

***\*NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.***

**\*Sec. 2. was vetoed, see message at end of chapter.**

Passed the Senate March 29, 1983.

Passed the House April 15, 1983.

Approved by the Governor April 22, 1983, with the exception of section 2, which is vetoed.

Filed in Office of Secretary of State April 22, 1983.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to one section, Substitute Senate Bill No. 4034, entitled:

"AN ACT Relating to motor vehicle and special fuels" and adding a new section to chapter 9.04 RCW; prescribing penalties; and declaring an emergency.

This worthy bill will protect gasoline consumers by prohibiting deceptive advertising of gasoline prices. Section 2, however, which would make the bill effective immediately, could cause affected gasoline dealers to be in violation of the law without knowing it. In order to give those people fair warning of the new provisions in this bill, I have vetoed section 2.

With the exception of section 2, which I have vetoed, Substitute Senate Bill No. 4034 is approved."

## CHAPTER 115

[Engrossed Substitute House Bill No. 297]

### SENTENCING GUIDELINES—PROSECUTING STANDARDS

AN ACT Relating to the sentencing of criminal offenders; and adding new sections to chapter 9.94A RCW.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. The following portions of the report to the legislature dated January 10, 1983, by the sentencing guidelines commission of the state of Washington and as set forth in sections 2 through 16 of this act are approved as modified by the legislature to take effect on July 1, 1984:

(1) The sentencing guidelines contained in tables 1, 2, and 3 and in part V; and

(2) The prosecuting standards for charging and plea dispositions contained in part VI.

**NEW SECTION.** Sec. 2.

TABLE 1  
Sentencing Grid

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
<b>XIV</b>	Life Sentence without Parole/Death Penalty									
<b>XIII</b>	23y4m 240- 320	24y4m 250- 333	25y4m 261- 347	26y4m 271- 361	27y4m 281- 374	28y4m 291- 388	30y4m 312- 416	32y10m 338- 450	36y 370- 493	40y 411- 548
<b>XII</b>	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397
<b>XI</b>	6y 62- 82	6y9m 69- 92	7y6m 77- 102	8y3m 85- 113	9y 93- 123	9y9m 100- 133	12y6m 129- 171	13y6m 139- 185	15y6m 159- 212	17y6m 180- 240
<b>X</b>	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198
<b>IX</b>	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	5y 51- 68	5y6m 57- 75	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144	12y6m 129- 171
<b>VIII</b>	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144
<b>VII</b>	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116
<b>VI</b>	13m 12+- 14	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y6m 46- 61	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102

SERIOUSNESS  
SCORE

## OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90 Days	2-	3-	4-	12+-	14-	17-	22-	33-	43-
		6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60 Days	0-90 Days	2-	2-	3-	4-	12+-	14-	17-	22-
			5	6	8	12	14	18	22	29

NOTE: 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 presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

Additional time added to the presumptive sentence if the offender was armed with a deadly weapon as defined in this chapter:

24 months (Rape 1, Robbery 1, Kidnaping 1)

18 months (Burglary 1)

12 months (Assault 2, Escape 1, Kidnaping 2, Burglary 2 of a building other than a dwelling)

NEW SECTION. Sec. 3.

TABLE 2

## CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV Aggravated Murder 1 (RCW 10.95.020)

XIII Murder 1 (RCW 9A.32.030)

XII Murder 2 (RCW 9A.32.050)

- XI Assault 1 (RCW 9A.36.010)
- X Kidnaping 1 (RCW 9A.40.020)  
Rape 1 (RCW 9A.44.040)
- IX Robbery 1 (RCW 9A.56.200)  
Manslaughter 1 (RCW 9A.32.060)  
Statutory Rape 1 (RCW 9A.44.070)
- VIII Arson 1 (RCW 9A.48.020)  
Rape 2 (RCW 9A.44.050)  
Promoting Prostitution 1 (RCW 9A.88.070)
- VII Burglary 1 (RCW 9A.52.020)  
Negligent Homicide (RCW 46.61.520)  
Introducing Contraband 1 (RCW 9A.76.140)
- VI Bribery (RCW 9A.68.010)  
Manslaughter 2 (RCW 9A.32.070)  
Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- V Statutory Rape 2 (RCW 9A.44.080)  
Kidnaping 2 (RCW 9A.40.030)  
Extortion 1 (RCW 9A.56.120)  
Indecent Liberties (RCW 9A.44.100)
- IV Robbery 2 (RCW 9A.56.210)  
Assault 2 (RCW 9A.36.020)  
Escape 1 (RCW 9A.76.110)  
Arson 2 (RCW 9A.48.030)  
Bribing a Witness/Bribe Received by Witness (RCW 9A.72-.090, 9A.72.100)  
Malicious Harassment (RCW 9A.36.080)  
Wilful Failure to Return from Furlough (RCW 72.66.060)  
Incest 1 (RCW 9A.64.020(1))
- III Rape 3 (RCW 9A.44.060)  
Statutory Rape 3 (RCW 9A.44.090)  
Incest 2 (RCW 9A.64.020(2))  
Extortion 2 (RCW 9A.56.130)  
Unlawful Imprisonment (RCW 9A.40.040)  
Assault 3 (RCW 9A.36.030)  
Promoting Prostitution 2 (RCW 9A.88.080)  
Introducing Contraband 2 (RCW 9A.76.150)  
Communicating with a Minor for Immoral Purposes (RCW 9A.44.110)  
Escape 2 (RCW 9A.76.120)  
Perjury 2 (RCW 9A.72.030)  
Intimidating a Public Servant (RCW 9A.76.180)

- Tampering with a Witness (RCW 9A.72.120)
- II Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Livestock (RCW 9A.56.080)
- Welfare Fraud (RCW 74.08.055)
- Burglary 2 (RCW 9A.52.030)
- I Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Auto Theft (Taking and Riding) (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Eluding a Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Bank Checks (RCW 9A.56.060)

NEW SECTION. Sec. 4.

TABLE 3  
OFFENDER SCORE MATRIX

Prior Adult Convictions					
Current Offenses	Serious Violent	Burglary 1	Other Violent	Negligent Homicide	Escape
Serious Violent	3	2	2	1	1
Burglary 1	2	2	2	1	1
Other Violent	2	2	2	1	1
Negligent Homicide	0	0	0	1	0
Escape	0	0	0	0	1
Burglary 2	1	2	1	1	1
Other Non-Violent	1	1	1	1	1

  

Current Offenses	Burglary 2	Felony Hit-and-Run	Serious Traffic	Other Non-Violent
Serious Violent	1	1	0	1
Burglary 1	2	1	0	1
Other Violent	1	1	0	1
Negligent Homicide	0	1	1	0
Escape	0	0	0	0

Current Offenses	Burglary 2	Felony Hit-and-Run	Serious Traffic	Other Non-Violent
Burglary 2	2	1	0	1
Other Non-Violent	1	1	0	1

Prior Juvenile Convictions

Current Offenses	Serious Violent	Burglary 1	Other Violent	Negligent Homicide	Escape
Serious Violent	3	2	2	1/2	1/2
Burglary 1	2	2	2	1/2	1/2
Other Violent	2	2	2	1/2	1/2
Negligent Homicide	0	0	0	1/2	0
Escape	0	0	0	0	1/2
Burglary 2	1	2	1	1/2	1/2
Other Non-Violent	1	1	1	1/2	1/2

Current Offenses	Burglary 2	Felony Hit-and-Run	Serious Traffic	Other Non-Violent
Serious Violent	1/2	1/2	0	1/2
Burglary 1	1	1/2	0	1/2
Other Violent	1/2	1/2	0	1/2
Negligent Homicide	0	1/2	1/2	0
Escape	0	0	0	0
Burglary 2	1	1/2	0	1/2
Other Non-Violent	1/2	1/2	0	1/2

Definitions: Serious Violent: Murder 1, Murder 2, Assault 1, Kidnaping 1, Rape 1  
 Escape: Escape 1, Escape 2, Willful Failure to Return From Work Release or Furlough  
 Serious Traffic: Driving While Intoxicated, Actual Physical Control, Reckless Driving, Hit-and-Run

V. RECOMMENDED SENTENCING GUIDELINES

NEW SECTION. Sec. 5. 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.

NEW SECTION. Sec. 6. OFFENSE SERIOUSNESS LEVEL. The offense seriousness level is determined by the offense of conviction. Felony

offenses are divided into fourteen levels of seriousness, ranging from low (seriousness level I) to high (seriousness level XIV – see section 3 of this act (Table 2)).

**NEW SECTION. Sec. 7. OFFENDER SCORE.** The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are summarized in Table 3, section 4 of this act.

The offender score is computed in the following way:

(1) Include juvenile felony convictions if the offender was 15 or older at the time the offense was committed and the offender was 23 or less at the time the offense for which he or she is being sentenced was committed.

(2) If the present conviction is for Murder 1 or 2, Assault 1, Kidnaping 1, or Rape 1, count three points for prior adult and juvenile convictions for crimes in these categories.

(3) If the present conviction is for a violent offense (as defined in RCW 9.94A.110) and not covered in subsection (2) of this section, count two points for each prior adult and juvenile violent felony conviction and 1/2 point for each prior juvenile nonviolent felony conviction (rounding down for uneven scores).

(4) If the present conviction is for Burglary (1 or 2), count two points for each prior adult Burglary conviction. Count two points for each prior juvenile Burglary 1, and one point for each prior juvenile Burglary 2 conviction.

(5) If the present conviction is for a nonviolent offense (as defined in RCW 9.94A.110), count one point for each prior adult felony conviction and one point for each prior juvenile violent felony conviction and 1/2 point for each prior juvenile nonviolent felony (rounding down for uneven scores).

(6) If the present conviction is for escape, 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 (rounding down for uneven scores).

(7) If the present conviction is for Negligent Homicide, only count the following crimes as part of the offender score: Negligent Homicide, Felony Hit and Run (RCW 46.52.020(4)), Hit and Run (RCW 46.52.020(5)), Driving While Intoxicated (RCW 46.61.502), Actual Physical Control (RCW 46.61.504), Reckless Driving (RCW 46.61.500). Count each adult prior conviction as one point and each juvenile prior conviction as 1/2 point (rounding down for uneven scores).

(8) In the case of multiple prior convictions 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. The conviction for the most serious offense, using the seriousness levels to define most serious, is scored.

(9) Class A prior felony convictions are always included in the offender score. Class B prior felony convictions are not included if the offender has

spent ten years in the community and has not been convicted of any felonies. Class C prior felony convictions and serious traffic convictions as defined in section 4 of this act are not included if the offender has spent five years in the community and has not been convicted of any felonies. This subsection applies to both adult and juvenile prior convictions.

The designation of out-of-state convictions shall be covered by the offense definitions and sentences provided by Washington law.

The offender score is the sum of points accrued under subsections (1) through (9) of this section.

**NEW SECTION. Sec. 8. PRESUMPTIVE SENTENCE.** The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see section 2 of this act, (Table 1)). The judge may sentence anywhere within this range. Except in decisions concerning first-time, nonviolent offenders, any sentence imposed by a sentencing judge which is outside the presumptive range is a departure from the guidelines, requires written reasons from the judge, and is reviewable on appeal.

In determining any sentence, the trial judge may use no more information than is admitted by the plea agreement, and admitted to or acknowledged at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the judge must either not consider the fact or grant an evidentiary hearing on the point. The real facts shall be deemed proven at the evidentiary hearing by a preponderance of the evidence. Real facts which establish elements of a higher crime, a more serious crime, or additional crimes cannot be used to go outside the guidelines except upon stipulation.

**NEW SECTION. Sec. 9. ALTERNATIVE CONVERSIONS.** For sentences of nonviolent offenders for less than one year, the court shall consider and give priority to available alternatives to total confinement and shall justify its reasons if they are not used.

With the exception of the first-time offender, the judge shall establish the sentence in terms of total confinement. This sentence can be converted as follows: One day of partial confinement or eight hours of community service can replace one day of total confinement. The community service conversion is limited to 240 hours or 30 working days. In addition, the judge can impose up to one year of community supervision to ensure that the terms of the alternative sentence are met. Fines can be assessed according to the following formula:

Class A felonies	\$0 - 50,000
Class B felonies	\$0 - 20,000
Class C felonies	\$0 - 10,000

**NEW SECTION. Sec. 10. DEPARTURES FROM THE GUIDELINES.** The presumptive sentence shall be the midpoint of the standard

range as established by the crime of conviction and any applicable enhancements. The sentencing court shall impose the presumptive sentence or other sentence within the indicated standard range that it determines to be appropriate. If the court finds that an exceptional sentence outside the standard range should be imposed in accordance with RCW 9.94A.120(2), the court may impose any sentence it deems appropriate within the statutory term. If the court sentences outside the standard range, it shall set forth its justification for doing so in written findings and conclusions, and any sentence outside the standard range shall be subject to review only as provided for in RCW 9.94A.210(4).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence:

#### Mitigating Circumstances

(1) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(2) 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.

(3) 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.

(4) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(5) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law, was significantly impaired (voluntary use of drugs or alcohol is excluded).

(6) 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.

#### Aggravating Circumstances

(1) The defendant's conduct during the commission of the offense manifested deliberate cruelty to the victim.

(2) The defendant knew or should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(3) The offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(a) The offense involved multiple victims or multiple incidents per victim;

(b) The offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(c) The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(d) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the offense.

(4) The 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 an offense as a major VUCSA:

(a) The offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so; or

(b) The offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or

(c) The offense involved the manufacture of controlled substances for use by other parties; or

(d) The offender possessed a firearm during the commission of the offense; or

(e) The circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or

(f) The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

(g) The offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

The above considerations are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

**NEW SECTION. Sec. 11. CONSECUTIVE/CONCURRENT SENTENCES.** (1) Whenever a person is convicted of two or more offenses, at least one of which is a violent offense, and the offenses arise out of separate and distinct criminal transactions, the sentences imposed shall run consecutively; provided that under this section, the presumptive sentence only for the most serious offense shall be determined by using the offender's actual criminal history score whereas the presumptive sentences for all other offenses shall be determined by using a criminal history score of zero.

(2) Whenever a person while under sentence of felony commits another felony and is sentenced to another term of imprisonment, the latter term shall not begin until expiration of all prior terms.

(3) Whenever a person is convicted of two or more offenses, and either: (a) All of the offenses are nonviolent and they arise out of separate and distinct criminal transactions; or (b) at least one of the offenses is a violent offense but they all arise out of the same criminal transaction, the sentences imposed shall run concurrently; provided that the presumptive sentence for

the most serious offense shall be enhanced by counting all other current offenses as prior offenses for purposes of calculating the criminal history score.

(4) Whenever a person is convicted of two or more nonviolent offenses which all a. out of the same criminal transaction, the sentences imposed shall run concurrently.

NEW SECTION. Sec. 12. **CONVICTIONS FOR ATTEMPTS OR CONSPIRACIES.** For persons convicted of attempted offenses or conspiracies to commit an offense, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the conviction, and multiplying the range by 75 percent.

NEW SECTION. Sec. 13. **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.

## VI. RECOMMENDED PROSECUTING STANDARDS FOR CHARGING AND PLEA DISPOSITIONS

NEW SECTION. Sec. 14. **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.

NEW SECTION. Sec. 15. **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 Minimus 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.

#### 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.

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 13 for the crimes within these categories.

TABLE 13

### CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

#### CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Kidnaping

1st Degree Assault

1st Degree Rape

1st Degree Robbery

1st Degree Statutory Rape

1st Degree Arson

2nd Degree Kidnaping

2nd Degree Assault

2nd Degree Rape

2nd Degree Robbery

1st Degree Burglary

1st Degree Manslaughter

2nd Degree Manslaughter

1st Degree Extortion

Indecent Liberties  
 2nd Degree Statutory Rape  
 Incest  
 Negligent Homicide  
 3rd Degree Rape  
 3rd Degree Statutory Rape  
 2nd Degree Extortion  
 1st Degree Promoting Prostitution  
 Intimidating a Juror  
 Communication with a Minor  
 Intimidating a Witness  
 Intimidating A Public Servant  
 Bomb Threat (if against person)  
 3rd Degree Assault  
 Unlawful Imprisonment  
 Promoting a Suicide Attempt  
 Riot (if against person)

#### CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson  
 1st Degree Escape  
 2nd Degree Burglary  
 1st Degree Theft  
 1st Degree Perjury  
 1st Degree Introducing Contraband  
 1st Degree Possession of Stolen Property  
 Bribery  
 Bribing a Witness  
 Bribe received by a Witness  
 Bomb Threat (if against property)  
 1st Degree Malicious Mischief  
 2nd Degree Theft  
 2nd Degree Escape  
 2nd Degree Introducing Contraband  
 2nd Degree Possession of Stolen Property  
 2nd Degree Malicious Mischief  
 1st Degree Reckless Burning  
 Taking a Motor Vehicle without Authorization  
 Forgery  
 Welfare Fraud  
 2nd Degree Perjury  
 2nd Degree Promoting Prostitution  
 Tampering with a Witness  
 Trading in Public Office

Trading in Special Influence  
Receiving/Granting Unlawful Compensation  
Bigamy  
Eluding a Police Vehicle  
Wilful Failure to Return from Furlough  
Riot (if against property)  
Thefts of Livestock

**ALL OTHER UNCLASSIFIED FELONIES**

**Selection of Charges/Degree of Charge**

(1) 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.

(2) 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.

**GUIDELINES/COMMENTARY:**

**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:

- (1) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (2) The completion of necessary laboratory tests; and
- (3) 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.

**Exceptions**

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

- (1) Probable cause exists to believe the suspect is guilty; and

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

(3) 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.

#### Investigation Techniques

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

- (1) Polygraph testing;
- (2) Hypnosis;
- (3) Electronic surveillance;
- (4) Use of informants.

#### Pre-Filing 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.

#### NEW SECTION. Sec. 16. 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.

#### NEW SECTION. Sec. 17. 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.

NEW SECTION. Sec. 18. Sections 1 through 17 of this act shall be added to chapter 9.94A RCW.

Passed the House April 13, 1983.

Passed the Senate April 11, 1983.

Approved by the Governor April 22, 1983.

Filed in Office of Secretary of State April 22, 1983.

## CHAPTER 116

{Engrossed Substitute House Bill No. 309}  
PHYSICAL THERAPISTS—LICENSING

AN ACT Relating to physical therapists; amending section 1, chapter 239, Laws of 1949 as amended by section 1, chapter 64, Laws of 1961 and RCW 18.74.010; amending section 2, chapter 239, Laws of 1949 as last amended by section 62, chapter 158, Laws of 1979 and RCW 18.74.020; amending section 3, chapter 239, Laws of 1949 as amended by section 2, chapter 64, Laws of 1961 and RCW 18.74.030; amending section 3, chapter 64, Laws of 1961 and RCW 18.74.035; amending section 4, chapter 239, Laws of 1949 and RCW 18.74.040; amending section 5, chapter 239, Laws of 1949 as last amended by section 65, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.74.050; amending section 6, chapter 239, Laws of 1949 as last amended by section 66, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.74.060; amending section 7, chapter 239, Laws of 1949 as last amended by section 67, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.74.070; amending section 8, chapter 239, Laws of 1949 as amended by section 7, chapter 64, Laws of 1961 and RCW 18.74.080; amending section 9, chapter 239, Laws of 1949 as amended by section 8, chapter 64, Laws of 1961 and RCW 18.74.090; amending section 9, chapter 64, Laws of 1961 and RCW 18.74.095; amending section 10, chapter 239, Laws of 1949 and RCW 18.74.100; amending section 12, chapter 239, Laws of 1949 as last amended by section 63, chapter 158, Laws of 1979 and RCW 18.74.120; adding new sections to chapter 18.74 RCW; repealing section 11, chapter 239, Laws of 1949 and RCW 18.74.110; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. There is added to chapter 18.74 RCW a new section to read as follows:

In order to safeguard the public safety and welfare, to protect the public from being misled by incompetent, unethical, and unauthorized persons, and to assure the highest degree of professional conduct and competency, it is the purpose of this chapter to strengthen existing regulation of persons offering physical therapy services to the public.

Sec. 2. Section 1, chapter 239, Laws of 1949 as amended by section 1, chapter 64, Laws of 1961 and RCW 18.74.010 are each amended to read as follows:

((In this chapter,)) Unless the context otherwise requires((:)), the definitions in this section apply throughout this chapter.