons for the court's decision.

(6) The administrative office of the courts shall, after receiving notice pursuant to subsection (5) of this section, transmit the notice to all superior courts and courts of limited jurisdiction in the state, and any law enforcement or corrections agency that has requested such notification.

(7) The courts, the administrative office of the courts, and their employees and agents are not liable for acts or omissions pursuant to subsections (5) and (6) of this section absent a showing of gross negligence or bad faith.

(8) For the purposes of this section:

(a) A "monitoring agency" means an entity, private or public, which electronically monitors an individual, pursuant to an electronic monitoring or home detention program, including the department of corrections, a sheriff's office, a police department, a local detention facility, or a private entity; and

(b) A "supervising agency" means the public entity that authorized, approved, administers or manages, whether pre-trial or post-trial, the home detention or electronic monitoring program of an individual and has jurisdiction and control over the monitored individual. A supervising agency may also be a monitoring agency.

(9) All government contracts with a private monitoring agency to provide electronic monitoring or home detention must be in writing and may provide contractual penalties in addition to those provided under chapter 287, Laws of 2015. [2015 c 287 § 3.]

9.94A.737 Community custody—Violations—Disciplinary proceedings—Structured violation process—Sanctions. (1) If an offender is accused of violating any condition or requirement of community custody, the department shall address the violation behavior. The department may hold offender disciplinary proceedings not subject to chapter 34.05 RCW. The department shall notify the offender in writing of the violation process.

(2)(a) The offender's violation behavior shall determine the sanction the department imposes. The department shall adopt rules creating a structured violation process that includes presumptive sanctions, aggravating and mitigating factors, and definitions for low level violations and high level violations.

(b) After an offender has committed and been sanctioned for five low level violations, all subsequent violations committed by that offender shall automatically be considered high level violations.

(c)(i) The department must define aggravating factors that indicate the offender may present a current and ongoing

foreseeable risk and which therefore, elevate an offender's behavior to a high level violation process.

(ii) The state and its officers, agents, and employees may not be held criminally or civilly liable for a decision to elevate or not to elevate an offender's behavior to a high level violation process under this subsection unless the state or its officers, agents, and employees acted with reckless disregard.

(3) The department may intervene when an offender commits a low level violation as follows:

(a) For a first low level violation, the department may sanction the offender to one or more nonconfinement sanctions.

(b) For a second or subsequent low level violation, the department may sanction the offender to not more than three days in total confinement.

(i) The department shall develop rules to ensure that each offender subject to a short-term confinement sanction is provided the opportunity to respond to the alleged violation prior to imposition of total confinement.

(ii) The offender may appeal the short-term confinement sanction to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The offender's appeal must be in writing and hand-delivered to department staff, or postmarked, within seven days after the sanction is imposed.

(4) If an offender is accused of committing a high level violation, the department may sanction the offender to not more than thirty days in total confinement per hearing.

(a) The offender is entitled to a hearing prior to the imposition of sanctions; and

(b) The offender may be held in total confinement pending a sanction hearing. Prehearing time served must be credited to the offender's sanction time.

(5) If the offender's underlying offense is one of the following felonies and the violation behavior constitutes a new misdemeanor, gross misdemeanor or felony, the offender shall be held in total confinement pending a sanction hearing, and until the sanction expires or until if a prosecuting attorney files new charges against the offender, whichever occurs first:

(a) Assault in the first degree, as defined in RCW 9A.36.011;

(b) Assault of a child in the first degree, as defined in RCW 9A.36.120;

(c) Assault of a child in the second degree, as defined in RCW 9A.36.130;

(d) Burglary in the first degree, as defined in RCW 9A.52.020;

(e) Child molestation in the first degree, as defined in RCW 9A.44.083;

(f) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;

(g) Dealing in depictions of a minor engaged in sexually explicit conduct, as defined in RCW 9.68A.050;

(h) Homicide by abuse, as defined in RCW 9A.32.055;

(i) Indecent liberties with forcible compulsion, as defined in RCW 9A.44.100(1)(a);

(j) Indecent liberties with a person capable of consent, as defined in RCW 9A.44.100(1)(b);

(k) Kidnapping in the first degree, as defined in RCW 9A.40.020;

(l) Murder in the first degree, as defined in RCW 9A.32.030;

(m) Murder in the second degree, as defined in RCW 9A.32.050;

(n) Promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101;

(o) Rape in the first degree, as defined in RCW 9A.44.040;

(p) Rape in the second degree, as defined in RCW 9A.44.050;

(q) Rape of a child in the first degree, as defined in RCW 9A.44.073;

(r) Rape of a child in the second degree, as defined in RCW 9A.44.076;

(s) Robbery in the first degree, as defined in RCW 9A.56.200;

(t) Sexual exploitation of a minor, as defined in RCW 9.68A.040; or

(u) Vehicular homicide while under the influence of intoxicating liquor or any drug, as defined in RCW 46.61.520(1)(a).

(6) The department shall adopt rules creating hearing procedures for high level violations. The hearings are offender disciplinary proceedings and are not subject to chapter 34.05 RCW. The procedures shall include the following:

(a) The department shall provide the offender with written notice of the alleged violation and the evidence supporting it. The notice must include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision;

(b) Unless the offender waives the right to a hearing, the department shall hold a hearing, and shall record it electronically. For offenders not in total confinement, the department shall hold a hearing within fifteen business days, but not less than twenty-four hours, after written notice of the alleged violation. For offenders in total confinement, the department shall hold a hearing within five business days, but not less than twenty-four hours, after written notice of the alleged violation;

(c) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) receive a written summary of the reasons for the hearing officer's decision; and

(d) The sanction shall take effect if affirmed by the hearing officer. The offender may appeal the sanction to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The offender's appeal must be in writing and hand-delivered to department staff, or post-marked, within seven days after the sanction was imposed. The appeals panel shall affirm, reverse, modify, vacate, or remand based on its findings. If a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community, then the panel will reverse, vacate, remand, or modify the sanction.

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(7) For purposes of this section, the hearings officer may not rely on unconfirmed or unconfirmable allegations to find that the offender violated a condition.

(8) Hearing officers shall report through a chain of command separate from that of community corrections officers. [2012 1st sp.s. c 6 § 7; 2008 c 231 § 20; (2009 c 375 § 13 expired August 1, 2009); 2007 c 483 § 305; 2005 c 435 § 3; 2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Expiration date—2009 c 375 §§ 1, 3, and 13: See note following RCW 9.94A.501.

Application—2009 c 375: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Findings—2007 c 483: See RCW 72.78.005.

Finding—Intent—2005 c 435: "The legislature believes that electronic monitoring, as an alternative to incarceration, is a proper and cost-effective method of punishment and supervision for many criminal offenders. The legislature further finds that advancements in electronic monitoring technology have made the technology more common and acceptable to criminal justice system personnel, policymakers, and the general public.

In an effort to reduce prison and jail populations, many states are increasing their utilization of electronic monitoring. However, Washington state's use of electronic monitoring has been relatively stagnant.

The intent of this act is to determine what electronic monitoring policies and programs have been implemented in the other forty-nine states, in order that Washington state can learn from the other states' experiences." [2005 c 435 § 1.]

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.740 Community custody violators—Arrest, detention, financial responsibility. (1) When an offender is arrested pursuant to RCW 9.94A.631 or 9.94A.716, the department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440, until the department releases its detainee.

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section.

(3) For confinement sanctions imposed by the department under RCW 9.94A.670, the local correctional facility shall be financially responsible.

(4) The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody.

(5) Except as provided in subsections (1) and (2) of this section, the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate for confinement sanctions imposed by the department pursuant to RCW 9.94A.737. If the department's use of bed space in local correctional facilities of any county for such confinement sanctions exceeds the 1998 bed utiliza-

tion rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs. [2012 1st sp.s. c 6 § 8; 2008 c 231 § 22; 1999 c 196 § 9; 1996 c 275 § 4; 1988 c 153 § 5. Formerly RCW 9.94A.207.]

Effective date—2012 1st sp.s. c 6 §§ 1, 3 through 9, and 11 through 14: See note following RCW 9.94A.631.

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.745 Interstate compact for adult offender supervision. The interstate compact for adult offender supervision is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I PURPOSE

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and

correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(l) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article IV of this compact.

(n) "Victim" means a person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of criminal conduct against the person or a member of the person's family.

ARTICLE III THE COMPACT COMMISSION

(a) The compacting states hereby create the "interstate commission for adult offender supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein; including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be *ex officio*, nonvoting members. The interstate commission may provide in its bylaws for such additional, *ex officio*, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV THE STATE COUNCIL

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council

shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims' groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

(a) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

(b) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(c) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;

(d) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(e) To establish and maintain offices;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

(h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III of this compact which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(i) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) To establish a budget and make expenditures and levy dues as provided in article X of this compact;

(n) To sue and be sued;

(o) To provide for dispute resolution among compacting states;

(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(q) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

(r) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity;

(s) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) **Bylaws.** The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(i) For the establishment of committees, and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

(3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start-up" administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) **Officers and staff.** (1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom

shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission: PROVIDED, That subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

(c) **Corporate records of the interstate commission.** The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

(d) **Qualified immunity, defense and indemnification.**

(1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That nothing in this subsection (d)(1) shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "government in sunshine act," 5 U.S.C. Sec. 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal administrative procedure act, 5 U.S.C. Sec. 551 et seq., and the federal advisory committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) Notice to victims and opportunity to be heard;

(2) Offender registration and compliance;

(3) Violations/returns;

(4) Transfer procedures and forms;

(5) Eligibility for transfer;

(6) Collection of restitution and fees from offenders;

(7) Data collection and reporting;

(8) The level of supervision to be provided by the receiving state;

(9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;

(10) Mediation, arbitration and dispute resolution.

(f) The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

(g) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

(a) **Oversight.** (1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) **Dispute resolution.** (1) The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) **Enforcement.** The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII(b) of this compact.

ARTICLE X FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of

nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

(a) **Withdrawal.** (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state: PROVIDED, That a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) **Default.** (1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(i) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(ii) Remedial training and technical assistance as directed by the interstate commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate com-

mission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(c) **Judicial enforcement.** The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) **Dissolution of compact.** (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIV BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) **Other laws.** (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) **Binding effect of the compact.** (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective. [2001 c 35 § 2.]

***Reviser's note:** The interstate compact was enacted and signed into law by the thirty-fifth state on June 19, 2002.

Additional notes found at www.leg.wa.gov

9.94A.74501 State council. (1) The department of corrections shall serve as the state council for interstate adult offender supervision as required under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. The department of corrections may form a subcommittee, including members representing the legislative, judicial, and executive branches of state government, and victims' groups to perform the functions of the state council. Any such subcommittee shall include representation of both houses and at least two of the four largest political caucuses in the legislature.

(2) The department or a subcommittee if formed for that purpose, shall:

(a) Review department operations and procedures under RCW 9.94A.745, and recommend policies to the compact administrator, including policies to be pursued in the administrator's capacity as the state's representative on the interstate commission created under article III of RCW 9.94A.745; and

(b) Report annually to the legislature on interstate supervision operations and procedures under RCW 9.94A.745, including recommendations for policy changes.

(3) The secretary shall appoint an employee of the department, or a subcommittee if formed for that purpose shall appoint one of its members, to represent the state at meetings of the interstate commission created under article III of RCW 9.94A.745 when the compact administrator cannot attend. [2011 1st sp.s. c 40 § 31; 2001 c 35 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.94A.74502 Compact administrator. The secretary of corrections, or an employee of the department designated by the secretary, shall serve as the compact administrator

under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. The legislature intends that the compact administrator, representing the state on the interstate commission created under article III of RCW 9.94A.745, will take an active role to assure that the interstate compact operates to protect the safety of the people and communities of the state. [2001 c 35 § 4.]

9.94A.74503 Other compacts and agreements—Withdrawal from current compact. (1) The state shall continue to meet its obligations under RCW 9.95.270, the interstate compact for the supervision of parolees and probationers, to those states which continue to meet their obligations to the state of Washington under the interstate compact for the supervision of parolees and probationers, and have not approved the interstate compact for adult offender supervision after July 1, 2001.

(2) If a state withdraws from the interstate compact for adult offender supervision under article XII(a) of RCW 9.94A.745, the state council for interstate adult offender supervision created by RCW 9.94A.74501 shall seek to negotiate an agreement with the withdrawing state fulfilling the purposes of RCW 9.94A.745, subject to the approval of the legislature.

(3) Nothing in chapter 35, Laws of 2001 limits the secretary's authority to enter into agreements with other jurisdictions for supervision of offenders. [2001 c 35 § 5.]

9.94A.74504 Supervision of transferred offenders—Processing transfer applications. (1) The department may supervise nonfelony offenders transferred to Washington pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and shall supervise these offenders according to the provisions of this chapter.

(2) The department shall process applications for interstate transfer of felony and nonfelony offenders requesting transfer of supervision out-of-state pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and may charge offenders a reasonable fee for processing the application.

(3) The department shall adopt a rule prescribing the amount of the interstate transfer application fee. [2011 1st sp.s. c 40 § 14; 2005 c 400 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.94A.74505 Review of obligations under compact—Report to legislature. (1) The department shall identify the states from which it receives adult offenders who need supervision and examine the feasibility and cost of establishing memoranda of understanding with the states that send the highest number of offenders for supervision to Washington state with the goal of achieving more balanced and equitable obligations under the interstate compact for adult offender supervision.

(2) At the next meeting of the interstate compact commission, Washington's representatives on the commission shall seek a resolution by the commission regarding:

(a) Any inequitable distribution of costs, benefits, and obligations affecting Washington under the interstate compact; and

(b) The scope of the mandatory acceptance policy and the authority of the receiving state to determine when it is no longer able to supervise an offender.

(3) The department shall examine the feasibility and cost of withdrawal from the interstate compact for adult offender supervision.

(4) The department shall report to the legislature no later than December 1, 2010, regarding:

(a) The development of memoranda of understanding with states that send the highest numbers of offenders to Washington state for supervision;

(b) The outcome of the resolution process with the interstate commission; and

(c) The feasibility and cost of withdrawal from the interstate compact for adult offender supervision. [2010 c 258 § 4.]

Purpose—2010 c 258 § 4: "The legislature has determined that it is necessary to examine patterns related to the exchange of out-of-state offenders needing supervision. The examination must assess the past action and behavior of other states that send offenders to the state of Washington for supervision to assure that the interstate compact for adult offender supervision operates to protect the safety of the people and communities of Washington and other individual states." [2010 c 258 § 3.]

Effective date—2010 c 258 §§ 3 and 4: "Sections 3 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2010." [2010 c 258 § 5.]

RESTITUTION AND LEGAL FINANCIAL OBLIGATIONS

9.94A.750 Restitution. This section applies to offenses committed on or before July 1, 1985.

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court shall not issue any order that postpones the commencement of restitution payments until after the offender is released from total confinement. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. An offender's inability to make restitution payments while in total confinement may not be the basis for a violation of his or her sentence unless his or her inability to make payments resulted from a refusal to accept an employment offer to a class I or class II job or a termination for cause from such a job.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments

based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support

registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. [2018 c 123 § 1; 2003 c 379 § 15; 2000 c 28 § 32. Prior: 1997 c 121 § 3; 1997 c 52 § 1; 1995 c 231 § 1; 1994 c 271 § 601; 1989 c 252 § 5; 1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14. Formerly RCW 9.94A.140.]

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.753 Restitution—Application dates. This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court shall not issue any order that postpones the commencement of restitution payments until after the offender is released from total confinement. The court should take into consideration the total amount of the restitution

owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. An offender's inability to make restitution payments while in total confinement may not be the basis for a violation of his or her sentence unless his or her inability to make payments resulted from a refusal to accept an employment offer to a class I or class II job or a termination for cause from such a job.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains

under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

(10) If a person has caused a victim to lose money or property through the filing of a vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale, upon conviction or when the offender pleads guilty and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim, the court may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the filing of the vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale. Such an amount may be used to provide restitution to the victim at the order of the court. It is the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court must make a finding as to the amount of the victim's loss due to the filing of the report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale, and if the record does not contain sufficient evidence to support such finding, the court may conduct a hearing upon the issue. For purposes of this section, "loss" refers to the amount of money or the value of property or services lost. [2018 c 123 § 2; 2016 c 86 § 5; 2003 c 379 § 16. Prior: 2000 c 226 § 3; 2000 c 28 § 33; prior: 1997 c 121 § 4; 1997 c 52 § 2; prior: 1995 c 231 § 2; 1995 c 33 § 4; 1994 c 271 § 602; 1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10. Formerly RCW 9.94A.142.]

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.760 Legal financial obligations. (1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court may not order an offender to pay costs as described in RCW 10.01.160 if the court finds that the offender at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c). An offender being indigent as defined in RCW 10.101.010(3) (a) through (c) is not grounds for failing to impose restitution or the crime victim penalty assessment under RCW 7.68.035. The court must on

either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount.

(2) Upon receipt of each payment made by or on behalf of an offender, the county clerk shall distribute the payment in the following order of priority until satisfied:

(a) First, proportionally to restitution to victims that have not been fully compensated from other sources;

(b) Second, proportionally to restitution to insurance or other sources with respect to a loss that has provided compensation to victims;

(c) Third, proportionally to crime victims' assessments; and

(d) Fourth, proportionally to costs, fines, and other assessments required by law.

(3) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration. The court shall not order the offender to pay the cost of incarceration if the court finds that the offender at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c). Costs of incarceration ordered by the court shall not exceed a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(4) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(5) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies avail-

able to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(6) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(7) After completing the investigation, the department shall make a report to the court on the amount of the monthly

payment that the offender should be required to make towards a satisfied legal financial obligation.

(8)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(9) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(10) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(11) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject

to the penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740. If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties.

(12)(a) The administrative office of the courts shall mail individualized periodic billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(b) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(c) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(d) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(13) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (5) of this section. The costs for collection services shall be paid by the offender.

(14) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(15) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, and who remains under the jurisdiction of the court for payment of legal financial obligations. [2018 c 269 § 14; 2011 c 106 § 3; 2008 c 231 § 35; 2005 c 263 § 1; 2004 c 121 § 3; 2003 c 379 § 14; 2001 c 10 § 3. Prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

Construction—2018 c 269: See note following RCW 10.82.090.

Finding—2011 c 106: See note following RCW 10.82.090.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Purpose—2003 c 379 §§ 13-27: "The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for [of] the courts. The

intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections." [2003 c 379 § 13.]

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.7601 "Earnings," "disposable earnings," and "obligee" defined. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. The term "obligee" means the department, party, or entity to whom the legal financial obligation is owed, or the department, party, or entity to whom the right to receive or collect support has been assigned. [1991 c 93 § 1. Formerly RCW 9.94A.200005.]

Additional notes found at www.leg.wa.gov

9.94A.7602 Legal financial obligation—Notice of payroll deduction—Issuance and content. (1) The department may issue a notice of payroll deduction in a criminal action if:

(a) The court at sentencing orders its immediate issuance; or

(b) The offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month, provided:

(i) The judgment and sentence or subsequent order to pay contains a statement that a notice of payroll deduction may be issued without further notice to the offender; or

(ii) The department has served a notice on the offender stating such requirements and authorization. Service of such notice shall be made by personal service or any form of mail requiring a return receipt.

(2) The notice of payroll deduction is to be in writing and include:

(a) The name, social security number, and identifying court case number of the offender/employee;

(b) The amount to be deducted from the offender/employee's disposable earnings each month, or alternative amounts and frequencies as may be necessary to facilitate processing of the payroll deduction by the employer;

(c) A statement that the total amount withheld on all payroll deduction notices for payment of court-ordered legal

financial obligations combined shall not exceed twenty-five percent of the offender/employee's disposable earnings; and

(d) The address to which the payments are to be mailed or delivered.

(3) An informational copy of the notice of payroll deduction shall be mailed to the offender's last known address by regular mail or shall be personally served.

(4) Neither the department nor any agents of the department shall be held liable for actions taken under RCW 9.94A.760 and 9.94A.7601 through 9.94A.761. [1991 c 93 § 3. Formerly RCW 9.94A.200010.]

Additional notes found at www.leg.wa.gov

9.94A.7603 Legal financial obligations—Payroll deductions—Maximum amounts withheld, apportionment. (1) The total amount to be withheld from the offender/employee's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the offender.

(2) If the offender is subject to two or more notices of payroll deduction for payment of a court-ordered legal financial obligation from different obligees, the employer or entity shall, if the nonexempt portion of the offender's earnings is not sufficient to respond fully to all notices of payroll deduction, apportion the offender's nonexempt disposable earnings between or among the various obligees equally. [1991 c 93 § 4. Formerly RCW 9.94A.200015.]

Additional notes found at www.leg.wa.gov

9.94A.7604 Legal financial obligations—Notice of payroll deduction—Employer or entity rights and responsibilities. (1) An employer or entity upon whom a notice of payroll deduction is served, shall make an answer to the department within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the offender is employed by or receives earnings from the employer or entity, whether the employer or entity anticipates paying earnings, and the amount of earnings. If the offender is no longer employed, or receiving earnings from the employer or entity, the answer shall state the present employer or entity's name and address, if known.

(2) Service of a notice of payroll deduction upon an employer or entity requires an employer or entity to immediately make a mandatory payroll deduction from the offender/employee's unpaid disposable earnings. The employer or entity shall thereafter at each pay period deduct the amount stated in the notice divided by the number of pay periods per month. The employer or entity must remit the proper amounts to the appropriate clerk of the court on each date the offender/employee is due to be paid.

(3) The employer or entity may combine amounts withheld from the earnings of more than one employee in a single payment to the clerk of the court, listing separately the amount of the payment that is attributable to each individual employee.

(4) The employer or entity may deduct a processing fee from the remainder of the employee's earnings after withholding under the notice of payroll deduction, even if the

remainder is exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and

(b) One dollar for each subsequent disbursement made under the notice of payroll deduction.

(5) The notice of payroll deduction shall remain in effect until released by the department or the court enters an order terminating the notice.

(6) An employer shall be liable to the obligee for the amount of court-ordered legal financial obligation moneys that should have been withheld from the offender/employee's earnings, if the employer:

(a) Fails or refuses, after being served with a notice of payroll deduction, to deduct and promptly remit from unpaid earnings the amounts of money required in the notice; or

(b) Fails or refuses to submit an answer to the notice of payroll deduction after being served. In such cases, liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney fees, and staff costs as part of the award.

(7) No employer who complies with a notice of payroll deduction under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discipline or discharge an employee or refuse to hire a person by reason of an action authorized in this chapter. If an employer disciplines or discharges an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1991 c 93 § 5. Formerly RCW 9.94A.200020.]

Additional notes found at www.leg.wa.gov

9.94A.7605 Motion to quash, modify, or terminate payroll deduction—Grounds for relief. (1) The offender subject to a payroll deduction under this chapter, may file a motion in superior court to quash, modify, or terminate the payroll deduction. The court may grant relief if:

(a) It is demonstrated that the payroll deduction causes extreme hardship or substantial injustice; or

(b) In cases where the court did not immediately order the issuance of a notice of payroll deduction at sentencing, that a court-ordered legal financial obligation payment was not more than thirty days past due in an amount equal to or greater than the amount payable for one month.

(2) Satisfaction by the offender of all past-due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction. If a notice of payroll deduction has been in operation for twelve consecutive months and the offender's payment towards a court-ordered legal financial obligation is current, upon motion of the offender, the court may order the department to terminate the payroll deduction, unless the department can show good cause as to why the notice of pay-

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roll deduction should remain in effect. [1991 c 93 § 6. Formerly RCW 9.94A.200025.]

Additional notes found at www.leg.wa.gov

9.94A.7606 Legal financial obligations—Order to withhold and deliver—Issuance and contents. (1) The department or county clerk may issue to any person or entity, except to the department, an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department or county clerk has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department or county clerk has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department or county clerk shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver. [2011 c 106 § 5; 1991 c 93 § 7. Formerly RCW 9.94A.200030.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7607 Legal financial obligations—Order to withhold and deliver—Duties and rights of person or entity served. (1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and

in writing, and shall make true answers to the matters inquired of in the order; and

(b) Provide further and additional answers when requested by the department or county clerk.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department or county clerk of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or other employment arrangement, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department or county clerk is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding. [2011 c 106 § 6; 1991 c 93 § 8. Formerly RCW 9.94A.200035.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7608 Legal financial obligations—Financial institutions—Service on main office or branch, effect—Collection actions against community bank account, court hearing. An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601 through 9.94A.761, if the department or county clerk initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first-class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department or the superior court contesting the withholding of his or her interest in the account or funds. The department or county clerk shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department or county clerk is authorized to proceed with the collection action. [2011 c 106 § 7; 1991 c 93 § 9. Formerly RCW 9.94A.200040.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7609 Legal financial obligations—Notice of debt—Service or mailing—Contents—Action on, when.

(1) The department or county clerk may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of

service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed [owed].

(6) The department or county clerk shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender. [2011 c 106 § 8; 1991 c 93 § 10. Formerly RCW 9.94A.200045.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.761 Legal financial obligations—Exemption from notice of payroll deduction or order to withhold and deliver. Whenever a notice of payroll deduction or order to withhold and deliver is served upon a person or entity asserting a court-ordered legal financial obligation debt against earnings and there is in the possession of the person or entity any of the earnings, RCW 6.27.150 shall not apply, but seventy-five percent of the disposable earnings shall be exempt and may be disbursed to the offender whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there is due the offender earnings for one week or for a longer period. The notice of payroll deduction or order to withhold and deliver shall continue to operate and require said person or entity to withhold the nonexempt portion of earnings, at each succeeding earnings disbursement interval until the entire amount of the court-ordered legal financial obligation debt has been withheld. [1991 c 93 § 11. Formerly RCW 9.94A.200050.]

Additional notes found at www.leg.wa.gov

9.94A.7701 Legal financial obligations—Wage assignments—Petition or motion. A petition or motion seeking a mandatory wage assignment in a criminal action may be filed by the department or any obligee if the offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month. The petition or motion shall include a sworn statement by the secretary or designee, or if filed solely by an obligee, by such obligee, stating the facts authorizing the issuance of the wage assignment order, including: (1) That the offender, stating his or her name and last known residence, is more than thirty days past due in payments in an amount equal to or greater than the amount payable for one month; (2) a description of the terms of the judgment and sentence and/or payment order requiring payment of a court-ordered legal financial obligation, the total amount remaining unpaid, and the amount past due; (3) the name and address of the offender's employer; (4) that notice by personal service, or any form of mail requiring a return receipt, has been provided to the offender at least fifteen days prior to the filing of a mandatory wage assignment, unless the judgment and sentence or the order for payment states that the department or

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obligee may seek a mandatory wage assignment without notice to the defendant. A copy of the judgment and sentence or payment order shall be attached to the petition or motion seeking the wage assignment. [1989 c 252 § 9. Formerly RCW 9.94A.2001.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7702 Legal financial obligations—Wage assignments—Answer. Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with RCW 9.94A.7701, the court shall issue a wage assignment order as provided in RCW 9.94A.7704 and including the information required in RCW 9.94A.7701, directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with RCW 9.94A.7706 within twenty days after service of the order upon the employer. [1989 c 252 § 10. Formerly RCW 9.94A.2002.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7703 Legal financial obligations—Wage assignments—Amounts to be withheld. (1) The wage assignment order in RCW 9.94A.7702 shall include: (a) The maximum amount or current amount owed on a court-ordered legal financial obligation, if any, to be withheld from the defendant's earnings each month, or from each earnings disbursement; and (b) the total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the defendant's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the defendant. If the amounts to be paid toward the arrearage are specified in the payment order, then the maximum amount to be withheld is the sum of the current amount owed and the amount ordered to be paid toward the arrearage, or twenty-five percent of the disposable earnings of the defendant, whichever is less.

(3) If the defendant is subject to two or more attachments for payment of a court-ordered legal financial obligation on account of different obligees, the employer shall, if the nonexempt portion of the defendant's earnings is not sufficient to respond fully to all the attachments, apportion the defendant's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the defendant's nonexempt disposable earnings upon notice to all interested parties. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute. [1989 c 252 § 11. Formerly RCW 9.94A.2003.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7704 Legal financial obligations—Wage assignments—Rules. The department shall develop a form and adopt rules for the wage assignment order. [1989 c 252 § 12. Formerly RCW 9.94A.2004.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7705 Legal financial obligations—Wage assignments—Employer responsibilities. (1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the offender is employed by or receives earnings from the employer, whether the employer will honor the wage assignment order, and whether there are multiple attachments against the offender.

(2) If the employer possesses any earnings due and owing to the offender, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The employer shall deliver the withheld earnings to the clerk of the court pursuant to the wage assignment order. The employer shall make the first delivery no sooner than twenty days after receipt of the wage assignment order.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings of the offender until notified that the wage assignment has been modified or terminated. The employer shall promptly notify the clerk of the court who entered the order when the employee is no longer employed.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under RCW 9.94A.7703. The processing fee may not exceed: (a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and (b) one dollar for each subsequent disbursement made under the wage assignment order.

(5) An employer who fails to withhold earnings as required by a wage assignment order issued under this chapter may be held liable for the amounts disbursed to the offender in violation of the wage assignment order, and may be found by the court to be in contempt of court and may be punished as provided by law.

(6) No employer who complies with a wage assignment order issued under this chapter may be liable to the employee for wrongful withholding.

(7) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment order issued and executed under this chapter. A person who violates this subsection may be found by the court to be in contempt of court and may be punished as provided by law.

(8) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible. [1989 c 252 § 13. Formerly RCW 9.94A.2005.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7706 Legal financial obligations—Wage assignments—Form and rules. The department shall develop a form and adopt rules for the wage assignment answer, and instructions for employers for preparing such answer. [1989 c 252 § 14. Formerly RCW 9.94A.2006.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7707 Legal financial obligations—Wage assignments—Service. (1) Service of the wage assignment order on the employer is invalid unless it is served with five answer forms in substantial conformance with RCW 9.94A.7706, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney, the petitioner, the department, and the obligor. The petitioner shall also include an extra copy of the wage assignment order for the employer to deliver to the obligor. Service on the employer shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the wage assignment order on the employer, the petitioner shall mail or cause to be mailed by certified mail a copy of the wage assignment order to the obligor at the obligor's last known post office address; or, in the alternative, a copy of the wage assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the employer. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection provides, or if any irregularity appears with respect to the mailing of service, the superior court, in its discretion, may quash the wage assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the defendant has suffered substantial injury due to the failure to mail or serve the copy. [1989 c 252 § 15. Formerly RCW 9.94A.2007.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7708 Legal financial obligations—Wage assignments—Hearing—Scope of relief. In a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfaction by the defendant of all past-due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's payment towards a court-ordered legal financial obligation is current, the court may terminate the order upon motion of the obligor unless the obligee or the department can show good cause as to why the wage assignment order should remain in effect. The department shall notify the employer of any modification or termination of the wage assignment order. [1989 c 252 § 16. Formerly RCW 9.94A.2008.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.7709 Legal financial obligations—Wage assignments—Recovery of costs, attorneys' fees. In any action to enforce legal financial obligations under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorneys' fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question. [1989 c 252 § 17. Formerly RCW 9.94A.2009.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.772 Legal financial obligations—Monthly payment, starting dates—Construction. Notwithstanding any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation on the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit reporting. Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment. [2004 c 121 § 4; 2003 c 379 § 22.]

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Additional notes found at www.leg.wa.gov

9.94A.775 Legal financial obligations—Termination of supervision—Monitoring of payments. If an offender with an unsatisfied legal financial obligation is not subject to supervision by the department for a term of community custody, or has not completed payment of all legal financial obligations included in the sentence at the expiration of his or her term of community custody, the department shall notify the administrative office of the courts of the termination of the offender's supervision and provide information to the administrative office of the courts to enable the county clerk to monitor payment of the remaining obligations. The county clerk is authorized to monitor payment after such notification. The secretary of corrections and the administrator for the courts shall enter into an interagency agreement to facilitate the electronic transfer of information about offenders, unpaid obligations, and payees to carry out the purposes of this section. [2008 c 231 § 36; 2003 c 379 § 17.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Additional notes found at www.leg.wa.gov

9.94A.777 Legal financial obligations—Defendants with mental health conditions. (1) Before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, other than restitution or the victim penalty assessment under RCW 7.68.035, a judge must first determine that the defendant, under the terms of this section, has the means to pay such additional sums.

(2) For the purposes of this section, a defendant suffers from a mental health condition when the defendant has been diagnosed with a mental disorder that prevents the defendant from participating in gainful employment, as evidenced by a determination of mental disability as the basis for the defendant's enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation. [2010 c 280 § 6.]

SEX OFFENDER TREATMENT

9.94A.780 Offender supervision intake fees. (1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the supervision intake fee, prescribed under subsection (2) of this section, which shall be

considered as payment or part payment of the cost of establishing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the intake fee based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such a payment.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the intake fee constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The supervision intake fee shall be imposed after the determination of eligibility for supervision has been completed. For offenders whose crime was committed on or after October 1, 2011, the intake fee prescribed shall be not less than four hundred dollars or more than six hundred dollars, and shall be assessed for each judgment and sentence imposed by the superior court in which supervision by the department is required.

(3) For offenders whose offense date was before October 1, 2011, the monthly rate shall be converted to a one-time fee. The amount due shall be based upon the most recent monthly fee amount by the months of supervision left to serve, but in no case shall exceed six hundred dollars.

(4) Nothing in chapter 40, Laws of 2011 1st sp. sess. shall affect the amount or dates payments are due for any prior balances owed by an offender for the cost of supervision.

(5) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(6) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

(7) If a county clerk assumes responsibility for collection of unpaid legal financial obligations under RCW 9.94A.760, or under any agreement with the department under that section, whether before or after the completion of any period of community custody, the clerk may impose a monthly or annual assessment for the cost of collections. The amount of the assessment shall not exceed the actual cost of collections. The county clerk may exempt or defer payment of all or part of the assessment based upon any of the factors listed in subsection (1) of this section. The offender shall pay the assessment under this subsection to the county clerk who shall apply it to the cost of collecting legal financial obligations under RCW 9.94A.760. [2011 1st sp.s. c 40 § 10; 2008 c 231 § 37; 2003 c 379 § 18; 1991 c 104 § 1; 1989 c 252 § 8; 1984 c 209 § 15; 1982 c 207 § 2. Formerly RCW 9.94A.270.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.810 Transition and relapse prevention strategies. Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department. [2000 c 28 § 35.]

Additional notes found at www.leg.wa.gov

9.94A.820 Sex offender treatment in the community.

(1) Sex offender examinations and treatment ordered as a special condition of community custody under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department finds that: (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (b) the treatment provider is employed by the department; or (c)(i) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult with a certified sex offender treatment provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A sex offender's failure to participate in treatment required as a condition of community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home. [2008 c 231 § 38; 2004 c 38 § 10; 2000 c 28 § 36.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

SPECIAL ALLEGATIONS

9.94A.825 Deadly weapon special verdict—Definition. In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of

the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Black-jack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas. [1983 c 163 § 3. Formerly RCW 9.94A.602, 9.94A.125.]

Additional notes found at www.leg.wa.gov

9.94A.827 Methamphetamine—Manufacturing with child on premises—Special allegation. In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401 relating to manufacture of methamphetamine; or (b) possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person under the age of eighteen was present in or upon the premises of manufacture; the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2003 c 53 § 60; 2002 c 134 § 3; 2000 c 132 § 1. Formerly RCW 9.94A.605, 9.94A.128.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

9.94A.829 Special allegation—Offense committed by criminal street gang member or associate—Procedures. In a criminal case in which the defendant has been convicted of unlawful possession of a firearm under RCW 9.41.040, and there has been a special allegation pleaded and proven by a preponderance of the evidence that the accused is a criminal street gang member or associate as defined in RCW 9.94A.030, the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the accused was a criminal street gang member or associate during the commission of the crime. [2009 c 28 § 16.]

Effective date—2009 c 28: See note following RCW 2.24.040.

9.94A.831 Special allegation—Assault of law enforcement personnel with a firearm—Procedures. In a criminal case where:

(1) The defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement

agency who was performing his or her official duties at the time of the assault as provided under RCW 9A.36.031; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant intentionally committed the assault with what appears to be a firearm;

the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2009 c 141 § 1.]

9.94A.832 Special allegation—Robbery in the first or second degree—Robbery of a pharmacy—Procedures. In a criminal case where:

(1) The defendant has been convicted of robbery in the first degree or robbery in the second degree; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed a robbery of a pharmacy as defined in *RCW 18.64.011(21);

the court shall make a finding of fact of the special allegation, or if a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2013 c 270 § 1.]

*Reviser's note: RCW 18.64.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (21) to subsection (26).

9.94A.833 Special allegation—Involving minor in felony offense—Procedures. (1) In a prosecution of a criminal street gang-related felony offense, the prosecution may file a special allegation that the felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense, as described under RCW 9.94A.533(10)(a).

(2) The state has the burden of proving a special allegation made under this section beyond a reasonable doubt. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the criminal street gang-related felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense. If no jury is had, the court shall make a finding of fact as to whether the criminal street gang-related felony offense involved the compensation, threatening, or solicitation of a minor in order to involve that minor in the commission of the felony offense. [2008 c 276 § 302.]

Additional notes found at www.leg.wa.gov

9.94A.834 Special allegation—Endangerment by eluding a police vehicle—Procedures. (1) The prosecuting attorney may file a special allegation of endangerment by eluding in every criminal case involving a charge of attempting to elude a police vehicle under RCW 46.61.024, when sufficient admissible evidence exists, to show that one or more persons other than the defendant or the pursuing law enforcement officer were threatened with physical injury or harm by the actions of the person committing the crime of attempting to elude a police vehicle.

(2) In a criminal case in which there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime while endangering one

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or more persons other than the defendant or the pursuing law enforcement officer. The court shall make a finding of fact of whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered during the commission of the crime. [2008 c 219 § 2.]

Additional notes found at www.leg.wa.gov

9.94A.835 Special allegation—Sexual motivation—Procedures. (1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030.

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [2009 c 28 § 15; 2006 c 123 § 2; 1999 c 143 § 11; 1990 c 3 § 601. Formerly RCW 9.94A.127.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.94A.836 Special allegation—Offense was predatory—Procedures. (1) In a prosecution for rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, the prosecuting attorney shall file a special allegation that the offense was predatory whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact finder that the offense was predatory, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the offense was predatory. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the offense was predatory. If no jury is had,

the court shall make a finding of fact as to whether the offense was predatory.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful. [2006 c 122 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.837 Special allegation—Victim was under fifteen years of age—Procedures. (1) In a prosecution for rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was under fifteen years of age at the time of the offense whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact finder that the victim was under fifteen years of age at the time of the offense, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was under fifteen years of age at the time of the offense. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was under the age of fifteen at the time of the offense. If no jury is had, the court shall make a finding of fact as to whether the victim was under the age of fifteen at the time of the offense.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful. [2006 c 122 § 2.]

Additional notes found at www.leg.wa.gov

9.94A.838 Special allegation—Victim had diminished capacity—Procedures. (1) In a prosecution for rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact finder that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail

elder or vulnerable adult, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult. If no jury is had, the court shall make a finding of fact as to whether the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

(4) For purposes of this section, "developmentally disabled," "mentally disordered," and "frail elder or vulnerable adult" have the same meaning as in *RCW 9A.44.010. [2006 c 122 § 3.]

***Reviser's note:** RCW 9A.44.010 was amended by 2007 c 20 § 3, changing the definition of "developmentally disabled" and "mentally disordered" to "person with a developmental disability" and "person with a mental disorder," respectively.

Additional notes found at www.leg.wa.gov

9.94A.839 Special allegation—Sexual conduct with victim in return for a fee—Procedures. (1) In a prosecution for a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, or an anticipatory offense for a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, committed on or after July 22, 2007, the prosecuting attorney may file a special allegation that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact finder that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in exchange for a fee. If no jury is had, the court shall make a finding of fact as to whether the defendant engaged, agreed, offered, attempted, solicited

another, or conspired to engage the victim in the sexual conduct in exchange for a fee.

(3) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact as defined in chapter 9A.44 RCW. [2007 c 368 § 10.]

SEX OFFENDERS

9.94A.840 Sex offenders—Release from total confinement—Notification of prosecutor. (1)(a) When it appears that a person who has been convicted of a sexually violent offense may meet the criteria of a sexually violent predator as defined in *RCW 71.09.020(1), the agency with jurisdiction over the person shall refer the person in writing to the prosecuting attorney of the county where that person was convicted, three months prior to the anticipated release from total confinement.

(b) The agency shall inform the prosecutor of the following:

(i) The person's name, identifying factors, anticipated future residence, and offense history; and

(ii) Documentation of institutional adjustment and any treatment received.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency with jurisdiction, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [1992 c 45 § 1; 1990 c 3 § 122. Formerly RCW 9.94A.151.]

***Reviser's note:** RCW 71.09.020 was amended by 2001 2nd sp.s. c 12 § 102, changing subsection (1) to subsection (12). RCW 71.09.020 was subsequently amended by 2002 c 58 § 2, changing subsection (12) to subsection (16). RCW 71.09.020 was subsequently amended by 2009 c 409 § 1, changing subsection (16) to subsection (18).

Additional notes found at www.leg.wa.gov

9.94A.843 Sex offenders—Release of information—Immunity. The department, its employees, and officials, shall be immune from liability for release of information regarding sex offenders that complies with RCW 4.24.550. [1990 c 3 § 123. Formerly RCW 9.94A.152.]

Additional notes found at www.leg.wa.gov

9.94A.844 Sex offenders—Discretionary decisions—Immunity. Law enforcement agencies and the department of corrections are immune from civil liability for damages from discretionary decisions made under chapter 436, Laws of 2005 if they make a good faith effort to comply with chapter 436, Laws of 2005. [2005 c 436 § 5.]

Reviser's note: 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

9.94A.845 Community protection zones—Preemption of local regulations—Retrospective application. (1) Sections 1 through 3 and 5 of chapter 436, Laws of 2005, supersede and preempt all rules, regulations, codes, statutes,

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or ordinances of all cities, counties, municipalities, and local agencies regarding the same subject matter. The state preemption created in this section applies to all rules, regulations, codes, statutes, and ordinances pertaining to residency restrictions for persons convicted of any sex offense at any time.

(2) This section does not apply to rules, regulations, codes, statutes, or ordinances adopted by cities, counties, municipalities, or local agencies prior to March 1, 2006, except as required by an order issued by a court of competent jurisdiction pursuant to litigation regarding the rules, regulations, codes, statutes, or ordinances. [2006 c 131 § 1.]

Reviser's note: No consensus statewide standards on sex offender residency restrictions were delivered to the governor on or before December 31, 2007.

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

9.94A.846 Sex offenders—Release of information. In addition to any other information required to be released under other provisions of this chapter, the department may, pursuant to RCW 4.24.550, release information concerning convicted sex offenders confined to the department of corrections. [1990 c 3 § 124. Formerly RCW 9.94A.153.]

Additional notes found at www.leg.wa.gov

SENTENCING GUIDELINES COMMISSION

9.94A.860 Sentencing guidelines commission—Membership—Appointments—Terms of office—Expenses and compensation. (1) The sentencing guidelines commission is hereby created, located within the office of financial management. Except as provided in RCW 9.94A.875, the commission shall serve to advise the governor and the legislature as necessary on issues relating to adult and juvenile sentencing. The commission may meet, as necessary, to accomplish these purposes within funds appropriated.

(2) The commission consists of twenty voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, or his or her designee, subject to confirmation by the senate.

(3) The voting membership consists of the following:

(a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;

(b) The director of financial management or designee, as an ex officio member;

(c) The chair of the indeterminate sentence review board, as an ex officio member;

(d) The head of the state agency, or the agency head's designee, having responsibility for juvenile corrections programs, as an ex officio member;

(e) Two prosecuting attorneys;

(f) Two attorneys with particular expertise in defense work;

(g) Four persons who are superior court judges;

(h) One person who is the chief law enforcement officer of a county or city;

(i) Four members of the public who are not prosecutors, defense attorneys, judges, or law enforcement officers, one of whom is a victim of crime or a crime victims' advocate;

(j) One person who is an elected official of a county government, other than a prosecuting attorney or sheriff;

(k) One person who is an elected official of a city government;

(l) One person who is an administrator of juvenile court services.

In making the appointments, the governor shall endeavor to assure that the commission membership includes adequate representation and expertise relating to both the adult criminal justice system and the juvenile justice system. In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the defense attorney members, of the superior court judges' association in respect to the members who are judges, of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer, of the Washington state association of counties in respect to the member who is a county official, of the association of Washington cities in respect to the member who is a city official, of the office of crime victims advocacy and other organizations of crime victims in respect to the member who is a victim of crime or a crime victims' advocate, and of the Washington association of juvenile court administrators in respect to the member who is an administrator of juvenile court services.

(4)(a) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed.

(b) The governor shall stagger the terms of the members appointed under subsection (3)(j), (k), and (l) of this section by appointing one of them for a term of one year, one for a term of two years, and one for a term of three years.

(5) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(6) The members of the commission may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members may be reimbursed by their respective houses as provided under RCW 44.04.120. Except for the reimbursement of travel expenses, members shall not be compensated. [2016 c 179 § 3; 2011 1st sp.s. c 40 § 36; 2001 2nd sp.s. c 12 § 311; 1996 c 232 § 3; 1993 c 11 § 1; 1988 c 157 § 2; 1984 c 287 § 10; 1981 c 137 § 6. Formerly RCW 9.94A.060.]

Findings—Purpose—2016 c 179: See note following RCW 2.16.010.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

9.94A.865 Standard sentence ranges—Revisions or modifications—Submission to legislature. Revisions or modifications of standard sentence ranges or other standards, together with any additional list of standard sentence ranges, shall be submitted to the legislature at least every two years. [1986 c 257 § 19; 1981 c 137 § 7. Formerly RCW 9.94A.070.]

Additional notes found at www.leg.wa.gov

9.94A.8673 Sex offender policy board—Membership—Expenses and compensation. (1) Within funds appropriated for this purpose, the sentencing guidelines commission shall establish and maintain a sex offender policy board.

(2)(a) The board shall serve to advise the governor and the legislature as necessary on issues relating to sex offender management.

(b) At such times as the governor or a legislative committee of jurisdiction may request, the sex offender policy board may be convened to:

(i) Undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy; and

(ii) Conduct case reviews of sex offense incidents to understand performance of Washington's sex offender prevention and response systems.

(3) The sex offender policy board shall consist of thirteen voting members. Unless the member is specifically named in this section, the following organizations shall designate a person to sit on the board. The voting membership shall consist of the following:

(a) A representative of the Washington association of sheriffs and police chiefs;

(b) A representative of the Washington association of prosecuting attorneys;

(c) A representative of the Washington association of criminal defense lawyers;

(d) The chair of the indeterminate sentence review board or his or her designee;

(e) A representative of the Washington association for the treatment of sex abusers;

(f) The secretary of the department of corrections or his or her designee;

(g) A representative of the Washington state superior court judges' association;

(h) The assistant secretary of the juvenile rehabilitation administration or his or her designee;

(i) The office of crime victims advocacy in the department of commerce;

(j) A representative of the Washington state association of counties;

(k) A representative of the association of Washington cities;

(l) A representative of the Washington association of sexual assault programs; and

(m) The director of the special commitment center or his or her designee.

(4) The board shall choose its chair by majority vote from among its voting membership. The chair's term shall be two years.

(5) As appropriate, the board shall consult with the criminal justice division in the attorney general's office and the Washington institute for public policy.

(6) Members of the board shall receive no compensation but may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 40 § 37; 2008 c 249 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

CLEMENCY, INMATE POPULATION

9.94A.870 Emergency due to inmate population exceeding correctional facility capacity. If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1999 c 143 § 13; 1984 c 246 § 1; 1983 c 163 § 4; 1981 c 137 § 16. Formerly RCW 9.94A.160.]

Additional notes found at www.leg.wa.gov

9.94A.875 Emergency in county jails population exceeding capacity. If the governor finds that an emergency exists in that the populations of county jails exceed their reasonable, maximum capacity in a significant manner as a result of increases in the sentenced felon population due to implementation of chapter 9.94A RCW, the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment. The commission shall also analyze how alternatives to total confinement are being provided and used and may recommend

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other emergency measures that may relieve the overcrowding.

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1984 c 209 § 9. Formerly RCW 9.94A.165.]

Additional notes found at www.leg.wa.gov

9.94A.880 Clemency and pardons board—Membership—Terms—Chair—Bylaws—Travel expenses—Staff. (1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chair from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board. [2011 c 336 § 335; 1981 c 137 § 25. Formerly RCW 9.94A.250.]

Additional notes found at www.leg.wa.gov

9.94A.885 Clemency and pardons board—Petitions for review—Hearing. (1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to engaging in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency under subsection (1) of this section until a public hearing has been held on the petition. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing. Information regarding victims, survivors of victims, or wit-

nesses receiving this notice are confidential and shall not be available to the offender. The board shall consider statements presented as set forth in RCW 7.69.032. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person. [2009 c 325 § 6; 2009 c 138 § 4; 1999 c 323 § 3; 1989 c 214 § 2; 1981 c 137 § 26. Formerly RCW 9.94A.260.]

Reviser's note: This section was amended by 2009 c 138 § 4 and by 2009 c 325 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1999 c 323: "The pardoning power is vested in the governor under such regulations and restrictions as may be prescribed by law. To assist the governor in gathering the facts necessary to the wise exercise of this power, the legislature created the clemency and pardons board.

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime, an intelligent recommendation on an application for clemency is dependent upon input from the victims and survivors of victims of crimes. It is the intent of the legislature to ensure that all victims and survivors of victims of crimes are afforded a meaningful role in the clemency process.

The impact of the crime on the community must also be assessed when passing upon an application for clemency. The prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are uniquely situated to provide an accurate account of the offense and the impact felt by the community as a result of the offense. It is the intent of the legislature to ensure that the prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are afforded a meaningful role in the clemency process." [1999 c 323 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.890 Abused victim—Resentencing for murder of abuser. (1) The sentencing court or the court's successor shall consider recommendations from the indeterminate sentence review board for resentencing offenders convicted of murder if the indeterminate sentence review board advises the court of the following:

(a) The offender was convicted for a murder committed prior to July 23, 1989;

(b) RCW 9.94A.535(1)(h), if effective when the offender committed the crime, would have provided a basis for the offender to seek a mitigated sentence; and

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the offender for the murder, did not consider evidence that the victim subjected the offender or the offender's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the offender in light of RCW 9.94A.535(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the offender committed the crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed. [2000 c 28 § 42; 1993 c 144 § 5. Formerly RCW 9.94A.395.]

Additional notes found at www.leg.wa.gov

9.94A.905 Effective date of *RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, 9.94A.250, 9.94A.260—Sentences apply to felonies committed after June 30, 1984. *RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, and 9.94A.250 and 9.94A.260 shall take effect on July 1, 1984. The sentences required under this chapter shall be prescribed in each sentence which occurs for a felony committed after June 30, 1984. [1981 c 137 § 28.]

***Reviser's note:** The majority of chapter 9.94A RCW was recodified by 2001 c 10 § 6. See Comparative Table for chapter 9.94A RCW in the Table of Disposition of Former RCW Sections.

9.94A.921 Effective date—2000 c 28. Sections 1 through 42 of this act take effect July 1, 2001. [2000 c 28 § 46.]

9.94A.923 Nonentitlement. Nothing in chapter 290, Laws of 2002 creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment. [2002 c 290 § 26.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

9.94A.925 Application—2003 c 379 §§ 13-27. The provisions of sections 13 through 27, chapter 379, Laws of 2003 apply to all offenders currently, or in the future, subject to sentences with unsatisfied legal financial obligations. The provisions of sections 13 through 27, chapter 379, Laws of 2003 do not change the amount of any legal financial obligation or the maximum term for which any offender is, or may be, under the jurisdiction of the court for collection of legal financial obligations. [2003 c 379 § 24.]

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Additional notes found at www.leg.wa.gov

9.94A.926 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 21.]

9.94A.930 Recodification. The code reviser shall recodify sections within chapter 9.94A RCW, and correct any cross-references to any such recodified sections, as necessary to simplify the organization of chapter 9.94A RCW. [2001 c 10 § 6.]

Chapter 9.94B RCW

SENTENCING—CRIMES COMMITTED PRIOR TO
JULY 1, 2000

Sections

9.94B.010	Application of chapter.
9.94B.020	Definitions.
9.94B.030	Postrelease supervision—Violations—Expenses.
9.94B.040	Noncompliance with condition or requirement of sentence— Procedure—Penalty.
9.94B.050	Community placement.
9.94B.060	Community placement for specified offenders.
9.94B.070	Community custody for sex offenders.
9.94B.080	Mental status evaluations.
9.94B.090	Transfer to community custody status in lieu of earned release.
9.94B.100	Legal financial obligations—Wage assignments—Sentences imposed before July 1, 1989.

9.94B.010 Application of chapter. (1) This chapter codifies sentencing provisions that may be applicable to sentences for crimes committed prior to July 1, 2000.

(2) This chapter supplements chapter 9.94A RCW and should be read in conjunction with that chapter. [2008 c 231 § 51.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94B.020 Definitions. In addition to the definitions set out in RCW 9.94A.030, the following definitions apply for purposes of this chapter:

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

(2) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW *16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(3) "Postrelease supervision" is that portion of an offender's community placement that is not community custody. [2008 c 231 § 52.]

***Reviser's note:** RCW 16.52.200 was amended by 2009 c 287 § 3, changing subsection (6) to subsection (7). RCW 16.52.200 was subsequently amended by 2011 c 172 § 4, changing subsection (7) to subsection (9).

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94B.030 Postrelease supervision—Violations—Expenses. If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94B.040. Jurisdiction shall be

with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction. [2009 c 28 § 18; 1988 c 153 § 8. Formerly RCW 9.94A.628, 9.94A.175.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.94B.040 Noncompliance with condition or requirement of sentence—Procedure—Penalty. (1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the non-financial requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation;

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the

noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, or (iii) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) If the violation involves failure to pay legal financial obligations, the following provisions apply:

(a) The department and the offender may enter into a stipulated agreement that the failure to pay was willful noncompliance, according to the provisions and requirements of subsection (3)(a) of this section;

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in a stipulated agreement under (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. The court may not sanction the offender for failure to pay legal financial obligations unless the court finds, after a hearing and on the record, that the failure to pay is willful. A failure to pay is willful if the offender has the current ability to pay but refuses to do so. In determining whether the offender has the current ability to pay, the court shall inquire into and consider: (i) The offender's income and assets; (ii) the offender's basic living costs as defined by RCW 10.101.010 and other liabilities including child support and other legal financial obligations; and (iii) the offender's bona fide efforts to acquire additional resources. An offender who is indigent as defined by RCW 10.101.010(3) (a) through (c) is presumed to lack the current ability to pay;

(d) If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties;

(e) If the court finds that the failure to pay is willful noncompliance, the court may order the offender to be confined for a period not to exceed sixty days for each violation or order one or more of the penalties authorized in subsection (3)(a)(i) of this section; and

(f) If the court finds that the violation was not willful, the court may, and if the court finds that the defendant is indigent as defined in RCW 10.101.010(3) (a) through (c), the court shall modify the terms of payment of the legal financial obligations, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. The crime victim penalty assessment under RCW 7.68.035 may not be reduced, waived, or converted to community restitution hours.

(5) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under *RCW 71.05.630.

(6) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

(7) Nothing in this section prohibits the filing of escape charges if appropriate. [2018 c 269 § 15; 2002 c 175 § 8; 1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20. Formerly RCW 9.94A.634, 9.94A.200.]

*Reviser's note: RCW 71.05.630 was repealed by 2013 c 200 § 34, effective July 1, 2014.

Construction—2018 c 269: See note following RCW 10.82.090.

Intent—1998 c 260: See note following RCW 9.94A.500.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94B.050 Community placement. When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

- (i) Assault in the second degree;
- (ii) Assault of a child in the second degree;
- (iii) A crime against persons where it is determined in accordance with *RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or
- (iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

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(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive. [2003 c 379 § 4; 2002 c 175 § 13; 2000 c 28 § 22. Formerly RCW 9.94A.700.]

*Reviser's note: RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

Additional notes found at www.leg.wa.gov

9.94B.060 Community placement for specified offenders. Except for persons sentenced under RCW 9.94B.050(2) or 9.94B.070, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.411(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with *RCW 9.94A.728 (1) and (2). When the court sentences the offender under this section to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with *RCW 9.94A.728 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement or community custody imposed under this section. [2009 c 28 § 19; 2003 c 379 § 5; 2000 c 28 § 23. Formerly RCW 9.94A.705.]

*Reviser's note: RCW 9.94A.728 was amended by 2009 c 455 § 2, deleting subsections (1) and (2).

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.94B.070 Community custody for sex offenders. (1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release.

(2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in RCW 9.94B.050(4) and may include those provided for in RCW 9.94B.050(5). As part of

any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.704.

(3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. [2009 c 28 § 20; 2000 c 28 § 24. Formerly RCW 9.94A.710.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Additional notes found at www.leg.wa.gov

9.94B.080 Mental status evaluations. The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment may be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate. [2015 c 80 § 1; 2008 c 231 § 53.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94B.090 Transfer to community custody status in lieu of earned release. A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with *RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to **RCW 9.94A.728(1). [2008 c 231 § 54.]

Reviser's note: *(1) RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

** (2) RCW 9.94A.728 was amended by 2009 c 455 § 2, deleting subsection (1).

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Additional notes found at www.leg.wa.gov

9.94B.100 Legal financial obligations—Wage assignments—Sentences imposed before July 1, 1989. For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW 9.94B.040. [2009 c 28 § 14; 1989 c 252 § 18. Formerly RCW 9.94A.771, 9.94A.201.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Chapter 9.95 RCW INDETERMINATE SENTENCES

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- 9.95.435 Offenders—Postrelease transfer to more restrictive confinement.
- 9.95.440 Offenders—Reinstatement of release.
- 9.95.900 Application of certain laws to felonies committed before, on, or after certain dates.

Commitments: Chapter 10.70 RCW.

Counties may provide probation and parole services: RCW 36.01.070.

Final discharge: RCW 9.96.050.

Form of sentence to penitentiary: RCW 10.64.060.

Leaves of absence for inmates: RCW 72.01.370, 72.01.380.

Probation and parole, transfer of certain powers, duties to department of corrections: Chapter 72.04A RCW.

Restoration of civil rights: Chapter 9.96 RCW.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

Western interstate corrections compact, board members may hold hearings: RCW 72.70.040.

(2019 Ed.)

9.95.0001 Definitions. (1) "Board" means the indeterminate sentence review board.

(2) "Community custody" means that portion of an offender's sentence subject to controls including crime-related prohibitions and affirmative conditions from the court, the board, or the department of corrections based on risk to community safety, that is served under supervision in the community, and which may be modified or revoked for violations of release conditions.

(3) "Crime-related prohibition" has the meaning defined in RCW 9.94A.030.

(4) "Department" means the department of corrections.

(5) "Parole" means that portion of a person's sentence for a crime committed before July 1, 1984, served on conditional release in the community subject to board controls and revocation and under supervision of the department.

(6) "Secretary" means the secretary of the department of corrections or his or her designee. [2001 2nd sp.s. c 12 § 317.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.0002 Transfer of board to department of corrections—Members of board shall exercise independent judgment. (1) The indeterminate sentence review board is transferred to the department of corrections.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written materials in the possession of the indeterminate sentence review board shall be delivered to the custody of the department of corrections. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the indeterminate sentence review board shall be made available to the department of corrections. All funds, credits, or other assets held by the indeterminate sentence review board shall be assigned to the department of corrections.

(b) Any appropriations made to the indeterminate sentence review board shall, on August 24, 2011, be transferred and credited to the department of corrections.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the indeterminate sentence review board are transferred to the jurisdiction of the department of corrections. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of corrections to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the indeterminate sentence review board shall be continued and acted upon by the department of corrections. All existing contracts and obligations shall remain in full force and shall be performed by the department of corrections.

(5) The transfer of the powers, duties, functions, and personnel of the indeterminate sentence review board shall not affect the validity of any act performed before August 24, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the indeterminate sentence review board assigned to the department of corrections under chapter 40, Laws of 2011 1st sp. sess. whose positions are within an existing bargaining unit description at the department of corrections shall become a part of the existing bargaining unit at the department of corrections and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW.

(8) Notwithstanding any provision of chapter 40, Laws of 2011 1st sp. sess. and despite the transfer of the indeterminate sentence review board to the department of corrections, the members of the indeterminate sentence review board will possess and shall exercise independent judgment when making any decisions concerning offenders. These decisions include, but are not limited to, decisions concerning offenders' release, revocation, reinstatement, or the imposition of conditions of supervision. [2011 1st sp.s. c 40 § 16.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.95.001 Board of prison terms and paroles redesignated as indeterminate sentence review board. On July 1, 1986, the board of prison terms and paroles shall be redesignated the indeterminate sentence review board. The newly designated board shall retain the same membership and staff as the previously designated board of prison terms and paroles. References to "the board" or "board of prison terms and paroles" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the indeterminate sentence review board. [1986 c 224 § 2; (i) 1935 c 114 § 1; RRS § 10249-1. (ii) 1947 c 47 § 1; Rem. Supp. 1947 § 10249-1a. Formerly RCW 43.67.010.]

Additional notes found at www.leg.wa.gov

9.95.002 Board considered parole board. The indeterminate sentence review board, in fulfilling its duties under the provisions of chapter 12, Laws of 2001 2nd sp. sess., shall be considered a parole board as that concept was treated in law under the state's indeterminate sentencing statutes. [2001 2nd sp.s. c 12 § 363.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.003 Appointment of board members—Qualifications—Duties of chair—Salaries and travel expenses—Staffing. (1) The board is created within the department. The board shall consist of a chair and four other members, each of

whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a term of five years, and until his or her successor is appointed and qualified. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled by appointment by the governor with the consent of the senate. In the event of the inability of any member to act, the governor shall appoint some competent person to act in his or her stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chair at the governor's pleasure. The appointed chair shall serve as a fully participating board member.

(2) The department shall provide administrative and staff support for the board. The secretary may employ a senior administrative officer and such other personnel as may be necessary to assist the board in carrying out its duties.

(3) The members of the board and staff assigned to the board shall not engage in any other business or profession or hold any other public office without the prior approval of the executive ethics board indicating compliance with RCW 42.52.020, 42.52.030, 42.52.040, and 42.52.120; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 40 § 15; 2011 c 336 § 336; 2007 c 362 § 1; 1997 c 350 § 2; 1986 c 224 § 3; 1975-'76 2nd ex.s. c 34 § 8; 1969 c 98 § 9; 1959 c 32 § 1; 1955 c 340 § 9. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.020.]

Reviser's note: This section was amended by 2011 c 336 § 336 and by 2011 1st sp.s. c 40 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.005 Board meetings—Quarters at institutions. The board shall meet at major state correctional institutions at such times as may be necessary for a full and complete study of the cases of all convicted persons whose durations of confinement are to be determined by it; whose community custody supervision is under the board's authority; or whose applications for parole come before it. Other times and places of meetings may also be fixed by the board.

The superintendents of the different institutions shall provide suitable quarters for the board while in the discharge of their duties. [2011 1st sp.s. c 40 § 17; 2001 2nd sp.s. c 12 § 318; 1986 c 224 § 4; 1959 c 32 § 2; 1955 c 340 § 10. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.030.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.007 Transaction of board's business in panels—Action by full board. The board may meet and transact business in panels. Each board panel shall consist of at least two members of the board. In all matters concerning the internal affairs of the board and policy-making decisions, a majority of the full board must concur in such matters. The chair of the board with the consent of a majority of the board may designate any two members to exercise all the powers and duties of the board in connection with any hearing before the board. If the two members so designated cannot unanimously agree as to the disposition of the hearing assigned to them, such hearing shall be reheard by the full board. All actions of the full board shall be by concurrence of a majority of the sitting board members. [2011 1st sp.s. c 40 § 18; 2011 c 336 § 337; 1986 c 224 § 5; 1975-'76 2nd ex.s. c 63 § 1; 1959 c 32 § 3. Formerly RCW 43.67.035.]

Reviser's note: This section was amended by 2011 c 336 § 337 and by 2011 1st sp.s. c 40 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.009 Board of prison terms and paroles redesignated indeterminate sentence review board—Continuation of functions. (1) On July 1, 1986, the board of prison terms and paroles shall be redesignated as the indeterminate sentence review board. The board's membership shall be reduced as follows: On July 1, 1986, and on July 1st of each year until 1998, the number of board members shall be reduced in a manner commensurate with the board's remaining workload as determined by the office of financial management based upon its population forecast for the indeterminate sentencing system and in conjunction with the budget process. To meet the statutory obligations of the indeterminate sentence review board, the number of board members shall not be reduced to fewer than three members, although the office of financial management may designate some or all members as part-time members and specify the extent to which they shall be less than full-time members. Any reduction shall take place by the expiration, on that date, of the term or terms having the least time left to serve.

(2) After July 1, 1984, the board shall continue its functions with respect to persons convicted of crimes committed prior to July 1, 1984, and committed to the department of corrections. When making decisions on duration of confinement, including those relating to persons committed under a mandatory life sentence, and parole release under RCW 9.95.100 and 9.95.110, the board shall consider the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act and the minimum term recommendations of the sentencing judge and prosecuting attorney, and shall attempt to make decisions reasonably consistent with those ranges, standards, purposes, and recommendations: PROVIDED, That the board and its successors shall give

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adequate written reasons whenever a minimum term or parole release decision is made which is outside the sentencing ranges under chapter 9.94A RCW of the sentencing reform act. In making such decisions, the board and its successors shall consider the different charging and disposition practices under the indeterminate sentencing system.

(3) Notwithstanding the provisions of subsection (2) of this section, the indeterminate sentence review board shall give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole. [2011 1st sp.s. c 40 § 41; 1990 c 3 § 707; 1989 c 259 § 1; 1986 c 224 § 6; 1985 c 279 § 1; 1982 c 192 § 8; 1981 c 137 § 24.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.010 Court to fix maximum sentence. When a person, whose crime was committed before July 1, 1984, is convicted of any felony, except treason, murder in the first degree, or carnal knowledge of a child under ten years, and a new trial is not granted, the court shall sentence such person to the penitentiary, or, if the law allows and the court sees fit to exercise such discretion, to the reformatory, and shall fix the maximum term of such person's sentence only.

The maximum term to be fixed by the court shall be the maximum provided by law for the crime of which such person was convicted, if the law provides for a maximum term. If the law does not provide a maximum term for the crime of which such person was convicted the court shall fix such maximum term, which may be for any number of years up to and including life imprisonment but in any case where the maximum term is fixed by the court it shall be fixed at not less than twenty years. [2001 2nd sp.s. c 12 § 319; 1955 c 133 § 2. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Punishment: Chapter 9.92 RCW.

Additional notes found at www.leg.wa.gov

9.95.011 Minimum terms. (1) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at

which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

(2)(a) Except as provided in (b) of this subsection, not less than ninety days prior to the expiration of the minimum term of a person sentenced under RCW 9.94A.507, for a sex offense committed on or after September 1, 2001, less any time credits permitted by statute, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(b) If at the time a person sentenced under RCW 9.94A.507 for a sex offense committed on or after September 1, 2001, arrives at a department of corrections facility, the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(c) In setting a new minimum term, the board may consider the length of time necessary for the offender to complete treatment and programming as well as other factors that relate to the offender's release under RCW 9.95.420. The board's rules shall permit an offender to petition for an earlier review if circumstances change or the board receives new information that would warrant an earlier review. [2011 1st sp.s. c 40 § 40; 2009 c 28 § 21; 2007 c 363 § 1; 2002 c 174 § 2; 2001 2nd sp.s. c 12 § 320; 1993 c 144 § 3; 1986 c 224 § 7.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.013 Application of sentencing reform act to board decision. The board shall apply all of the statutory requirements of RCW 9.95.009(2), requiring decisions of the board to be reasonably consistent with the ranges, standards, and purposes of the sentencing reform act, chapter 9.94A RCW, and the minimum term recommendations of the sentencing judge and the prosecuting attorney, to every person who, on July 23, 1989, is incarcerated and has been adjudged under the provisions of RCW 9.92.090. [1989 c 259 § 5.]

[Title 9 RCW—page 226]

9.95.015 Finding of fact or special verdict establishing defendant armed with deadly weapon. In every criminal case wherein conviction would require the board to determine the duration of confinement, or the court to make such determination for persons committed after July 1, 1986, for crimes committed before July 1, 1984, and wherein there has been an allegation and evidence establishing that the accused was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused was armed with a deadly weapon, as defined by RCW 9.95.040, at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the defendant was armed with a deadly weapon, as defined in RCW 9.95.040, at the time of the commission of the crime. [1986 c 224 § 8; 1961 c 138 § 1.]

Additional notes found at www.leg.wa.gov

9.95.017 Criteria for confinement and parole. (1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release.

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after September 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in RCW 9.94A.507, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. [2009 c 28 § 22; 2008 c 231 § 40; 2003 c 218 § 2; 2001 2nd sp.s. c 12 § 321; 1986 c 224 § 11.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealer—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.020 Duties of superintendent of correctional institution. If the sentence of a person so convicted is not suspended by the court, the superintendent of a major state correctional institution shall receive such person, if committed to his or her institution, and imprison the person until released under the provisions of this chapter, under RCW 9.95.420, upon the completion of the statutory maximum sentence, or through the action of the governor. [2001 2nd sp.s. c 12 § 322; 1955 c 133 § 3. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.028 Statement of prosecuting attorney provided to department, when. It is the intent of the legislature to expedite the inmate classification process of the department of corrections. The statement of the prosecuting attorney regarding a convicted criminal defendant should be prepared

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and made available to the department at the time the convicted person is placed in the custody of the department. [1984 c 114 § 1.]

9.95.030 Statement to indeterminate sentence review board. At the time the convicted person is transported to the custody of the department of corrections, the indeterminate sentence review board shall obtain from the sentencing judge and the prosecuting attorney, a statement of all the facts concerning the convicted person's crime and any other information of which they may be possessed relative to him or her, and the sentencing judge and the prosecuting attorney shall furnish the board with such information. The sentencing judge and prosecuting attorney shall indicate to the board, for its guidance, what, in their judgment, should be the duration of the convicted person's imprisonment. [2011 c 336 § 338; 1999 c 143 § 17; 1984 c 114 § 2; 1955 c 133 § 4. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.031 Statement of prosecuting attorney. Whenever any person shall be convicted of a crime and who shall be sentenced to imprisonment or confinement in a state correctional facility, it shall be the duty of the prosecuting attorney who prosecuted such convicted person to make a statement of the facts respecting the crime for which the prisoner was tried and convicted, and include in such statement all information that the prosecuting attorney can give in regard to the career of the prisoner before the commission of the crime for which the prisoner was convicted and sentenced, stating to the best of the prosecuting attorney's knowledge whether the prisoner was industrious and of good character, and all other facts and circumstances that may tend to throw any light upon the question as to whether such prisoner is capable of again becoming a good citizen. [1992 c 7 § 23; 1929 c 158 § 1; RRS § 10254.]

Reviser's note: This section and RCW 9.95.032 antedate the 1935 act (1935 c 114) that created the board of prison terms and paroles. They were not expressly repealed thereby, although part of section 2 of the 1935 act (RCW 9.95.030) contains similar provisions. The effect of 1935 c 114 (as amended) upon other unrepealed prior laws is discussed in *Lindsey v. Superior Court*, 33 Wn.2d 94 (1949) at pp 99-100.

9.95.032 Statement of prosecuting attorney—Delivery of statement. Such statement shall be signed by the prosecuting attorney and approved by the judge by whom the judgment was rendered and shall be delivered to the sheriff, traveling guard, department of corrections personnel, or other officer executing the sentence, and a copy of such statement shall be furnished to the defendant or his or her attorney. Such officer shall deliver the statement, at the time of the prisoner's commitment, to the superintendent of the institution to which such prisoner has been committed. The superintendent shall make such statement available for use by the board. [2001 2nd sp.s. c 12 § 323; 1984 c 114 § 3; 1929 c 158 § 2; RRS § 10255.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

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9.95.040 Terms fixed by board—Minimums for certain cases. The board shall fix the duration of confinement for persons committed by the court before July 1, 1986, for crimes committed before July 1, 1984. Within six months after the admission of the convicted person to a state correctional facility, the board shall fix the duration of confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which the person was convicted or the maximum fixed by the court where the law does not provide for a maximum term.

Subject to RCW 9.95.047, the following limitations are placed on the board or the court for persons committed to a state correctional facility on or after July 1, 1986, for crimes committed before July 1, 1984, with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence:

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than five years.

(2) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than seven and one-half years.

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

(3) For a person convicted of being an habitual criminal within the meaning of the statute which provides for mandatory life imprisonment for such habitual criminals, the duration of confinement shall not be fixed at less than fifteen years.

(4) Any person convicted of embezzling funds from any institution of public deposit of which the person was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of a state correctional facility has been convicted of murder in the first or second degree, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action: PROVIDED, That any inmate who has a mandatory minimum term and is paroled prior to the expiration of such term according to the provisions of this chapter shall not receive a conditional release from supervision while on parole until after the mandatory minimum term has expired.

An inmate serving a sentence fixed under this chapter, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the secretary of corrections when authorized under *RCW 9.94A.728 (4). [1999 c 324 § 4. Prior: 1993 c 144 § 4; 1993 c 140 § 1; 1992 c 7 § 24; 1986 c 224 § 9; 1975-'76 2nd ex.s. c 63 § 2; 1961 c 138 § 2; 1955 c 133 § 5; prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

***Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, changing subsection (4) to subsection (3). RCW 9.94A.728 was subsequently amended by 2015 c 156 § 1, changing subsection (3) to subsection (1)(c).

Additional notes found at www.leg.wa.gov

9.95.045 Abused victim—Reduction in sentence for murder of abuser—Petition for review. (1) An inmate convicted of murder may petition the indeterminate sentence review board to review the inmate's sentence if the petition alleges the following:

(a) The inmate was sentenced for a murder committed prior to July 23, 1989, which was the effective date of section 1, chapter 408, Laws of 1989, as codified in RCW 9.94A.535 (1)(h). RCW 9.94A.535(1)(h) provides that the sentencing court may consider as a mitigating factor evidence that the defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense was a response to that abuse;

(b) RCW 9.94A.535(1)(h), if effective when the defendant committed the crime, would have provided a basis for the defendant to seek a mitigated sentence; and

(c) The sentencing court when determining what sentence to impose, did not consider evidence that the victim subjected the defendant or the defendant's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) An inmate who seeks to have his or her sentence reviewed under this section must petition the board for review no later than October 1, 1993. The petition may be by letter requesting review.

(3)(a) If the inmate was convicted of a murder committed prior to July 1, 1984, and the inmate is under the jurisdiction of the indeterminate sentence review board, the board shall conduct the review as provided in RCW 9.95.047. If the inmate was sentenced pursuant to chapter 9.94A RCW for a murder committed after June 30, 1984, but before July 23, 1989, the board shall conduct the review and may make appropriate recommendations to the sentencing court as provided in RCW 9.94A.890. The board shall complete its review of the petitions and submit recommendations to the sentencing courts or their successors by October 1, 1994.

(b) When reviewing petitions, the board shall solicit recommendations from the prosecuting attorneys of the counties where the petitioners were convicted, and shall accept input from other interested parties. [1993 c 144 § 1.]

Additional notes found at www.leg.wa.gov

9.95.047 Abused victim—Considerations of board in reviewing petition. (1) If an inmate under the board's jurisdiction files a petition for review under RCW 9.95.045, the board shall review the duration of the inmate's confinement, including review of the minimum term and parole eligibility review dates. The board shall consider whether:

(a) The petitioner was convicted for a murder committed prior to the effective date of RCW 9.94A.535(1)(h);

(b) RCW 9.94A.535(1)(h), if effective when the petitioner committed the crime, would have provided a basis for the petitioner to seek a mitigated sentence; and

(c) The sentencing court and prosecuting attorney, when making their minimum term recommendations, considered

evidence that the victim subjected the petitioner or the petitioner's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The board may reset the minimum term and parole eligibility review date of a petitioner convicted of murder if the board finds that had RCW 9.94A.535(1)(h) been effective when the petitioner committed the crime, the petitioner may have received an exceptional mitigating sentence. [1993 c 144 § 2.]

Additional notes found at www.leg.wa.gov

9.95.052 Redetermination and refixing of minimum term of confinement. At any time after the board (or the court after July 1, 1986) has determined the minimum term of confinement of any person subject to confinement in a state correctional institution for a crime committed before July 1, 1984, the board may request the superintendent of such correctional institution to conduct a full review of such person's prospects for rehabilitation and report to the board the facts of such review and the resulting findings. Upon the basis of such report and such other information and investigation that the board deems appropriate, the board may redetermine and refix such convicted person's minimum term of confinement whether the term was set by the board or the court.

The board shall not reduce a person's minimum term of confinement unless the board has received from the department of corrections all institutional conduct reports relating to the person. [2001 2nd sp.s. c 12 § 324; 1986 c 224 § 10; 1983 c 196 § 1; 1972 ex.s. c 67 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.055 Reduction of sentences during war emergency. The indeterminate sentence review board is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate under the jurisdiction of the board confined in a state correctional facility, who will be accepted by and inducted into the armed services: PROVIDED, That a reduction downward shall not be made under this section for those inmates who: (1) Are confined for (a) treason; (b) murder in the first degree; or (c) rape of a child in the first degree where the victim is under ten years of age or an equivalent offense under prior law; (2) are being considered for civil commitment as a sexually violent predator under chapter 71.09 RCW; or (3) were sentenced under RCW 9.94A.507 for a crime committed on or after September 1, 2001. [2009 c 28 § 23; 2003 c 218 § 3; 2001 2nd sp.s. c 12 § 325; 1992 c 7 § 25; 1951 c 239 § 1.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.060 When sentence begins to run. When a convicted person seeks appellate review of his or her conviction and is at liberty on bond pending the determination of the proceeding by the supreme court or the court of appeals, credit on his or her sentence will begin from the date such

convicted person is returned to custody. The date of return to custody shall be certified to the department of corrections, the indeterminate sentence review board, and the prosecuting attorney of the county in which such convicted person was convicted and sentenced, by the sheriff of such county. If such convicted person does not seek review of the conviction, but is at liberty for a period of time subsequent to the signing of the judgment and sentence, or becomes a fugitive, credit on his sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified as provided in this section. In all other cases, credit on a sentence will begin from the date the judgment and sentence is signed by the court. [1999 c 143 § 18; 1988 c 202 § 15; 1981 c 136 § 36; 1979 c 141 § 1; 1971 c 81 § 46; 1967 c 200 § 10; 1955 c 133 § 7. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. §10249-2, part.]

Additional notes found at www.leg.wa.gov

9.95.062 Stay of judgment—When prohibited—Credit for jail time pending appeal. (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

(2) An appeal by a defendant convicted of one of the following offenses shall not stay execution of the judgment of conviction: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or second degree (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses.

(3) In case the defendant has been convicted of a felony, and has been unable to obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, the time the defendant has been imprisoned pending the appeal shall be deducted from the term for which the defendant was sentenced, if the judgment is affirmed. [2011 c 111 § 3; 1996 c 275 § 9; 1989 c 276 § 1; 1969 ex.s. c 4 § 1;

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1969 c 103 § 1; 1955 c 42 § 2. Prior: 1893 c 61 § 30; RRS § 1745. Formerly RCW 10.73.030, part.]

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.95.063 Conviction upon new trial—Former imprisonment deductible. If a defendant who has been imprisoned during the pendency of any posttrial proceeding in any state or federal court shall be again convicted upon a new trial resulting from any such proceeding, the period of his or her former imprisonment shall be deducted by the superior court from the period of imprisonment to be fixed on the last verdict of conviction. [2011 c 336 § 339; 1971 ex.s. c 86 § 1; 1971 c 81 § 47; 1955 c 42 § 4. Prior: 1893 c 61 § 34; RRS § 1750. Formerly RCW 10.73.070, part.]

9.95.064 Conditions of release. (1) In order to minimize the trauma to the victim, the court may attach conditions on release of an offender under RCW 9.95.062, convicted of a crime committed before July 1, 1984, regarding the whereabouts of the defendant, contact with the victim, or other conditions.

(2) Offenders released under RCW 9.95.420 are subject to crime-related prohibitions and affirmative conditions established by the court, the department of corrections, or the board pursuant to RCW *9.94A.712, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. [2008 c 231 § 41; 2001 2nd sp.s. c 12 § 326; 1989 c 276 § 4.]

***Reviser's note:** RCW 9.94A.712 was recodified as RCW 9.94A.507 pursuant to the direction found in section 56(4), chapter 231, Laws of 2008, effective August 1, 2009.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.070 Reductions for good behavior. (1) Every prisoner, convicted of a crime committed before July 1, 1984, who has a favorable record of conduct at a state correctional institution, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him or her to the satisfaction of the superintendent of the institution, and in whose behalf the superintendent of the institution files a report certifying that his or her conduct and work have been meritorious and recommending allowance of time credits to him or her, shall upon, but not until, the adoption of such recommendation by the indeterminate sentence review board, be allowed time credit reductions from the term of imprisonment fixed by the board.

(2) Offenders sentenced under RCW 9.94A.507 for a crime committed on or after September 1, 2001, are subject to the earned release provisions for sex offenders established in RCW 9.94A.728. [2009 c 28 § 24; 2003 c 218 § 4; 2001 2nd sp.s. c 12 § 327; 1999 c 143 § 19; 1955 c 133 § 8. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.080 Revocation and redetermination of minimum for infractions. In case any person convicted of a crime committed before July 1, 1984, and under the jurisdiction of the indeterminate sentence review board undergoing sentence in a state correctional institution commits any infractions of the rules and regulations of the institution, the board may revoke any order theretofore made determining the length of time such convicted person shall be imprisoned, including the forfeiture of all or a portion of credits earned or to be earned, pursuant to the provisions of RCW 9.95.110, and make a new order determining the length of time the person shall serve, not exceeding the maximum penalty provided by law for the crime for which the person was convicted, or the maximum fixed by the court. Such revocation and redetermination shall not be had except upon a hearing before the indeterminate sentence review board. At such hearing the convicted person shall be present and entitled to be heard and may present evidence and witnesses in his or her behalf. [2001 2nd sp.s. c 12 § 328; 1992 c 7 § 26; 1972 ex.s. c 68 § 1; 1961 c 106 § 1; 1955 c 133 § 9. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.090 Labor required. (1) The board shall require of every able bodied offender confined in a state correctional institution for a crime committed before July 1, 1984, as many hours of faithful labor in each and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the institution in which he or she is confined.

(2) Offenders sentenced under RCW 9.94A.507 for crimes committed on or after July 1, 2001, shall perform work or other programming as required by the department of corrections during their term of confinement. [2009 c 28 § 25; 2001 2nd sp.s. c 12 § 329; 1999 c 143 § 20; 1955 c 133 § 10. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. § 10249-2, part.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Labor by prisoners: Chapter 72.64 RCW.

Additional notes found at www.leg.wa.gov

9.95.100 Prisoner released on serving maximum term. Any person convicted of a felony committed before July 1, 1984, and undergoing sentence in a state correctional institution, not sooner released under the provisions of this chapter, shall, in accordance with the provisions of law, be discharged from custody on serving the maximum punishment provided by law for the offense of which such person was convicted, or the maximum term fixed by the court where the law does not provide for a maximum term. The board shall not, however, until his or her maximum term expires, release a prisoner, unless in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release. [2001 2nd sp.s. c 12 § 330; 1955 c 133 § 11. Prior: (i) 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part. (ii) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

[Title 9 RCW—page 230]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.110 Parole. (1) The board may permit an offender convicted of a crime committed before July 1, 1984, to leave the buildings and enclosures of a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which an offender may be allowed to leave the confines of a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after September 1, 2001, and sentenced under RCW 9.94A.507, to leave a state correctional institution on community custody according to the provisions of RCW 9.94A.507, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of RCW 9.95.435. [2009 c 28 § 26; 2008 c 231 § 42; 2003 c 218 § 7; 2001 2nd sp.s. c 12 § 331; 1999 c 143 § 21; 1955 c 133 § 12. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.115 Parole of life term prisoners—Crimes committed before July 1, 1984. The indeterminate sentence review board is hereby granted authority to parole any person sentenced to the custody of the department of corrections, under a mandatory life sentence for a crime committed before July 1, 1984, except those persons sentenced to life without the possibility of parole. No such person shall be granted parole unless the person has been continuously confined therein for a period of twenty consecutive years less earned good time: PROVIDED, That no such person shall be released under parole who is subject to civil commitment as a sexually violent predator under chapter 71.09 RCW. [2001 2nd sp.s. c 12 § 332; 1989 c 259 § 3; 1951 c 238 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.116 Duration of confinement—Mandatory life sentences—Crimes committed before July 1, 1984. (1) The board shall fix the duration of confinement for persons committed to the custody of the department of corrections under a mandatory life sentence for a crime or crimes committed before July 1, 1984. However, no duration of confine-

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ment shall be fixed for those persons committed under a life sentence without the possibility of parole.

The duration of confinement for persons covered by this section shall be fixed no later than July 1, 1992, or within six months after the admission or readmission of the convicted person to the custody of the department of corrections, whichever is later.

(2) Prior to fixing a duration of confinement under this section, the board shall request from the sentencing judge and the prosecuting attorney an updated statement in accordance with RCW 9.95.030. In addition to the report and recommendations of the prosecuting attorney and sentencing judge, the board shall also consider any victim impact statement submitted by a victim, survivor, or a representative, and any statement submitted by an investigative law enforcement officer. The board shall provide the convicted person with copies of any new statement and an opportunity to comment thereon prior to fixing the duration of confinement. [1989 c 259 § 2.]

9.95.120 Suspension, revision of parole—Community corrections officers—Hearing—Retaking violators—Reinstatement. Whenever the board or a community corrections officer of this state has reason to believe a person convicted of a crime committed before July 1, 1984, has breached a condition of his or her parole or violated the law of any state where he or she may then be or the rules and regulations of the board, any community corrections officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the board by the community corrections officer, with recommendations. The board, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state community corrections officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the community corrections officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal, which order shall be sufficient warrant for all peace officers to take into custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the board for his or her return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his or her parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he or she may then be, he or she shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he or she is served with charges of the violation of conditions of parole after his or her arrest and detention. The hearing shall be held before one or more members of the board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the board suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the board shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the board may determine advisable. Before the board shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a correctional institution. [2003 c 218 § 5; 2001 2nd sp.s. c 12 § 333; 1999 c 143 § 22; 1981 c 136 § 37; 1979 c 141 § 2; 1969 c 98 § 2; 1961 c 106 § 2; 1955 c 133 § 13. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Violations of parole or probation—Revision of parole conditions—Rearrest—Detention: RCW 72.04A.090.

Additional notes found at www.leg.wa.gov

9.95.121 On-site revocation hearing—Procedure when waived. (1) For offenders convicted of crimes committed before July 1, 1984, within fifteen days from the date of notice to the department of corrections of the arrest and detention of the alleged parole violator, he or she shall be personally served by a state community corrections officer with a copy of the factual allegations of the violation of the conditions of parole, and, at the same time shall be advised of his or her right to an on-site parole revocation hearing and of his or her rights and privileges as provided in RCW 9.95.120 through 9.95.126. The alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights may waive the on-site parole revocation hearing as provided in RCW 9.95.120, and admit one or more of the alleged violations of the conditions of parole. If the board accepts the waiver it shall either, (a) reinstate the parolee on parole under the same or modified conditions, or (b) revoke the parole of the parolee and enter an order of parole revocation and return to state custody. A determination of a new minimum sentence shall be made within thirty days of return to state custody which shall not exceed the maximum sentence as provided by law for the crime of which the parolee was originally convicted or the maximum fixed by the court.

If the waiver made by the parolee is rejected by the board it shall hold an on-site parole revocation hearing under the provisions of RCW 9.95.120 through 9.95.126.

(2) Offenders sentenced under RCW 9.94A.507 are subject to the violation hearing process established in RCW 9.95.435. [2009 c 28 § 27; 2001 2nd sp.s. c 12 § 334; 1981 c 136 § 38; 1979 c 141 § 3; 1969 c 98 § 3.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.122 On-site revocation hearing—Representation for alleged violators—Compensation. (1) At any on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, the alleged parole violator shall be entitled to be represented by an attorney of his or her own choosing and at his or her own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: PROVIDED, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the board.

(2) The rights of offenders sentenced under RCW 9.94A.507 are defined in RCW 9.95.435. [2009 c 28 § 28; 2001 2nd sp.s. c 12 § 335; 1999 c 143 § 23; 1969 c 98 § 4.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.123 On-site parole or community custody revocation or violations hearings—Conduct—Witnesses—Subpoenas, enforcement. In conducting on-site parole hearings or community custody revocation or violations hearings, the board shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole or community custody revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW. If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the board may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: PROVIDED, That an offer to pay statutory fees and mileage has

been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey the order, the witness shall be dealt with as for contempt of court. [2008 c 231 § 43; 2001 2nd sp.s. c 12 § 336; 1999 c 143 § 24; 1969 c 98 § 5.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.124 On-site revocation hearing—Attorney general's recommendations—Procedural rules. At all on-site parole revocation hearings for offenders convicted of crimes committed before July 1, 1984, the community corrections officers of the department of corrections, having made the allegations of the violations of the conditions of parole, may be represented by the attorney general. The attorney general may make independent recommendations to the board about whether the violations constitute sufficient cause for the revocation of the parole and the return of the parolee to a state correctional institution for convicted felons. The hearings shall be open to the public unless the board for specifically stated reasons closes the hearing in whole or in part. The hearings shall be recorded either manually or by a mechanical recording device. An alleged parole violator may be requested to testify and any such testimony shall not be used against him or her in any criminal prosecution. The board shall adopt rules governing the formal and informal procedures authorized by this chapter and make rules of practice before the board in on-site parole revocation hearings, together with forms and instructions. [2001 2nd sp.s. c 12 § 337; 1999 c 143 § 25; 1983 c 196 § 2; 1981 c 136 § 39; 1979 c 141 § 4; 1969 c 98 § 6.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.125 On-site parole revocation hearing—Board's decision—Reinstatement or revocation of parole. After the on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, has been concluded, the members of the board having heard the matter shall enter their decision of record within ten days, and make findings and conclusions upon the allegations of the violations of the conditions of parole. If the member, or members having heard the matter, should conclude that the allegations

of violation of the conditions of parole have not been proven by a preponderance of the evidence, or, those which have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions of parole. For parole violations not resulting in new convictions, modified conditions of parole may include sanctions according to an administrative sanction grid. If the member or members having heard the matter should conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then such member or members shall enter an order of parole revocation and return the parole violator to state custody. Within thirty days of the return of such parole violator to a state correctional institution the board shall enter an order determining a new minimum term not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court. [2001 2nd sp.s. c 12 § 338; 1993 c 140 § 2; 1969 c 98 § 7.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.126 On-site revocation hearing—Cooperation in providing facilities. All officers and employees of the state, counties, cities and political subdivisions of this state shall cooperate with the board in making available suitable facilities for conducting parole or community custody revocation hearings. [2001 2nd sp.s. c 12 § 339; 1969 c 98 § 8.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.130 Parole-revoked offender as escapee. From and after the suspension, cancellation, or revocation of the parole of any offender convicted of a crime committed before July 1, 1984, and until his or her return to custody the offender shall be deemed an escapee and a fugitive from justice. The indeterminate sentence review board may deny credit against the maximum sentence any time during which he or she is an escapee and fugitive from justice. [2001 2nd sp.s. c 12 § 340; 1993 c 140 § 3; 1955 c 133 § 14. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.140 Record of parolees—Privacy—Release of sex offender information—Immunity from liability—Cooperation by officials and employees. (1) The board shall cause a complete record to be kept of every prisoner under the jurisdiction of the board released on parole or community custody. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. Subject to information sharing provisions related to offenders with mental illness and the end of sentence review committee, the board may make rules as to the privacy of such records and their use by

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others than the board and the department staff assigned to perform board-related duties. Sex offenders convicted of crimes committed before July 1, 1984, who are under the board's jurisdiction shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification. The board and the department staff assigned to perform board-related duties shall be immune from liability for the release of information concerning sex offenders as provided in RCW 4.24.550.

The superintendents of state correctional facilities and all officers and employees thereof and all other public officials shall at all times cooperate with the board and furnish to the board and staff assigned to perform board-related duties such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the board and staff assigned to perform board-related duties free access to all prisoners confined in the state correctional facilities.

(2) Offenders sentenced under RCW 9.94A.507 shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification.

(3) The end of sentence review committee shall make law enforcement notifications for offenders under board jurisdiction on the same basis that it notifies law enforcement regarding offenders sentenced under chapter 9.94A RCW for crimes committed after July 1, 1984. [2011 1st sp.s. c 40 § 19; 2009 c 28 § 29; 2001 2nd sp.s. c 12 § 341; 1992 c 7 § 27; 1990 c 3 § 126; 1955 c 133 § 15. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Washington state patrol identification and criminal history section: RCW 43.43.700 through 43.43.765.

Additional notes found at www.leg.wa.gov

9.95.143 Court-ordered treatment—Required disclosures. When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to RCW 9.94A.562 or 71.05.132, the offender must provide the mental health or chemical dependency treatment provider with a copy of the order granting the relief. [2016 sp.s. c 29 § 404; 2004 c 166 § 10.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

9.95.150 Rules and regulations. The board shall make all necessary rules and regulations to carry out the provisions of this chapter not inconsistent therewith, and may provide

the forms of all documents necessary therefor. [1999 c 143 § 26; 1955 c 133 § 16. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.155 Rule making regarding sex offenders. See RCW 72.09.337.

9.95.160 Governor's powers not affected—Revocation of paroles granted by board. This chapter shall not limit or circumscribe the powers of the governor to commute the sentence of, or grant a pardon to, any convicted person, and the governor may cancel or revoke the parole granted to any convicted person by the board. The written order of the governor canceling or revoking such parole shall have the same force and effect and be executed in like manner as an order of the board. [1999 c 143 § 27; 1955 c 133 § 17. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.170 Board to inform itself as to each convict—Records from department of corrections. To assist it in fixing the duration of a convicted person's term of confinement, and in fixing the condition for release from custody on parole, it shall not only be the duty of the board to thoroughly inform itself as to the facts of such convicted person's crime but also to inform itself as thoroughly as possible as to such convict as a personality. The department of corrections and the institutions under its control shall make available to the board on request its case investigations, any file or other record, in order to assist the board in developing information for carrying out the purpose of this section. [1999 c 143 § 28; 1981 c 136 § 40; 1979 c 141 § 5; 1967 c 134 § 13; 1935 c 114 § 3; RRS § 10249-3.]

Additional notes found at www.leg.wa.gov

9.95.190 Application of RCW 9.95.010 through 9.95.170 to inmates previously committed. The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall apply to all convicted persons serving time in a state correctional facility for crimes committed before July 1, 1984, to the end that at all times the same provisions relating to sentences, imprisonments, and paroles of prisoners shall apply to all inmates thereof. [2001 2nd sp.s. c 12 § 342; 1992 c 7 § 28; 1983 c 3 § 10; 1955 c 133 § 18. Prior: (i) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part. (ii) 1947 c 92 § 2, part; Rem. Supp. 1947 § 10249-2a, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.200 Probation by court—Investigation by secretary of corrections. After conviction by plea or verdict of guilty of any crime, the court upon application or its own motion, may summarily grant or deny probation, or at a subsequent time fixed may hear and determine, in the presence of the defendant, the matter of probation of the defendant, and the conditions of such probation, if granted. The court may, in its discretion, prior to the hearing on the granting of probation, refer the matter to the secretary of corrections or such officers as the secretary may designate for investigation and report to the court at a specified time, upon the circum-

stances surrounding the crime and concerning the defendant, his or her prior record, and his or her family surroundings and environment. [2011 c 336 § 340; 1981 c 136 § 41; 1979 c 141 § 6; 1967 c 134 § 15; 1957 c 227 § 3. Prior: 1949 c 59 § 1; 1939 c 125 § 1, part; 1935 c 114 § 5; Rem. Supp. 1949 § 10249-5a.]

Rules of court: ER 410.

Suspending sentences: RCW 9.92.060.

Additional notes found at www.leg.wa.gov

9.95.204 Misdemeanant probation services—County supervision. (1) When a superior court places a defendant convicted of a misdemeanor or gross misdemeanor on probation and orders supervision under RCW 9.92.060 or 9.95.210, the department of corrections has responsibility for supervision of defendants pursuant to RCW 9.94A.501 and *9.94A.5011.

(2) A county legislative authority may assume responsibility for the supervision of defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and sentenced to probation by a superior court. If a county legislative authority chooses to assume responsibility for defendants supervised by the department, the assumption of responsibility shall be made by contract with the department of corrections on a biennial basis.

(3) The state of Washington, the department of corrections and its employees, community corrections officers, and volunteers who assist community corrections officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of a county. A county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any harm caused by the actions of a superior court misdemeanor probationer who is under the supervision of the department of corrections.

(4) The state of Washington, the department of corrections and its employees, community corrections officers, any county providing supervision services pursuant to this section and its employees, probation officers, and volunteers who assist community corrections officers and probation officers in the superior court misdemeanor probation program are not liable for civil damages resulting from any act or omission in the rendering of superior court misdemeanor probation activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035.

(5)(a) If a misdemeanor probationer requests permission to travel or transfer to another state, the assigned probation officer employed or contracted for by the county shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the probation officer shall:

(i) Notify the department of corrections of the probationer's request;

(ii) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;

(iii) Notify the probationer of the fee due to the department of corrections for processing an application under the compact;

(iv) Cease supervision of the probationer while another state supervises the probationer pursuant to the compact;

(v) Resume supervision if the probationer returns to this state before the term of probation expires.

(b) The probationer shall receive credit for time served while being supervised by another state. [2011 1st sp.s. c 40 § 6. Prior: 2005 c 400 § 2; 2005 c 362 § 3; 1996 c 298 § 1.]

*Reviser's note: RCW 9.94A.5011 expired August 1, 2014.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.210 Conditions of probation. (1)(a) Except as provided in (b) of this subsection in granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

(b) For a defendant sentenced for a domestic violence offense, or under RCW 46.61.5055, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension continue upon such conditions and for such time as the court shall designate, not to exceed five years. The court shall have continuing jurisdiction and authority to suspend the execution of all or any part of the sentence upon stated terms, including installment payment of fines. A defendant who has been sentenced, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. Any time before entering an order terminating probation, the court may modify or revoke its order suspending the imposition or execution of the sentence if the defendant violates or fails to carry out any of the conditions of the suspended sentence.

(2) In the order granting probation and as a condition thereof, the superior court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required; (d) following consideration of the financial condition of the person sub-

ject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation; (e) to contribute to a county or interlocal drug fund; and (f) to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

(3) The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

(4) In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary for up to twelve months. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(5) If the probationer has been ordered to make restitution and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If the superior court has ordered supervision and restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

(6) The provisions of RCW 9.94A.501 and *9.94A.5011 apply to sentences imposed under this section.

(7) For purposes of this section, "domestic violence" means the same as in RCW 10.99.020. [2019 c 263 § 302; 2012 1st sp.s. c 6 § 10; (2012 1st sp.s. c 6 § 9 expired August 1, 2012); 2012 c 183 § 4; 2011 1st sp.s. c 40 § 7; 2005 c 362 § 4; 1996 c 298 § 3; 1995 1st sp.s. c 19 § 29; 1995 c 33 § 6; 1993 c 251 § 3; 1992 c 86 § 1; 1987 c 202 § 146; 1984 c 46 § 1; 1983 c 156 § 4; 1982 1st ex.s. c 47 § 10; 1982 1st ex.s. c 8 § 5; 1981 c 136 § 42; 1980 c 19 § 1. Prior: 1979 c 141 § 7; 1979 c 29 § 2; 1969 c 29 § 1; 1967 c 200 § 8; 1967 c 134 §

16; 1957 c 227 § 4; prior: 1949 c 77 § 1; 1939 c 125 § 1, part; Rem. Supp. 1949 § 10249-5b.]

*Reviser's note: RCW 9.94A.5011 expired August 1, 2014.

Findings—Intent—2019 c 263 §§ 202-803: See note following RCW 10.01.240.

Findings—Intent—Domestic violence no-contact orders—2019 c 263 §§ 302 and 303: See note following RCW 10.99.050.

Effective date—2012 1st sp.s. c 6 § 10: "Section 10 of this act takes effect August 1, 2012." [2012 1st sp.s. c 6 § 17.]

Expiration date—2012 1st sp.s. c 6 § 9: "Section 9 of this act expires August 1, 2012." [2012 1st sp.s. c 6 § 16.]

Application—2012 1st sp.s. c 6: See note following RCW 9.94A.631.

Effective date—2012 c 183: See note following RCW 9.94A.475.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Intent—1987 c 202: See note following RCW 2.04.190.

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Restitution

alternative to fine: RCW 9A.20.030.

condition to suspending sentence: RCW 9.92.060.

disposition when victim not found or dead: RCW 7.68.290.

Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.

Violations of probation conditions, rearrest, detention: RCW 72.04A.090.

Additional notes found at www.leg.wa.gov

9.95.214 Assessments and intake fees for supervision of misdemeanor probationers. Whenever a defendant convicted of a misdemeanor or gross misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and the defendant is supervised by a county probation department, the county probation department may assess and collect from the defendant for the duration of the term of supervision a monthly assessment not to exceed one hundred dollars per month. Whenever a defendant convicted of a misdemeanor or gross misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and the defendant is supervised by the department of corrections, the department may collect supervision intake fees pursuant to RCW 9.94A.780. This assessment shall be paid to the agency supervising the defendant and shall be applied, along with funds appropriated by the legislature, toward the payment or part payment of the cost of supervising the defendant. The county probation department shall suspend such assessment while the defendant is being supervised by another state pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision. [2011 1st sp.s. c 40 § 11; 2005 c 400 § 3; 1996 c 298 § 4; 1995 1st sp.s. c 19 § 32.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Additional notes found at www.leg.wa.gov

9.95.220 Violation of probation—Rearrest—Imprisonment. (1) Except as provided in subsection (2) of this section, whenever the state parole officer or other officer under whose supervision the probationer has been placed shall have reason to believe such probationer is violating the terms of his or her probation, or engaging in criminal practices, or is abandoned to improper associates, or living a vicious life, he or she shall cause the probationer to be brought before the court wherein the probation was granted. For this purpose any peace officer or state parole officer may rearrest any such person without warrant or other process. The court may thereupon in its discretion without notice revoke and terminate such probation. In the event the judgment has been pronounced by the court and the execution thereof suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory as the case may be. If the judgment has not been pronounced, the court shall pronounce judgment after such revocation of probation and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory, in accordance with the sentence imposed.

(2) If a probationer is being supervised by the department of corrections pursuant to RCW 9.95.204, the department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions. [2009 c 375 § 11; 1957 c 227 § 5. Prior: 1939 c 125 § 1, part; RRS § 10249-5c.]

Application—2009 c 375: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.230 Court revocation or termination of probation. The court shall have authority at any time prior to the entry of an order terminating probation to (1) revoke, modify, or change its order of suspension of imposition or execution of sentence; (2) it may at any time, when the ends of justice will be subserved thereby, and when the reformation of the probationer shall warrant it, terminate the period of probation, and discharge the person so held. [1982 1st ex.s. c 47 § 11; 1957 c 227 § 6. Prior: 1939 c 125 § 1, part; RRS § 10249-5d.]

Additional notes found at www.leg.wa.gov

9.95.240 Dismissal of information or indictment after probation completed—Vacation of conviction. (1) Every defendant who has fulfilled the conditions of his or her probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he or she has been convicted be permitted in the discretion of the court to withdraw his or her plea of guilty and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss

the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted. The probationer shall be informed of this right in his or her probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.

(2)(a) After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

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

(3) This section does not apply to chapter 18.130 RCW. [2008 c 134 § 27; 2003 c 66 § 1; 1957 c 227 § 7. Prior: 1939 c 125 § 1, part; RRS § 10249-5e.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

Additional notes found at www.leg.wa.gov

9.95.250 Community corrections officers. In order to carry out the provisions of this chapter 9.95 RCW the parole officers working under the supervision of the secretary of corrections shall be known as community corrections officers. [2001 2nd sp.s. c 12 § 343; 1981 c 136 § 43; 1979 c 141 § 8; 1967 c 134 § 17; 1957 c 227 § 8. Prior: 1939 c 125 § 1, part; RRS § 10249-5f.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

Additional notes found at www.leg.wa.gov

9.95.260 Indeterminate sentence review board—Supervision of conditionally pardoned persons—Hearing. (1) The indeterminate sentence review board shall, when requested by the governor, pass on the representations made in support of applications for pardons for convicted persons and make recommendations thereon to the governor.

(2) It will be the duty of the secretary of corrections to exercise supervision over such convicted persons as have

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been conditionally pardoned by the governor, to the end that such persons shall faithfully comply with the conditions of such pardons. The indeterminate sentence review board shall also pass on any representations made in support of applications for restoration of civil rights of convicted persons, and make recommendations to the governor. The department of corrections shall prepare materials and make investigations requested by the indeterminate sentence review board in order to assist the board in passing on the representations made in support of applications for pardon or for the restoration of civil rights.

(3) The board shall make no recommendations to the governor in support of an application for pardon until a public hearing has been held under this section or RCW 9.94A.885 (3) upon the application. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that an application for pardon has been filed and the date and place at which the hearing on the application for pardon will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the application for pardon shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider written, oral, audio, or videotaped statements regarding the application for pardon received, personally or by representation, from the individuals who receive notice pursuant to this section. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person. [1999 c 323 § 4; 1999 c 143 § 29; 1981 c 136 § 44; 1979 c 141 § 9; 1967 c 134 § 14; 1935 c 114 § 7; RRS § 10249-7.]

Reviser's note: This section was amended by 1999 c 143 § 29 and by 1999 c 323 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1999 c 323: See note following RCW 9.94A.885.

Additional notes found at www.leg.wa.gov

9.95.265 Report to governor and legislature. The board shall transmit to the governor and to the legislature, as often as the governor may require it, a report of its work, in which shall be given such information as may be relevant. [1999 c 143 § 30; 1977 c 75 § 5; 1955 c 340 § 11. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.040.]

9.95.270 Compacts for out-of-state supervision of parolees or probationers—Uniform act. The governor of this state is hereby authorized to execute a compact on behalf of the state of Washington with any of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the congress of

the United States of America, granted by an act entitled "An Act granting the consent of congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state, party to this compact, (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his or her family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his or her family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his or her coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he or she has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: PROVIDED, HOWEVER, That if at the time when a state seeks to retake a probationer or parolee there should be pending against him or her within the receiving state any criminal charge, or he or she should be suspected of having committed within such state a criminal offense, he or she shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states, party hereto. [2012 c 117 § 3; 1937 c 92 § 1; RRS § 10249-11.]

Interstate compact on juveniles: Chapter 13.24 RCW.

Additional notes found at www.leg.wa.gov

9.95.280 Return of parole violators from another state—Deputizing out-of-state officers. The secretary, upon recommendation by the board, may deputize any person (regularly employed by another state) to act as an officer and agent of this state in effecting the return of any person convicted of a crime committed before July 1, 1984, who has violated the terms and conditions of parole or probation as granted by this state. In any matter relating to the return of such a person, any agent so deputized shall have all the powers of a police officer of this state. [2011 1st sp.s. c 40 § 20; 2001 2nd sp.s. c 12 § 344; 1999 c 143 § 31; 1955 c 183 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.290 Return of parole violators from another state—Deputization procedure. Any deputization pursuant to this statute with regard to an offender convicted of a crime committed before July 1, 1984, shall be in writing and any person authorized to act as an agent of this state pursuant hereto shall carry formal evidence of his or her deputization and shall produce the same upon demand. [2001 2nd sp.s. c 12 § 345; 1955 c 183 § 2.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.300 Return of parole violators from another state—Contracts to share costs. The secretary, upon recommendation by the board, may enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole, probation, or community custody as granted by this state. [2011 1st sp.s. c 40 § 21; 2001 2nd sp.s. c 12 § 346; 1999 c 143 § 32; 1955 c 183 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.310 Assistance for parolees, work release, and discharged prisoners—Declaration of purpose. The purpose of RCW 9.95.310 through 9.95.370 is to provide necessary assistance, other than assistance which is authorized to be provided under the vocational rehabilitation laws, Title 28A RCW, under the public assistance laws, Title 74 RCW or the employment security department or other state agency, for parolees, inmates assigned to work/training release facilities, discharged prisoners and persons convicted of a felony committed before July 1, 1984, and granted probation in need and whose capacity to earn a living under these circumstances is impaired; and to help such persons attain self-care and/or self-support for rehabilitation and restoration to independence as useful citizens as rapidly as possible thereby reducing the number of returnees to the institutions of this state to the benefit of such person and society as a whole. [2001 2nd sp.s. c 12 § 347; 1986 c 125 § 1; 1971 ex.s. c 31 § 1; 1961 c 217 § 2.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.320 Assistance for parolees, work release, and discharged prisoners—Subsistence payments—Terms and conditions. The secretary of corrections or his or her designee may provide to any parolee, inmate assigned to a work/training release facility, discharged prisoner and persons convicted of a felony committed before July 1, 1984, and granted probation in need and without necessary means, from any funds legally available therefor, such reasonable sums as he or she deems necessary for the subsistence of such person and his or her family until such person has become gainfully employed. Such aid may be made under such terms and conditions, and through local parole or probation officers if necessary, as the secretary of corrections or his or her designee may require and shall be supplementary to any moneys which may be provided under public assistance or from any other source. [2001 2nd sp.s. c 12 § 348; 1986 c 125 § 2; 1981 c 136 § 45; 1971 ex.s. c 31 § 2; 1961 c 217 § 3.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.330 Assistance for parolees, work release, and discharged prisoners—Department may accept gifts and make expenditures. The department of corrections may accept any devise, bequest, gift, grant, or contribution made for the purposes of RCW 9.95.310 through 9.95.370 and the secretary of corrections or his or her designee may make expenditures, or approve expenditures by local parole or probation officers, therefrom for the purposes of RCW 9.95.310 through 9.95.370 in accordance with the rules of the department of corrections. [2011 c 336 § 341; 1981 c 136 § 46; 1971 ex.s. c 31 § 3; 1961 c 217 § 4.]

Additional notes found at www.leg.wa.gov

9.95.340 Assistance for parolees, work release, and discharged prisoners—Use and repayment of funds belonging to absconders. Any funds in the hands of the

department of corrections, or which may come into its hands, which belong to discharged prisoners, inmates assigned to work/training release facilities, parolees or persons convicted of a felony and granted probation who absconded, or whose whereabouts are unknown, shall be deposited in the community services revolving fund. Said funds shall be used to defray the expenses of clothing and other necessities and for transporting discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation who are without means to secure the same. All payments disbursed from these funds shall be repaid, whenever possible, by discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation for whose benefit they are made. Whenever any money belonging to such persons is so paid into the revolving fund, it shall be repaid to them in accordance with law if a claim therefor is filed with the department of corrections within five years of deposit into said fund and upon a clear showing of a legal right of such claimant to such money. This section applies to persons convicted of a felony committed before July 1, 1984. [2001 2nd sp.s. c 12 § 349; 1986 c 125 § 3; 1981 c 136 § 47; 1971 ex.s. c 31 § 4; 1961 c 217 § 5.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.350 Assistance for parolees, work release, and discharged prisoners—Use and accounting of funds or property. All money or other property paid or delivered to a community corrections officer or employee of the department of corrections by or for the benefit of any discharged prisoner, inmate assigned to a work/training release facility, parolee or persons convicted of a felony and granted probation shall be immediately transmitted to the department of corrections and it shall enter the same upon its books to his or her credit. Such money or other property shall be used only under the direction of the department of corrections.

If such person absconds, the money shall be deposited in the revolving fund created by RCW 9.95.360, and any other property, if not called for within one year, shall be sold by the department of corrections and the proceeds credited to the revolving fund.

If any person, files a claim within five years after the deposit or crediting of such funds, and satisfies the department of corrections that he or she is entitled thereto, the department may make a finding to that effect and may make payment to the claimant in the amount to which he or she is entitled.

This section applies to persons convicted of a felony committed before July 1, 1984. [2001 2nd sp.s. c 12 § 350; 1986 c 125 § 4; 1981 c 136 § 48; 1971 ex.s. c 31 § 5; 1961 c 217 § 6.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.360 Assistance for parolees, work release, and discharged prisoners—Community services revolving fund. The department of corrections shall create, maintain, and administer outside the state treasury a permanent revolv-

ing fund to be known as the "community services revolving fund" into which shall be deposited all moneys received by it under RCW 9.95.310 through 9.95.370 and any appropriation made for the purposes of RCW 9.95.310 through 9.95.370. All expenditures from this revolving fund shall be made by check or voucher signed by the secretary of corrections or his or her designee. The community services revolving fund shall be deposited by the department of corrections in such banks or financial institutions as it may select which shall give to the department a surety bond executed by a surety company authorized to do business in this state, or collateral eligible as security for deposit of state funds in at least the full amount of deposit.

This section applies to persons convicted of a felony committed before July 1, 1984. [2001 2nd sp.s. c 12 § 351; 1986 c 125 § 5; 1981 c 136 § 49; 1971 ex.s. c 31 § 6; 1961 c 217 § 7.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.370 Assistance for parolees and discharged prisoners—Repayment agreement. The secretary of corrections or his or her designee shall enter into a written agreement with every person receiving funds under RCW 9.95.310 through 9.95.370 that such person will repay such funds under the terms and conditions in said agreement. No person shall receive funds until such an agreement is validly made. This section applies to persons convicted of a felony committed before July 1, 1984. [2001 2nd sp.s. c 12 § 352; 1981 c 136 § 50; 1971 ex.s. c 31 § 7; 1961 c 217 § 8.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.420 Sex offenders—End of sentence review—Victim input. (1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.704. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the depart-

ment. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence. [2009 c 138 § 3; (2009 c 138 § 2 expired August 1, 2009); 2008 c 231 § 44; 2007 c 363 § 2; 2006 c 313 § 2; 2002 c 174 § 1; 2001 2nd sp.s. c 12 § 306.]

Effective date—2009 c 138 § 3: "Section 3 of this act takes effect August 1, 2009." [2009 c 138 § 7.]

Expiration date—2009 c 138 § 2: "Section 2 of this act expires August 1, 2009." [2009 c 138 § 6.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.422 Petition for early release—Determination of parole eligibility review date—Notice—Records—Comprehensive minutes. (1) Upon receipt of a petition for early release submitted under RCW 9.94A.730, or upon determination of a parole eligibility review date pursuant to RCW 9.95.100 and 9.95.052, the indeterminate sentence review board must provide notice and a copy of a petition or parole eligibility documents to the sentencing court, prosecuting attorney, and crime victim or surviving family member. The board may request the prosecuting attorney to assist in contacting the crime victim or surviving family member. If requested in writing by the sentencing court, the prosecuting attorney, or the crime victim or surviving family member, the indeterminate sentence review board must also provide any assessment, psychological evaluation, institutional behavior record, or other examination of the offender. Notice of the early release hearing date or parole eligibility date, and any evaluations or information relevant to the release decision, must be provided at least ninety days before the early release hearing or parole eligibility review hearing. The records described in this section, and other records reviewed by the board in response to the petition or parole eligibility review[,] must be disclosed in full and without redaction. Copies of records to be provided to the sentencing court and prosecuting attorney under this section must be provided as required without regard to whether the board has received a request for copies.

(2) For the purpose of review by the board of a petition for early release or parole eligibility, it is presumed that none of the records reviewed are exempt from disclosure to the sentencing court, prosecuting attorney, and crime victim or surviving family member, in whole or in part. The board may not claim any exemption from disclosure for the records reviewed for an early release petition or parole eligibility review hearing.

(3) The board and its subcommittees must provide comprehensive minutes of all related meetings and hearings on a petition for early release or parole eligibility review hearing. The comprehensive minutes should include, but not be limited to, the board members present, the name of the petitioner seeking review, the purpose and date of the meeting or hearing, a listing of documents reviewed, the names of members of the public who testify, a summary of discussion, the motions or other actions taken, and the votes of board members by name. For the purposes of this subsection, "action" has the same meaning as in RCW 42.30.020. The comprehensive minutes must be publicly and conspicuously posted on the board's web site within thirty days of the meeting or hearing, without any information withheld or redacted. Nothing in this subsection precludes the board from receiving confidential input from the crime victim or surviving family member. [2016 c 218 § 2.]

Finding—2016 c 218: "The legislature finds that the duties of the indeterminate sentence review board have been expanded beyond those envisioned when the sentencing reform act was adopted. Rather than an expiring jurisdiction tied to presentencing reform act prisoners, the indeterminate sentence review board has been given authority over the release and supervision of determinate plus sex offenders sentenced under RCW 9.94A.507, and the release and supervision of certain offenders who committed crimes while under the age of eighteen, pursuant to RCW 9.94A.730. In light of this expanded and important role within the criminal justice system, the legislature adopts immediate requirements for notice and transparency in release hearings, as well as recommending that chapter 9.95 RCW be updated by the

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relevant legislative committees in conjunction with the sentencing guidelines commission." [2016 c 218 § 1.]

9.95.425 Offenders—Postrelease violations. (1) Whenever the board or a community corrections officer of this state has reason to believe an offender released under RCW 9.95.420, 10.95.030(3), or 9.94A.730 has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board whether sanctions should be imposed or the offender's community custody should be revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board, with recommendations.

(2) If the board or the department causes the arrest or detention of an offender for a violation that does not amount to a new crime and the offender is arrested or detained by local law enforcement or in a local jail, the board or department, whichever caused the arrest or detention, shall be financially responsible for local costs. Jail bed costs shall be allocated at the rate established under RCW 9.94A.740. [2014 c 130 § 5; 2009 c 28 § 30; 2001 2nd sp.s. c 12 § 307.]

Application—Effective date—2014 c 130: See notes following RCW 9.94A.510.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.430 Offenders—Postrelease arrest. Any offender released under RCW 9.95.420, 10.95.030(3), or 9.94A.730 who is arrested and detained in physical custody by the authority of a community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order reinstating the offender's release on the same or modified conditions. All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process. [2014 c 130 § 6; 2001 2nd sp.s. c 12 § 308.]

Application—Effective date—2014 c 130: See notes following RCW 9.94A.510.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.435 Offenders—Postrelease transfer to more restrictive confinement. (1) If an offender released by the board under RCW 9.95.420, 10.95.030(3), or 9.94A.730 violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work

crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend the release and sanction up to sixty days' confinement in a local correctional facility for each violation, or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420, 10.95.030(3), or 9.94A.730 violates any condition or requirement of community custody.

(3) If an offender released by the board under RCW 9.95.420, 10.95.030(3), or 9.94A.730 is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board or a designee of the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members or designees of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The board shall provide the offender with findings and conclusions which include the evidence relied upon, and the reasons the particular sanction was imposed. The board shall notify the offender of the right to appeal the sanction and the right to file a personal restraint petition under court rules after the final decision of the board;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. For offenders in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. The board or its designee shall make a determination whether probable cause exists to believe the violation or violations occurred. The determination shall be made within forty-eight hours of receipt of the allegation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the presiding hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody upon a finding of violation is a probable sanction for the violation. The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has waived the right to counsel; and

(e) The sanction shall take effect if affirmed by the presiding hearing officer.

(5) Within seven days after the presiding hearing officer's decision, the offender may appeal the decision to the full board or to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (a) The crime of conviction; (b) the violation committed; (c) the offender's risk of reoffending; or (d) the safety of the community.

(6) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations. [2014 c 130 § 7; 2007 c 363 § 3; 2003 c 218 § 1; 2002 c 175 § 17; 2001 2nd sp.s. c 12 § 309.]

Application—Effective date—2014 c 130: See notes following RCW 9.94A.510.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.440 Offenders—Reinstatement of release. In the event the board suspends the release status of an offender released under RCW 9.95.420, 10.95.030(3), or 9.94A.730 by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board determines advisable under RCW 9.94A.704. Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement. [2014 c 130 § 8; 2008 c 231 § 45; 2003 c 218 § 6; 2001 2nd sp.s. c 12 § 310.]

Application—Effective date—2014 c 130: See notes following RCW 9.94A.510.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.95.900 Application of certain laws to felonies committed before, on, or after certain dates. (1) Except as provided in subsection (2) of this section, the following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, 9.95.040, 9.95.045, 9.95.047, 9.95.052, 9.95.080, 9.95.100, 9.95.115, 9.95.116, 9.95.120, 9.95.124, 9.95.125, 9.95.130, 9.95.190, 9.95.200, 9.95.204, *9.95.206, 9.95.210, *9.95.212, 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350, 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

(2) The following sections apply to any felony offense committed before July 1, 1984, and to any offense sentenced under RCW 9.94A.507 and committed on or after July 1, 2001: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055, 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110, 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160,

9.95.170, 9.95.300, and 9.96.050. [2009 c 28 § 31; 2001 2nd sp.s. c 12 § 353; 1981 c 137 § 32.]

*Reviser's note: RCW 9.95.206 and 9.95.212 were repealed by 2009 c 375 § 16.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

(Signed)

Governor of Washington."

[2016 c 202 § 3; 2012 c 117 § 4; 2011 c 336 § 343; 1931 c 19 § 2; 1929 c 26 § 3; RRS § 10251.]

9.96.030 Certified copy—Recording and indexing.

Upon the filing of an instrument restoring civil rights in his or her office, it shall be the duty of the secretary of state to transmit a duly certified copy thereof to the clerk of the superior court named therein, who shall record the same in the journal of the court and index the same in the execution docket of the cause in which the conviction was had. [2011 c 336 § 344; 1931 c 19 § 3; 1929 c 26 § 4; RRS § 10252.]

9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.

(1)(a) When an offender on parole has performed all obligations of his or her release, including any and all legal financial obligations, for such time as shall satisfy the indeterminate sentence review board that his or her final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the offender.

(b) The board retains the jurisdiction to issue a certificate of discharge after the expiration of the offender's or parolee's maximum statutory sentence. If not earlier granted and any and all legal financial obligations have been paid, the board shall issue a final order of discharge three years from the date of parole unless the parolee is on suspended or revoked status at the expiration of the three years.

(c) The discharge, regardless of when issued, shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certification of discharge shall so state.

(d) This restoration of civil rights shall not restore the right to receive, possess, own, or transport firearms.

(e) The board shall issue a certificate of discharge to the offender in person or by mail to the offender's last known address.

(2) A copy of every signed certificate of discharge for offender sentences under the authority of the department of corrections shall be placed in the department's files.

(3) The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person. [2011 1st sp.s. c 40 § 22; 2009 c 325 § 4. Prior: 2007 c 363 § 4; 2007 c 171 § 2; 2002 c 16 § 3; 1993 c 140 § 4; 1980 c 75 § 1; 1961 c 187 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—2002 c 16: See note following RCW 9.94A.637.

9.96.060 Vacating records of conviction for misdemeanor and gross misdemeanor offenses.

(1) When vacating a conviction under this section, the court effectuates the vacation by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not

Chapter 9.96 RCW

RESTORATION OF CIVIL RIGHTS

Sections

- 9.96.010 Restoration of civil rights.
9.96.020 Form of certificate.
9.96.030 Certified copy—Recording and indexing.
9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.
9.96.060 Vacating records of conviction for misdemeanor and gross misdemeanor offenses.
9.96.070 Vacating records of conviction—Prostitution offenses.

Governor

- pardoning power: State Constitution Art. 3 § 9.
records to be kept: RCW 43.06.020.
remission of fines and forfeitures: State Constitution Art. 3 § 11.
Instrument restoring civil rights as evidence: RCW 5.44.090.
Report of indeterminate sentence review board: RCW 9.95.260.
Restoration of employment rights: Chapter 9.96A RCW.
Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.
Voting rights, loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

9.96.010 Restoration of civil rights. Whenever the governor shall grant a pardon to a person convicted of an infamous crime, or whenever the maximum term of imprisonment for which any such person was committed is about to expire or has expired, and such person has not otherwise had his or her civil rights restored, the governor shall have the power, in his or her discretion, to restore to such person his or her civil rights in the manner as in this chapter provided. [2011 c 336 § 342; 1961 c 187 § 2; 1931 c 19 § 1; 1929 c 26 § 2; RRS § 10250.]

9.96.020 Form of certificate. Whenever the governor shall determine to restore his or her civil rights to any person convicted of an infamous crime in any superior court of this state, he or she shall execute and file in the office of the secretary of state an instrument in writing in substantially the following form:

"To the People of the State of Washington
Greeting:

I, the undersigned Governor of the State of Washington, by virtue of the power vested in my office by the constitution and laws of the State of Washington, do by these presents restore to his or her civil rights forfeited by him (or her) by reason of his (or her) conviction of the crime of (naming it) in the Superior Court for the County of, on to-wit: The day of, (year)

Dated the day of, (year)

guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) Every person convicted of a misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the requirements of this subsection, the court may in its discretion vacate the record of conviction. Except as provided in subsections (3), (4), and (5) of this section, an applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

(a) The applicant has not completed all of the terms of the sentence for the offense;

(b) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal or tribal court, at the time of application;

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

(d) The offense was a violation of RCW 46.61.502 (driving while under the influence), 46.61.504 (actual physical control while under the influence), 9.91.020 (operating a railroad, etc. while intoxicated), or the offense is considered a "prior offense" under RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense or less than ten years has elapsed since the date of the arrest for the prior offense;

(e) The offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses), except for failure to register as a sex offender under RCW 9A.44.132;

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

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

(ii) The applicant has two or more domestic violence convictions stemming from different incidents. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;

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

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

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

(h) The offender has been convicted of a new crime in this state, another state, or federal or tribal court in the three years prior to the vacation application; or

(i) The applicant is currently restrained by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party or was previously restrained by such an order and was found to have committed one or more violations of the order in the five years prior to the vacation application.

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

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

(b) The offender has been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction. The limitation in this subsection (3)(b) does not apply to convictions where the offender proves by a preponderance of the evidence that he or she committed the crime as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq., according to the requirements provided in RCW 9.96.070 for each respective conviction.

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

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

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

(5) Every person convicted of a misdemeanor marijuana offense, who was twenty-one years of age or older at the time of the offense, may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. A misdemeanor marijuana offense includes, but is not limited to: Any offense under RCW 69.50.4014, from July 1, 2004, onward, and its predecessor statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense under an equivalent municipal ordinance. If an applicant qualifies under this subsection, the court shall vacate the record of conviction.

(6)(a) Except as provided in (c) of this subsection, once the court vacates a record of conviction under this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under this section may state that he or she has never been convicted of that crime. However, nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040. Except as provided in (b) of this subsection, nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(b) When a court vacates a record of domestic violence as defined in RCW 10.99.020 under this section, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, *26.10.220, 26.26B.050, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii) stalking (RCW 9A.46.110). A vacated conviction under this section is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

(c) A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense as defined in RCW 9.94A.030 occurring on or after July 28, 2019.

(7) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the

order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2019 c 400 § 1; 2019 c 331 § 4; 2019 c 46 § 5010. Prior: 2017 c 336 § 2; 2017 c 272 § 9; 2017 c 128 § 1; prior: 2014 c 176 § 1; 2014 c 109 § 1; prior: 2012 c 183 § 5; 2012 c 142 § 2; 2001 c 140 § 1.]

Reviser's note: *(1) RCW 26.10.220 was repealed by 2019 c 437 § 801, effective January 1, 2021.

(2) This section was amended by 2019 c 46 § 5010, 2019 c 331 § 4, and by 2019 c 400 § 1, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2019 c 331: See note following RCW 9.94A.637.

Findings—2017 c 336: "The legislature finds that there is significant value in diligently combating the crime of driving under the influence and promoting the safety of all persons using our public roadways. The legislature also finds that phlebotomy, also known as venipuncture, is a health care procedure that involves removing blood from the body by making an incision in a vein with a needle. The legislature finds further that the use of forensic phlebotomy can be a useful tool when investigating whether a person may be impaired while operating a motor vehicle. The legislature also finds, however, that despite the value of forensic phlebotomy, both motorists and law enforcement officers must be protected from the potentially significant health risks inherent in allowing the practice of phlebotomy without adequate and appropriate training, as defined by the department of health." [2017 c 336 § 1.]

Effective date—2012 c 183: See note following RCW 9.94A.475.

Domestic violence risk assessment work group: RCW 10.99.800.

9.96.070 Vacating records of conviction—Prostitution offenses. (1) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of trafficking, RCW 9A.40.100, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;

(ii) The person who committed any of the acts in (a)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or commercial sex act; and

(iii) The applicant's conviction record for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from such acts; or

(b)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;

(ii) The person who committed any of the acts in (b)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that the applicant had not attained the age of eighteen and would be caused to engage in a sexually explicit act or commercial sex act; and

(iii) The applicant's record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from such acts.

(2) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of promoting prostitution in the first degree, RCW 9A.88.070, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant was compelled by threat or force to engage in prostitution;

(ii) The person who compelled the applicant acted knowingly; and

(iii) The applicant's conviction record for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from the compulsion; or

(b)(i) The applicant has a mental incapacity or developmental disability that renders the applicant incapable of consent;

(ii) The applicant was compelled to engage in prostitution;

(iii) The person who compelled the applicant acted knowingly; and

(iv) The applicant's record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from the compulsion.

(3) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of promoting commercial sexual abuse of a minor, RCW 9.68A.101, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant had not attained the age of eighteen at the time of the prostitution offense;

(ii) A person advanced commercial sexual abuse or a sexually explicit act of the applicant at the time he or she had not attained the age of eighteen;

(iii) The person committing the acts in (a)(ii) of this subsection acted knowingly; and

(iv) The applicant's record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from any of the acts in (a)(ii) of this subsection.

(b) For purposes of this subsection (3), a person:

(i) "Advanced commercial sexual abuse" of the applicant if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor;

(ii) "Advanced a sexually explicit act" of the applicant if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(4) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq., the applicant must prove each of the following elements by a preponderance of the evidence:

(a) The applicant was induced by force, fraud, or coercion to engage in a commercial sex act and the record of con-

viction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from the inducement; or

(b) The applicant was induced to engage in a commercial sex act prior to reaching the age of eighteen and the record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from the inducement.

(5) Any motion for vacation of a conviction under RCW 9.96.060(3) and this section must be supported by the sworn testimony of the applicant at a hearing before the court. [2017 c 128 § 2; 2014 c 109 § 2.]

Chapter 9.96A RCW

RESTORATION OF EMPLOYMENT RIGHTS

Sections

9.96A.010	Legislative declaration.
9.96A.020	Employment, occupational licensing by public entity—Prior felony conviction no disqualification—Exceptions.
9.96A.030	Exclusion—Law enforcement agencies.
9.96A.040	Violations—Adjudication pursuant to administrative procedure act.
9.96A.050	Provisions of chapter prevailing—Exception.
9.96A.060	Exclusion—Employees dealing with children or vulnerable persons.
9.96A.900	Effective date—1973 c 135.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Restoration of civil rights: Chapter 9.96 RCW.

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

9.96A.010 Legislative declaration. The legislature declares that it is the policy of the state of Washington to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to rehabilitation and the assumption of the responsibilities of citizenship. [1973 c 135 § 1.]

9.96A.020 Employment, occupational licensing by public entity—Prior felony conviction no disqualification—Exceptions. (1) Subject to the exceptions in subsections (3) through (5) of this section, and unless there is another provision of law to the contrary, a person is not disqualified from employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, nor is a person disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations solely because of a prior conviction of a felony. However, this section does not preclude the fact of any prior conviction of a crime from being considered.

(2) A person may be denied employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation,

or business by reason of the prior conviction of a felony if the felony for which he or she was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years, except as provided in RCW 9.97.020. However, for positions in the county treasurer's office, a person may be disqualified from employment because of a prior guilty plea or conviction of a felony involving embezzlement or theft, even if the time elapsed since the guilty plea or conviction is ten years or more.

(3) A person is disqualified for any certificate required or authorized under chapters 28A.405 or 28A.410 RCW, because of a prior guilty plea or the conviction of a felony crime specified under RCW 28A.400.322, even if the time elapsed since the guilty plea or conviction is ten years or more.

(4) A person is disqualified from employment by school districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children, because of a prior guilty plea or conviction of a felony crime specified under RCW 28A.400.322, even if the time elapsed since the guilty plea or conviction is ten years or more, except as provided in RCW 9.97.020.

(5) The provisions of this chapter do not apply to issuance of licenses or credentials for professions regulated under chapter 18.130 RCW.

(6) Subsections (3) and (4) of this section as they pertain to felony crimes specified under RCW 28A.400.322(1) apply to a person applying for a certificate or for employment on or after July 25, 1993, and before July 26, 2009. Subsections (3) and (4) of this section as they pertain to all felony crimes specified under RCW 28A.400.322(2) apply to a person applying for a certificate or for employment on or after July 26, 2009. Subsection (5) of this section only applies to a person applying for a license or credential on or after June 12, 2008. [2016 c 81 § 6; 2009 c 396 § 7; 2008 c 134 § 26; 1999 c 16 § 1; 1993 c 71 § 1; 1973 c 135 § 2.]

Finding—Conflict with federal requirements—2016 c 81: See notes following RCW 9.97.010.

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Intent—1993 c 71: "The legislature reaffirms its singular intent that this act shall not affect the duties imposed or powers conferred on the office of the superintendent of public instruction by RCW 28A.410.090." [1993 c 71 § 2.]

9.96A.030 Exclusion—Law enforcement agencies. This chapter shall not be applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth in this chapter. [1973 c 135 § 3.]

9.96A.040 Violations—Adjudication pursuant to administrative procedure act. Any complaints or grievances concerning the violation of this chapter shall be processed and adjudicated in accordance with the procedures set forth in chapter 34.05 RCW, the administrative procedure act. [1973 c 135 § 4.]

(2019 Ed.)

9.96A.050 Provisions of chapter prevailing—Exception. Except as provided in RCW 9.97.020, the provisions of this chapter shall prevail over any other provisions of law which purport to govern the denial of licenses, permits, certificates, registrations, or other means to engage in a business, on the grounds of a lack of good moral character, or which purport to govern the suspension or revocation of such a license, permit, certificate, or registration on the grounds of conviction of a crime. [2016 c 81 § 7; 1973 c 135 § 5.]

Finding—Conflict with federal requirements—2016 c 81: See notes following RCW 9.97.010.

9.96A.060 Exclusion—Employees dealing with children or vulnerable persons. This chapter is not applicable to the department of social and health services or the department of children, youth, and families when employing a person, who in the course of his or her employment, has or may have unsupervised access to any person who is under the age of eighteen, who is under the age of twenty-one and has been sentenced to a term of confinement under the supervision of the department of children, youth, and families under chapter 13.40 RCW, who is a vulnerable adult under chapter 74.34 RCW, or who is a vulnerable person. For purposes of this section "vulnerable person" means an adult of any age who lacks the functional, mental, or physical ability to care for himself or herself. [2017 3rd sp.s. c 6 § 805; 2001 c 296 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—2001 c 296: "It is the intent of the legislature to authorize the department of social and health services to investigate the background of current and future department employees to the same extent and with the same effect as it has authorized the state to investigate the background and exclude from the provision of service current and future care providers, contractors, volunteers, and others. The department of social and health services must coordinate with the department of personnel to develop rules that address the procedures for undertaking background checks, and specifically what action would be taken against a current employee who is disqualified from his or her current position because of a background check not previously performed." [2001 c 296 § 1.]

9.96A.900 Effective date—1973 c 135. This act shall take effect on July 1, 1973. [1973 c 135 § 7.]

Chapter 9.97 RCW

CERTIFICATES OF RESTORATION OF OPPORTUNITY

Sections

- 9.97.010 Definitions.
- 9.97.020 Certificate of restoration of opportunity—Qualified applicants—States, counties, municipal departments, boards, officers, or agencies authorized may not disqualify—Exceptions—Immunity—Qualified courts have jurisdiction to issue certificates—Employers, housing providers—Department of social and health services and department of children, youth, and families—Washington state patrol—Court records—Judicial proceedings—Department of health—Notice by applicant—Certain superior courts may decline to consider applications—Certificate transmittal—Duties of administrative office of the courts.

9.97.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Qualified applicant" means any adult or juvenile who meets the following requirements:

(a)(i) One year has passed from sentencing for those sentenced by a Washington state court to probation, or receiving a deferred sentence or other noncustodial sentencing for a misdemeanor or gross misdemeanor offense or an equivalent juvenile adjudication; or

(ii) Eighteen months have passed from release from total or partial confinement from a Washington prison or jail or juvenile facility for those sentenced by a Washington state court to incarceration for a misdemeanor or gross misdemeanor or an equivalent juvenile adjudication; or

(iii) Two years have passed from sentencing for those sentenced by a Washington state court to probation, or receiving a deferred sentence or other noncustodial sentencing for a class B or C felony or an equivalent juvenile adjudication; or

(iv) Two years have passed from release from total or partial confinement from a Washington prison or jail or juvenile facility for those sentenced by a Washington state court for a class B or C felony or an equivalent juvenile adjudication; or

(v) Five years have passed from sentencing for those sentenced by a Washington state court to probation, or receiving a deferred sentence or other noncustodial sentencing for a violent offense as defined in RCW 9.94A.030 or an equivalent juvenile adjudication; or

(vi) Five years have passed from release from total or partial confinement from a Washington prison or jail or juvenile facility for those sentenced by a Washington state court for a violent offense as defined in RCW 9.94A.030 or an equivalent juvenile adjudication;

(b) Is in compliance with or has completed all sentencing requirements imposed by a court including:

(i) Has paid in full all court-ordered legal financial obligations;

(ii) Is fully compliant with a payment plan for court-ordered legal financial obligations; or

(iii) Is out of compliance with a payment plan for court-ordered legal financial obligations but has established good cause with the court for any noncompliance with the payment plan;

(c) Has never been convicted of a class A felony, an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, a sex offense as defined in RCW 9.94A.030, a crime that includes sexual motivation pursuant to RCW 9.94A.835, 13.40.135, or 9.94A.535(3)(f), extortion in the first degree under RCW 9A.56.120, drive-by shooting under RCW 9A.36.045, vehicular assault under RCW 46.61.522(1) (a) or (b), or luring under RCW 9A.40.090, and is not required to register as a sex offender pursuant to RCW 9A.44.130; and

(d) Has not been arrested for nor convicted of a new crime and has no pending criminal charge, and there is no information presented to a qualified court that such a charge is imminent.

(2) "Qualified court" means any Washington superior court in the county where an applicant resides or that has sen-

tenced or adjudicated the applicant. If the sentencing or adjudicating court was a court of limited jurisdiction then a qualified court is the superior court in the county of the applicant's conviction or adjudication. [2016 c 81 § 2.]

Finding—2016 c 81: "The legislature finds that employment is a key factor to the successful reintegration to society of people with criminal histories, and is critical to reducing recidivism, promoting public safety, and encouraging personal responsibility.

Occupational licensing and employment laws regulate many professions as well as unskilled and semiskilled occupations. Examples of regulated occupations include alcohol servers, barbers and cosmetologists, body piercers, commercial fishers, contractors, drivers, embalmers, engineers, health care workers, insurance adjusters, real estate professionals, tattoo artists, and waste management workers. Individuals with criminal histories may meet the competency requirements for these occupations through training, experience, or education, but may be disqualified from them based on their criminal history.

Certificates of restoration of opportunity help reduce some barriers to employment for adults and juveniles by providing an opportunity for individuals to become more employable and to more successfully reintegrate into society after they have served their sentence, demonstrated a period of law-abiding behavior consistent with successful reentry, and have turned their lives around following a conviction. Applicants for a certificate must also meet all other statutory licensing requirements.

Certificates of restoration of opportunity offer potential public and private employers or housing providers concrete and objective information about an individual under consideration for an opportunity. These certificates can facilitate the successful societal reintegration of individuals with a criminal history whose behavior demonstrates that they are taking responsibility for their past criminal conduct and pursuing a positive law-abiding future. A certificate of restoration of opportunity provides a process for people previously sentenced by a Washington court who have successfully changed their lives to seek a court document confirming their changed circumstances.

A certificate of restoration of opportunity does not affect any employer's or housing provider's discretion to individually assess every applicant and to hire or rent to the applicants of their choice. Employers will not have to forego hiring their chosen applicants because they face statutory bars that prevent obtaining the necessary occupational credentials." [2016 c 81 § 1.]

Conflict with federal requirements—2016 c 81: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2016 c 81 § 20.]

9.97.020 Certificate of restoration of opportunity—Qualified applicants—States, counties, municipal departments, boards, officers, or agencies authorized may not disqualify—Exceptions—Immunity—Qualified courts have jurisdiction to issue certificates—Employers, housing providers—Department of social and health services and department of children, youth, and families—Washington state patrol—Court records—Judicial proceedings—Department of health—Notice by applicant—Certain superior courts may decline to consider applications—Certificate transmittal—Duties of administrative office of the courts. (1) Except as provided in this section, no state, county, or municipal department, board, officer, or agency authorized to assess the qualifications of any applicant for a license, certificate of authority, qualification to engage in the practice of a profession or business, or for admission to an examination to qualify for such a license or certificate may disqualify a qualified applicant, solely based on the applicant's criminal history, if the qualified applicant has obtained a certificate of restoration of opportunity and the applicant meets all other statutory and regulatory requirements, except

as required by federal law or exempted under this subsection. Nothing in this section is interpreted as restoring or creating a means to restore any firearms rights or eligibility to obtain a firearm dealer license pursuant to RCW 9.41.110 or requiring the removal of a protection order.

(a)(i) Criminal justice agencies, as defined in RCW 10.97.030, and the Washington state bar association are exempt from this section.

(ii) This section does not apply to the licensing, certification, or qualification of the following professionals: Accountants, RCW 18.04.295; assisted living facilities employees, RCW 18.20.125; bail bond agents, RCW 18.185.020; escrow agents, RCW 18.44.241; long-term care workers, RCW 18.88B.080; nursing home administrators, RCW 18.52.071; nursing, chapter 18.79 RCW; physicians and physician assistants, chapters 18.71 and 18.71A RCW; private investigators, RCW 18.165.030; receivers, RCW 7.60.035; teachers, chapters 28A.405 and 28A.410 RCW; notaries public, chapter 42.45 RCW; private investigators, chapter 18.165 RCW; real estate brokers and salespersons, chapters 18.85 and 18.86 RCW; security guards, chapter 18.170 RCW; and vulnerable adult care providers, RCW 43.43.842.

(iii) To the extent this section conflicts with the requirements for receipt of federal funding under the adoption and safe families act, 42 U.S.C. Sec. 671, this section does not apply.

(b) Unless otherwise addressed in statute, in cases where an applicant would be disqualified under RCW 43.20A.710, and the applicant has obtained a certificate of restoration of opportunity, the department of social and health services and the department of children, youth, and families may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or license sought, at their discretion:

(i) Allow the applicant to have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities if the applicant is otherwise qualified and suitable; or

(ii) Disqualify the applicant solely based on the applicant's criminal history.

(c) If the practice of a profession or business involves unsupervised contact with vulnerable adults, children, or individuals with mental illness or developmental disabilities, or populations otherwise defined by statute as vulnerable, the department of health may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or license sought, at its discretion:

(i) Disqualify an applicant who has obtained a certificate of restoration of opportunity, for a license, certification, or registration to engage in the practice of a health care profession or business solely based on the applicant's criminal history; or

(ii) If such applicant is otherwise qualified and suitable, credential or credential with conditions an applicant who has obtained a certificate of restoration of opportunity for a license, certification, or registration to engage in the practice of a health care profession or business.

(d) The state of Washington, any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, the department of health, and its officers, employees, contractors, and agents are immune from suit in law, equity, or any action under the administrative procedure act based upon its exercise of discretion under this section. This section does not create a protected class; private right of action; any right, privilege, or duty; or change to any right, privilege, or duty existing under law. This section does not modify a licensing or certification applicant's right to a review of an agency's decision under the administrative procedure act or other applicable statute or agency rule. A certificate of restoration of opportunity does not remove or alter citizenship or legal residency requirements already in place for state agencies and employers.

(2) A qualified court has jurisdiction to issue a certificate of restoration of opportunity to a qualified applicant.

(a) A court must determine, in its discretion whether the certificate:

(i) Applies to all past criminal history; or

(ii) Applies only to the convictions or adjudications in the jurisdiction of the court.

(b) The certificate does not apply to any future criminal justice involvement that occurs after the certificate is issued.

(c) A court must determine whether to issue a certificate by determining whether the applicant is a qualified applicant as defined in RCW 9.97.010.

(3) An employer or housing provider may, in its sole discretion, determine whether to consider a certificate of restoration of opportunity issued under this chapter in making employment or rental decisions. An employer or housing provider is immune from suit in law, equity, or under the administrative procedure act for damages based upon its exercise of discretion under this section or the refusal to exercise such discretion. In any action at law against an employer or housing provider arising out of the employment of or provision of housing to the recipient of a certificate of restoration of opportunity, evidence of the crime for which a certificate of restoration of opportunity has been issued may not be introduced as evidence of negligence or intentionally tortious conduct on the part of the employer or housing provider. This subsection does not create a protected class, private right of action, any right, privilege, or duty, or to change any right, privilege, or duty existing under law related to employment or housing except as provided in RCW 7.60.035.

(4)(a) Department of social and health services: A certificate of restoration of opportunity does not apply to the state abuse and neglect registry. No finding of abuse, neglect, or misappropriation of property may be removed from the registry based solely on a certificate. The department must include such certificates as part of its criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838. The department shall adopt rules to implement this subsection.

(b) Washington state patrol: The Washington state patrol is not required to remove any records based solely on a certificate of restoration of opportunity. The state patrol must include a certificate as part of its criminal history record report.

(c) Court records:

(i) A certificate of restoration of opportunity has no effect on any other court records, including records in the judicial information system. The court records related to a certificate of restoration of opportunity must be processed and recorded in the same manner as any other record.

(ii) The qualified court where the applicant seeks the certificate of restoration of opportunity must administer the court records regarding the certificate in the same manner as it does regarding all other proceedings.

(d) Effect in other judicial proceedings: A certificate of restoration of opportunity may only be submitted to a court to demonstrate that the individual met the specific requirements of this section and not for any other procedure, including evidence of character, reputation, or conduct. A certificate is not an equivalent procedure under Rule of Evidence 609(c).

(e) Department of health: The department of health must include a certificate of restoration of opportunity on its public web site if:

(i) Its web site includes an order, stipulation to informal disposition, or notice of decision related to the conviction identified in the certificate of restoration of opportunity; and

(ii) The credential holder has provided a certified copy of the certificate of restoration of opportunity to the department of health.

(f) Department of children, youth, and families: A certificate of restoration of opportunity does not apply to founded findings of child abuse or neglect. No finding of child abuse or neglect may be destroyed based solely on a certificate. The department of children, youth, and families must include such certificates as part of its criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838. The department of children, youth, and families shall adopt rules to implement this subsection (4)(f).

(5) In all cases, an applicant must provide notice to the prosecutor in the county where he or she seeks a certificate of restoration of opportunity of the pendency of such application. If the applicant has been sentenced by any other jurisdiction in the five years preceding the application for a certificate, the applicant must also notify the prosecuting attorney in those jurisdictions. The prosecutor in the county where an applicant applies for a certificate shall provide the court with a report of the applicant's criminal history.

(6) Application for a certificate of restoration of opportunity must be filed as a civil action.

(7) A superior court in the county in which the applicant resides may decline to consider the application for certificate of restoration of opportunity. If the superior court in which the applicant resides declines to consider the application, the court must dismiss the application without prejudice and the applicant may refile the application in another qualified court. The court must state the reason for the dismissal on the order. If the court determines that the applicant does not meet the required qualifications, then the court must dismiss the application without prejudice and state the reason(s) on the order. The superior court in the county of the applicant's conviction or adjudication may not decline to consider the application.

(8) Unless the qualified court determines that a hearing on an application for certificate of restoration is necessary,

the court must decide without a hearing whether to grant the certificate of restoration of opportunity based on a review of the application filed by the applicant and pleadings filed by the prosecuting attorney.

(9) The clerk of the court in which the certificate of restoration of opportunity is granted shall transmit the certificate of restoration of opportunity to the Washington state patrol identification section, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol shall update its records to reflect the certificate of restoration of opportunity.

(10)(a) The administrative office of the courts shall develop and prepare instructions, forms, and an informational brochure designed to assist applicants applying for a certificate of restoration of opportunity.

(b) The instructions must include, at least, a sample of a standard application and a form order for a certificate of restoration of opportunity.

(c) The administrative office of the courts shall distribute a master copy of the instructions, informational brochure, and sample application and form order to all county clerks and a master copy of the application and order to all superior courts by January 1, 2017.

(d) The administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions, which shall contain a sample of the standard application and order, and the informational brochure into languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to the county clerks by January 1, 2017.

(e) The administrative office of the courts shall update the instructions, brochures, standard application and order, and translations when changes in the law make an update necessary. [2017 3rd sp.s. c 6 § 806; 2017 c 281 § 35; 2016 c 81 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2017 c 281: See RCW 42.45.905.

Finding—Conflict with federal requirements—2016 c 81: See notes following RCW 9.97.010.

Chapter 9.98 RCW PRISONERS—UNTRIED INDICTMENTS, INFORMATIONS, COMPLAINTS

Sections

9.98.010	Disposition of untried indictment, information, complaint—Procedure—Escape, effect.
9.98.020	Loss of jurisdiction and failure of indictment, information, complaint—Dismissal.
9.98.030	Chapter not applicable to mentally ill.
9.98.040	Court not prohibited from ordering prisoner to trial.

9.98.010 Disposition of untried indictment, information, complaint—Procedure—Escape, effect. (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever

during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he or she shall be brought to trial within one hundred twenty days after he or she shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information, or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his or her counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the superintendent having custody of him or her, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by certified mail, return receipt requested.

(3) The superintendent having custody of the prisoner shall promptly inform him or her in writing of the source and contents of any untried indictment, information, or complaint against him or her concerning which the superintendent has knowledge and of his or her right to make a request for final disposition thereof.

(4) Escape from custody by the prisoner subsequent to his or her execution of the request for final disposition referred to in subsection (1) of this section shall void the request. [2011 c 336 § 345; 1999 c 143 § 33; 1959 c 56 § 1.]

9.98.020 Loss of jurisdiction and failure of indictment, information, complaint—Dismissal. In the event that the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice. [1959 c 56 § 2.]

9.98.030 Chapter not applicable to mentally ill. The provisions of this chapter shall not apply to any person adjudged to be mentally ill. [1959 c 56 § 3.]

9.98.040 Court not prohibited from ordering prisoner to trial. This chapter shall not be construed as preempting the right of the superior court on the motion of the county prosecuting attorney from ordering the superintendent of a state penal or correctional institution to cause a prisoner to be transported to the superior court of the county for trial upon any untried indictment, information or complaint. [1959 c 56 § 4.]

(2019 Ed.)

**Chapter 9.100 RCW
AGREEMENT ON DETAINERS**

Sections

9.100.010 Agreement on detainers—Text.

9.100.020 Appropriate court defined.

9.100.030 Courts, state and political subdivisions enjoined to enforce agreement.

9.100.040 Escape—Effect.

9.100.050 Giving over inmate authorized.

9.100.060 Administrator—Appointment.

9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights.

9.100.080 Copies of chapter—Transmission.

Untried indictments, informations, complaints—Disposition: Chapter 9.98 RCW.

9.100.010 Agreement on detainers—Text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

TEXT OF THE AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he

shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing

in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: PROVIDED, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: PROVIDED FURTHER, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in

order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(i) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(ii) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all

costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or effect [affect] any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1967 c 34 § 1.]

9.100.020 Appropriate court defined. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction. [1967 c 34 § 2.]

9.100.030 Courts, state and political subdivisions enjoined to enforce agreement. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes. [1967 c 34 § 3.]

9.100.040 Escape—Effect. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution. [1967 c 34 § 4.]

9.100.050 Giving over inmate authorized. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers. [1967 c 34 § 5.]

9.100.060 Administrator—Appointment. The governor is hereby authorized and empowered to designate and appoint a state officer to act as the administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article VII of the agreement on detainers. [1967 c 34 § 6.]

9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights. In order to implement Article IV(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him or her in writing of his or her rights to counsel, to make representations to the governor within thirty days, and to contest the legality of his or her delivery. [2011 c 336 § 346; 1967 c 34 § 7.]

9.100.080 Copies of chapter—Transmission. Copies of this chapter shall, upon its approval, be transmitted by the secretary of state to the governor of each state, to the attorney general and the secretary of state of the United States, and the council of state governments. [1967 c 34 § 8.]

Chapter 9.101 RCW

CRIMINAL STREET GANG DEFINITIONS—STATE PREEMPTION

Sections

9.101.010 Criminal street gang definitions—State preemption.

9.101.010 Criminal street gang definitions—State preemption. (1) The state of Washington hereby fully occupies and preempts the entire field of definitions used for pur-

poses of substantive criminal law relating to criminal street gangs, criminal street gang-related offenses, criminal street gang associates and members, and pattern of criminal street gang activity. These definitions of "criminal street gang," "criminal street gang associate or member," "criminal street gang-related offense," and "pattern of criminal street gang activity" contained in RCW 9.94A.030 expressly preempt any conflicting city or county codes or ordinances. Cities, towns, counties, or other municipalities may enact laws and ordinances relating to criminal street gangs that contain definitions that are consistent with definitions pursuant to RCW 9.94A.030. Local laws and ordinances that are inconsistent with the definitions shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

(2) The preemption provided in this chapter does not apply to "gang" as defined in RCW 28A.600.455 under the common school provisions act or "gang" as defined in RCW 59.18.030 under the landlord-tenant act.

(3) The preemption provided for in this chapter does not restrict the adoption or use of a uniform state definition of "gang," "gang member," or "gang associate," for purposes of the creation and maintenance of the statewide gang database for law enforcement intelligence purposes under RCW 43.43.762. [2008 c 276 § 401.]

Additional notes found at www.leg.wa.gov