

remedy by a civil action, the offense may be compromised as provided in RCW 10.22.020, except when it was committed:

- (1) By or upon an officer while in the execution of the duties of his office.
- (2) Riotously; ~~((or;))~~
- (3) With an intent to commit a felony; or
- (4) By one family or household member against another as defined in RCW 10.99.020(1) and was a crime of domestic violence as defined in RCW 10.99.020(2).

Passed the Senate April 17, 1989.

Passed the House April 12, 1989.

Approved by the Governor May 13, 1989.

Filed in Office of Secretary of State May 13, 1989.

CHAPTER 412

[Senate Bill No. 5233]

RESIDENTIAL BURGLARY

[Veto overridden: See chapter 1, 2nd Ex. Sess., infra.]

AN ACT Relating to burglary; amending RCW 9A.52.030; reenacting and amending RCW 9.94A.320; adding a new section to chapter 9A.52 RCW; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9A.52 RCW to read as follows:

(1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, the sentencing guidelines commission and the juvenile disposition standards commission shall consider residential burglary as a more serious offense than second degree burglary.

Sec. 2. Section 9A.52.030, chapter 260, Laws of 1975 1st ex. sess. as amended by section 7, chapter 38, Laws of 1975-'76 2nd ex. sess. and RCW 9A.52.030 are each amended to read as follows:

(1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle or a dwelling.

(2) Burglary in the second degree is a class B felony.

***Sec. 3. Section 2, chapter 62, Laws of 1988, section 12, chapter 145, Laws of 1988, and section 2, chapter 218, Laws of 1988 and RCW 9.94A-.320 are each reenacted and amended to read as follows:**

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV	<i>Aggravated Murder 1 (RCW 10.95.020)</i>
XIII	<i>Murder 1 (RCW 9A.32.030)</i> <i>Homicide by abuse (RCW 9A.32.055)</i>
XII	<i>Murder 2 (RCW 9A.32.050)</i>
XI	<i>Assault 1 (RCW 9A.36.011)</i>
X	<i>Kidnapping 1 (RCW 9A.40.020)</i> <i>Rape 1 (RCW 9A.44.040)</i> <i>Rape of a Child 1 (RCW 9A.44.073)</i> <i>Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))</i> <i>Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 and 3 years junior (RCW 69.50.406)</i> <i>Leading Organized Crime (RCW 9A.82.060(1)(a))</i>
IX	<i>Robbery 1 (RCW 9A.56.200)</i> <i>Manslaughter 1 (RCW 9A.32.060)</i> <i>Explosive devices prohibited (RCW 70.74.180)</i> <i>Endangering life and property by explosives with threat to human being (RCW 70.74.270)</i> <i>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)</i> <i>Sexual Exploitation, Under 16 (RCW 9.68A.040(2)(a))</i> <i>Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))</i>
VIII	<i>Arson 1 (RCW 9A.48.020)</i> <i>Rape 2 (RCW 9A.44.050)</i> <i>Rape of a Child 2 (RCW 9A.44.076)</i> <i>Child Molestation 1 (RCW 9A.44.083)</i> <i>Promoting Prostitution 1 (RCW 9A.88.070)</i> <i>Selling heroin for profit (RCW 69.50.410)</i>
VII	<i>Burglary 1 (RCW 9A.52.020)</i> <i>Vehicular Homicide (RCW 46.61.520)</i> <i>Introducing Contraband 1 (RCW 9A.76.140)</i> <i>Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))</i> <i>Sexual Exploitation, Under 18 (RCW 9.68A.040(2)(b))</i> <i>Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)</i>

- 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)
Child Molestation 2 (RCW 9A.44.086)
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))
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** *Criminal Mistreatment 1 (RCW 9A.42.020)*
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** *Residential Burglary (RCW 9A.52.----) (section 1 of this act)*
Theft of Livestock 1 (RCW 9A.56.080)
Robbery 2 (RCW 9A.56.210)
Assault 2 (RCW 9A.36.021)
Escape 1 (RCW 9A.76.110)
Arson 2 (RCW 9A.48.030)
Rape of a Child 3 (RCW 9A.44.079)
Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
Malicious Harassment (RCW 9A.36.080)
Willful 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** *Criminal mistreatment 2 (RCW 9A.42.030)*
Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
Child Molestation 3 (RCW 9A.44.089)
Extortion 2 (RCW 9A.56.130)
Unlawful Imprisonment (RCW 9A.40.040)
Assault 3 (RCW 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)
Willful Failure to Return from Work Release (RCW 72.65.070)
Burglary 2 (RCW 9A.52.030)
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)
~~*(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)
Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
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))

*Sec. 3 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 4. This act shall take effect July 1, 1990.

Passed the Senate April 17, 1989.

Passed the House April 11, 1989.

Approved by the Governor May 13, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 13, 1989.

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

"I am returning herewith, without my approval as to section 3, Engrossed Senate Bill No. 5233 entitled:

"AN ACT Relating to burglary."

This legislation creates a new crime of residential burglary for those incidents in which an individual enters a dwelling for the purposes of committing "a crime against persons or property therein". The existing crime of burglary in the second degree is retained for cases involving buildings other than dwellings.

Section 3 of this measure increases the seriousness level of second degree burglary from range II to range III and ranks the new crime of residential burglary at an even higher level, range IV. These rankings have significant fiscal impacts on both state and local governments that are not fully addressed. Although the Legislature included funds in the Omnibus Budget for the purposes of this act, they fall far short of meeting the Department of Correction's needs. In addition, no funds were provided to address the impacts on local jails.

I support the intent of this bill. Residential burglary is a particularly offensive crime that not only results in material loss, but shatters the sense of privacy people enjoy within their homes. Persons who invade homes in this manner must be punished.

However, attempting to address this issue has highlighted some of the inflexibility of the state's Sentencing Reform Act. Because of the sentencing structure created by the Act, little can be done in response to the problem of burglary other than to raise the seriousness level, as accomplished by section 3.

I am retaining the new definition of residential burglary created by this bill, and the instructions in section 1 requiring the Sentencing Guidelines Commission to consider residential burglary as a more serious offense than burglary in the second degree. Because the provisions of the bill do not take effect until July 1990, I believe this veto allows us to more fully consider the ramifications of this sentencing change.

The long-term financial impact on the state adult and juvenile systems will mandate significant additional commitment of both capital and operating funds. I am concerned that the full financial reality of passing this bill has not settled upon the Legislature. The Legislature should also consider the consistency of punishment level in this bill related to punishment for other criminal offenses.

Particular attention must also be paid to the effect these changes have on our local jail system. We can no longer continue to ignore the overcrowding and potentially dangerous conditions facing these facilities. At the same time the Legislature was enacting a measure extending eligibility for home detention programs to burglars, it was removing over fifty percent of the eligible inmates by the definition change included in this bill. The Sentencing Guidelines Commission is the proper place to consider these system-wide impacts.

I am asking the Sentencing Guidelines Commission to take up this issue for the purpose of recommending a resolution to the 1990 Legislature. The commission will review the relative rankings of these crimes, and will explore the possibility of reordering the sentencing grid in such a way as to allow courts greater flexibility in determining appropriate sanctions. In addition, the Commission will review the potential for changing sentencing practices associated with rank changes, and the relationship of deadly weapons enhancements to these two offenses.

With the exception of section 3, Engrossed Senate Bill No. 5233 is approved.*

CHAPTER 413

[Substitute House Bill No. 1889]

STATE EMPLOYEES—STATE LIABILITY FOR JUDGMENTS FOR ACTS OR OMISSIONS WITHIN SCOPE OF EMPLOYMENT

AN ACT Relating to public employee immunity; amending RCW 4.92.070; adding a new section to chapter 4.24 RCW; adding a new section to chapter 4.92 RCW; and repealing RCW 4.92.060 and 10.01.150.

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

***Sec. 1. Section 2, chapter 79, Laws of 1921 as last amended by section 6, chapter 126, Laws of 1986 and RCW 4.92.070 are each amended to read as follows:**

(1) If ~~((the attorney general shall find that said))~~ a civil action or proceeding for damages is instituted against a state officer, employee, or volunteer(~~s~~) arising ~~((acts or omissions were, or purported to be in good faith))~~ from acts or omissions in good faith and within the scope of that person's official duties, ~~((said request shall be granted, in which event))~~ or alleging a violation of 42 U.S.C. Sec. 1981 or 1983, the necessary expenses of the defense of ~~((said))~~ the civil action or proceeding shall be paid from the appropriations made for the support of the department to which such officer, employee, or volunteer is attached. In such cases the attorney general shall appear and defend such officer, employee, or volunteer, who shall assist and cooperate in the defense of such suit.