

CHAPTER 187

[Substitute Senate Bill No. 5089]

HOMICIDE BY ABUSE

AN ACT Relating to homicide by abuse; amending RCW 9A.32.010, 9.94A.030, and 9.94A.320; adding a new section to chapter 9A.32 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9A.32 RCW to read as follows:

(1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(3) Homicide by abuse is a class A felony.

Sec. 2. Section 9A.32.010, chapter 260, Laws of 1975 1st ex. sess. as amended by section 1, chapter 10, Laws of 1983 and RCW 9A.32.010 are each amended to read as follows:

Homicide is the killing of a human being by the act, procurement or omission of another, death occurring within three years and a day, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (~~((3))~~) (4) excusable homicide, or (~~((4))~~) (5) justifiable homicide.

Sec. 3. Section 3, chapter 137, Laws of 1981 as last amended by section 17, chapter 257, Laws of 1986 and RCW 9.94A.030 are each amended to read as follows:

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

(1) "Commission" means the sentencing guidelines commission.

(2) "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.

(3) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender. 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.

(4) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5).

(5) "Confinement" means total or partial confinement as defined in this section.

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

(7) "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.

(8) (a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. 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) "Criminal history" includes a defendant's prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(9) "Department" means the department of corrections.

(10) "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 supervision, the number of actual hours or days of community service work, or dollars or terms of a fine or restitution. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(11) "Drug offense" means any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403).

(12) "Escape" means escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), wilful failure to return from

furlough (RCW 72.66.060), or wilful failure to return from work release (RCW 72.65.070).

(13) "Felony traffic offense" means vehicular homicide (RCW 46.61-.520), vehicular assault (RCW 46.61.522), or felony hit-and-run injury-accident (RCW 46.52.020(4)).

(14) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(15)(a) "First-time offender" means any person who is convicted of a felony not classified as a violent offense or a sex offense under this chapter, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction.

(16) "Nonviolent offense" means an offense which is not a violent offense.

(17) "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 has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(18) "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 the state or any other unit of government, for a substantial portion of each day with the balance of the day spent in the community.

(19) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(20) "Serious traffic offense" means driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)).

(21) "Serious violent offense" is a subcategory of violent offense and means murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies.

(22) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(23) "Sex offense" means a felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes.

(24) "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.

(25) "Victim" means any person who has sustained physical or financial injury to person or property as a direct result of the crime charged.

(26) "Violent offense" 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, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular homicide, and vehicular assault;

(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 subsection (26)(a) of this section; 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 subsection (26) (a) or (b) of this section.

Sec. 4. Section 3, chapter 115, Laws of 1983 as last amended by section 23, chapter 257, Laws of 1986 and RCW 9.94A.320 are each amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV	Aggravated Murder 1 (RCW 10.95.020)
XIII	Murder 1 (RCW 9A.32.030) <u>Homicide by abuse (section 1 of this 1987 act)</u>
XII	Murder 2 (RCW 9A.32.050)
XI	Assault 1 (RCW (9A.36.010) <u>9A.36.011</u>)
X	Kidnapping 1 (RCW 9A.40.020) Rape 1 (RCW 9A.44.040) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 and 3 years junior (RCW 69.50.406)

- Leading Organized Crime (RCW 9A.82.060(1)(a))
- IX Robbery 1 (RCW 9A.56.200)
 Manslaughter 1 (RCW 9A.32.060)
 Statutory Rape 1 (RCW 9A.44.070)
 Explosive devices prohibited (RCW 70.74.180)
 Endangering life and property by explosives with threat to human being (RCW 70.74.270)
 Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
 Sexual Exploitation, Under 16 (RCW 9.68A.040(2)(a))
 Inciting Criminal Profiteering (RCW ~~((9A.82.061(1)(b))~~
~~{RCW 9A.82.060(1)(b)})~~ 9A.82.060(1)(b))
- VIII Arson 1 (RCW 9A.48.020)
 Rape 2 (RCW 9A.44.050)
 Promoting Prostitution 1 (RCW 9A.88.070)
 Selling heroin for profit (RCW 69.50.410)
- VII Burglary 1 (RCW 9A.52.020)
 Vehicular Homicide (RCW 46.61.520)
 Introducing Contraband 1 (RCW 9A.76.140)
 Statutory Rape 2 (RCW 9A.44.080)
 Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 Sexual Exploitation, Under 18 (RCW 9.68A.040(2)(b))
 Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- VI Bribery (RCW 9A.68.010)
 Manslaughter 2 (RCW 9A.32.070)
 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
 Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) ~~((and)),~~ (c), and (d))
 Incest 1 (RCW 9A.64.020(1))
 Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)
 Manufacture, deliver, or possess with intent to deliver heroin or narcotics from Schedule I or II (RCW 69.50.401(a)(1)(i))

- Intimidating a Judge (RCW 9A.72.160)
- V Rape 3 (RCW 9A.44.060)
Kidnapping 2 (RCW 9A.40.030)
Extortion 1 (RCW 9A.56.120)
Incest 2 (RCW 9A.64.020(2))
Perjury 1 (RCW 9A.72.020)
Extortionate Extension of Credit (RCW 9A.82.020)
Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
Rendering Criminal Assistance 1 (RCW 9A.76.070)
- IV Robbery 2 (RCW 9A.56.210)
Assault 2 (RCW (~~9A.36.020~~) 9A.36.021)
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)
Hit and Run — Injury Accident (RCW 46.52.020(4))
Vehicular Assault (RCW 46.61.522)
Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana) (RCW 69.50.401(a)(1)(ii) through (iv))
Influencing Outcome of Sporting Event (RCW 9A.82.070)
Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Statutory Rape 3 (RCW 9A.44.090)
Extortion 2 (RCW 9A.56.130)
Unlawful Imprisonment (RCW 9A.40.040)
Assault 3 (RCW (~~9A.36.030~~) 9A.36.031)
Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
Harassment (RCW 9A.46.020)
Promoting Prostitution 2 (RCW 9A.88.080)
Wilful Failure to Return from Work Release (RCW 72.65.070)
Introducing Contraband 2 (RCW 9A.76.150)
Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
Patronizing a Juvenile Prostitute (RCW 9.68A.100)

- 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)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 1 (RCW 9A.56.080)
- 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 2 (RCW 9A.56.080)
- Burglary 2 (RCW 9A.52.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- I Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (RCW 69.50.401(d))

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