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SUPERIOR COURT OF WASHINGTON  
COUNTY OF THURSTON

STATE OF WASHINGTON,  
Plaintiff,  
vs.  
JERRY LEE BROCK,  
Defendant.

No. 95-1-00402-8

CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE

SHORT TITLE: PERSISTENT  
OFFENDER ACCOUNTABILITY  
ACT/POAA RCW 9.94A.555  
1994 c 1 § 7, 1-593

A. IDENTITY OF MOVING PARTY

COMES NOW the Defendant, JERRY LEE BROCK, and hereby  
moves this Court for the relief designated in Part B,  
directly below.

B. STATEMENT OF RELIEF SOUGHT

Defendant BROCK asks this Court to find and declare  
that the inclusion of a "non-violent offense" (i.e., section  
(21)(m) Promoting Prostitution in the First Degree/RCW  
9A.88.070), among the list of "most serious offenses" in  
1-593 (Persistent Offender Accountability Act/POAA) Section  
3, violates the "subject-in-title" requirement of Article

CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -1-

PETITIONER MAY FILE THE  
PETITION WITHOUT PAYMENT OF  
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1 II, § 19 of the Washington State Constitution.

2 As a residual consequence of this constitutional  
3 violation, Defendant BROCK asks this Court to vacate his  
4 life sentence under the POAA and, accordingly, direct that  
5 he be re-sentenced under the standard range of the Sentencing  
6 Reform Act.

7 C. JURISDICTION

8 This Court has original jurisdiction in "[A]ll criminal  
9 cases amounting to a felony," and "Every cause submitted  
10 to a judge of a superior court for his/her decision shall  
11 be decided ... within ninety days from the submission thereof  
12 ...." Washington State Constitution, Art. IV, § 6 and 20.

13 In relevant part, the superior court rule for the  
14 procedure on vacation of judgment reads as follows:

15 Application shall be made by motion stating the  
16 grounds upon which relief is asked, and supported  
17 by affidavits setting forth a concise statement  
18 of the facts or errors upon which the motion is  
19 based. The court may deny the motion without  
20 a hearing if the facts alleged in the affidavits  
do not establish grounds for relief. ...  
Otherwise, the court shall enter an order fixing  
a time and place for hearing and directing the  
adverse party to appear and show cause why the  
relief asked for should not be granted.

21 CrR 7.8(c)(1)&(2).

22 D. 1-YEAR TIME LIMIT NOT APPLICABLE

23 The [one year] time limit specified in RCW 10.73.090  
24 does not apply to a petition or motion that is based solely  
25

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -2-

1 on one or more of the following grounds:

2 (2) The statute that the defendant was convicted  
3 of violating was unconstitutional on its  
4 face or as applied to the defendant's conduct.

4 RCW 10.73.100(2).

5 Here, Defendant BROCK was convicted of a "Most Serious  
6 Offense" and declared to be a "persistent offender" pursuant  
7 to I-593 (commonly known as the 3-Strikes law). BROCK is  
8 challenging the constitutional validity of the statute and  
9 his status as a persistent offender.

10 E. FACTS RELEVANT TO MOTION

11 By First Amended Information filed on July 6, 1995,  
12 Defendant BROCK was charged with one count of Child  
13 Molestation in the First Degree (RCW 9A.44.083). CP 9.<sup>1</sup>  
14 Child Molestation in the First Degree is a "Most Serious  
15 Offense" under the Persistent Offender Accountability Act  
16 ("POAA" / "I-593"). RCW 9.94A.030(21)(a). The State had  
17 previously given notice that it was charging Defendant BROCK  
18 as a persistent offender under the POAA pursuant to RCW  
19 9.94A.030(21) and RCW 9.94A.120(4). CP 4.

20 On July 11 and 12, 1995, a jury trial was held. RP  
21 101-304.<sup>2</sup> The jury returned a verdict of guilty as charged.

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22  
23 <sup>1</sup> "CP" - Clerk's Papers.

24 <sup>2</sup> "RP" - Verbatim Report of Proceedings.

1 CP 27.

2 On November 3, 1995, a sentence hearing was held.  
3 The State alleged Defendant BROCK'S current conviction and  
4 two prior convictions<sup>3</sup> were "Most Serious Offenses," making  
5 him a "persistent offender" and automatic recipient for  
6 life imprisonment without the possibility of parole under  
7 the POAA/RCW 9.94A.120(4). RP 367-407. The court found  
8 that the statute Defendant BROCK was convicted of violating  
9 made him a "persistent offender." Defendant BROCK was then  
10 sentenced to life in prison without the possibility of  
11 parole. RP 401; CP 36-45; Id. APPENDIX A - Judgment and  
12 Sentence, Section 4.6(a), p. 5.

13 **F. GROUNDS FOR RELIEF AND ARGUMENT**

14 THE INCLUSION OF A "NON-VIOLENT" OFFENSE AMONG  
15 THE LIST OF "MOST SERIOUS OFFENSES" IN I-593  
16 SECTION 3, VIOLATES THE "SUBJECT-IN-TITLE"  
17 REQUIREMENT OF ARTICLE II, § 19 OF THE WASHINGTON  
18 STATE CONSTITUTION BECAUSE THE BALLOT TITLE WAS  
19 MISLEADING AND DID NOT PROVIDE NOTICE OF THE  
20 INITIATIVE'S CONTENT.

18 **I. INTRODUCTION**

19 **a. Judicial review of Initiatives**

20 **Marbury v. Madison, 5 U.S. 137 (1803), was the first**

21  
22 <sup>3</sup> See APPENDIX A - Judgment and Sentence, p. 5, Section  
23 4.6, indicating that prior convictions #2 (Promoting  
24 Prostitution in the First Degree) and #6 (Burglary in the  
25 First Degree), set forth in Section 2.2, p. 2, and the  
26 attached appendix p. 8, are 'most serious offenses.'

1 United States Supreme Court decision to define the  
2 distinctive role of the courts. Announced on February 23,  
3 1803, Marbury v. Madison in the words of Chief Justice  
4 Marshall declared that the very essence of judicial duty  
5 is to decide what laws conform to the Constitution.

6 b. Judicial Review of Legislative Acts in Washington State

7 The Constitution of the State of Washington vests  
8 legislative power in the legislature and in the people.  
9 Article II, § 1 is clear; it reserves to the people "the  
10 power to propose bills, laws, and to enact or reject the  
11 same at the polls, independent of the legislature and ...  
12 at their own option, to approve or reject at the polls any  
13 act, item, section, or part of any bill, act, or law passed  
14 by the legislature." Article II, § 1 goes on to describe  
15 the exercise of such power through initiative and referendum.

16 The powers of initiative and referendum were not  
17 original provisions of the Washington State Constitution  
18 when it was ratified in 1889. Amendment 7, which departs  
19 from the idea of 'representational democracy' to 'direct  
20 democracy,' was proposed by the Legislature in 1911 and  
21 ratified by the voters in 1912.<sup>4</sup> It's ratification permits  
22 direct participation by citizens in governance through  
23

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24 <sup>4</sup> The history of our state's adoption of Amend. 7 has been chronicled in  
25 numerous articles, journals and court opinions. See for example: Fritz

1 legislative acts, creating for our state, a parallel method  
2 of enacting legislation to that of the legislature. In  
3 approving an initiative measure, the people are exercising  
4 the same power of sovereignty that the Legislature exercises  
5 when it enacts a statute. Washington Fed'n of State  
6 Employees v. State, 127 Wn.2d 544, 565 (1995)(citing In  
7 re Estate of Thompson, 103 Wn.2d 292, 294 (1984)).

8 A bedrock principle of American democracy is that our  
9 laws must comply with the Constitution, whether that law  
10 was enacted by the legislature or directly by the people  
11 through an initiative process. Burien v. Kiga, 144 Wn.2d  
12 819, 824 (2001). As early as 1933 our state was reminded  
13 that "the people when legislating, the legislature, and  
14 the courts, are and should be bound by the limitations,  
15 restrictions, definitions and prohibitions of the  
16 Constitution" because it is the fundamental law of the state.  
17 Culliton v. Chase, 174 Wash. 363, 379 (1933).

18  
19 v. Gorton, 83 Wn.2d 275, 280 (1974) where our Supreme Court notes that  
20 the people's desire for legislative power arose from popular discontent  
21 with the unresponsiveness of government to the special needs and desires  
22 felt by the people. See also Claudius Johnson, The Adoption of the  
23 Initiative and Referendum in Washington, 35 Pac. N.W. Quarterly 291  
24 (1944); Jeffrey T. Even, Direct Democracy in Washington: A Discourse  
25 on the People's Powers of Initiative and Referendum, 32 Gons.L.Rev.  
26 247 (1996/97); Symposium, The Initiative Process in Washington:  
Implications and Effects, 27 Seattle U.L.Rev. 1017 (Spring 2001); Fed'n  
of Employees v. State, 127 Wn.2d 544, 565 (1995)(Talmadge, J., concurring  
in part dissenting in part).

CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -6-

S C A N N E D

1 It is not the prerogative of the judiciary to substitute  
2 its judgment for that of the electorate in enacting  
3 initiatives, although it is the court's duty to set aside  
4 an initiative that clearly contravenes constitutional  
5 provisions. Fritz v. Gorton, 83 Wn.2d 275 (1974).  
6 Conversely, the court may not invalidate laws based upon  
7 considerations of public policy; only a constitutional  
8 violation justifies such a judicial intervention into the  
9 legislative process. Amalgamated Transit Union Local 587  
10 v. State ("ATU"), 142 Wn.2d 183, 205 (2000).

11 c. A Summary of Initiative 593

12 I-593, was filed with the secretary of state as an  
13 initiative to the people. Const. Art. II, § 1(a); See  
14 APPENDIX B - Voter's Pamphlet and complete text of the  
15 Initiative. The sponsors entitled the initiative "AN ACT  
16 Relating to persistent offenders; reenacting and amending  
17 RCW 9.94A.120 and 9.94A.030; creating new sections; and  
18 prescribing penalties." Id. APPENDIX B, p. 14. Pursuant  
19 to RCW 29.79.035(1) and (2) and 29.79.040, the attorney  
20 general's office prepared an explanatory statement and the  
21 following 'Official Ballot Title' for the initiative:

22 Shall criminals who are convicted of "most serious  
23 offenses" on three occasions be sentenced to life  
in prison without parole?

24 Id. APPENDIX B, Voters Pamphlet, p. 4-5.

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -7-

1 On November 2, 1993, the voters of the state of  
2 Washington passed I-593 by a 76 percent vote. Commonly  
3 known as the "three strikes and you're out" law, the "POAA"  
4 amended sections of the Sentencing Reform Act of 1981 (SRA).  
5 RCW 9.94A. In relevant part, the new law added the following  
6 language to RCW 9.94A.120(4):

7  
8 A persistent offender shall be sentenced to a  
9 term of total confinement for life without the  
10 possibility of parole or, when authorized by RCW  
11 10.95.030 for the crime of aggravated murder in  
12 the first degree, sentenced to death,  
13 notwithstanding the maximum sentence under any  
14 other law.

15 I-593, § 2(4), p. 14 / Id. APPENDIX B.

16 I-593 also defined the terms "persistent offender"  
17 and "most serious offense." A "persistent offender" is  
18 an offender who:

19 (a) Has been convicted in this state of any felony  
20 considered a most serious offense; and

21 (b) Has, before the commission of the offense  
22 under (a) of this subsection, been convicted as  
23 an offender on at least two separate occasions,  
24 whether in this state or elsewhere, of felonies  
25 that under the laws of this state would be  
26 considered most serious offenses and would be  
included in the offender score under RCW 9.94A.360;  
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 has  
previously been convicted.

I-593, § 3(25), p. 21 / Id. APPENDIX B.

CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -8-

1 "Most serious offense" means any of the following  
2 felonies or a felony attempt to commit any of the following  
3 felonies, as now existing or hereafter amended:

4 (a) Any felony defined under any law as a class A felony or  
5 criminal solicitation of or criminal conspiracy to commit  
a class A felony;

6 (b) Assault in the second degree;

7 (c) Assault of a child in the second degree;

8 (d) Child molestation in the second degree;

9 (e) Controlled substance homicide;

10 (f) Extortion in the first degree;

11 (g) Incest when committed against a child under age 14;

12 (h) indecent liberties;

13 (i) Kidnapping in the second degree;

14 (j) Leading organized crime;

15 (k) Manslaughter in the first degree;

16 (l) Manslaughter in the second degree;

17 (m) Promoting prostitution in the first degree; [Non-Violent]

18 (n) Rape in the third degree;

19 (o) Robbery in the second degree;

20 (p) Sexual exploitation;

21 (q) Vehicular assault;

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

26 (s) Any other class B felony offense with a finding of sexual  
motivation, as "sexual motivation" is defined under this  
section;

(t) Any other felony with a deadly weapon verdict under RCW  
9.94A.125;

(u) Any felony offense in effect at 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.

I-593, § 3(21)(a)-(u), p. 20 / Id. APPENDIX B. (emphasis  
in underline added).

CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -9-

1 Pursuant to the Washington State Constitution Article  
2 II, § 1(d), I-593 took effect and became the law of this  
3 State on December 2, 1993, thirty days after its approval  
4 by the voters. See APPENDIX C - Final Bill Report  
5 I-593/C1L94 [Laws of 1994 ch. 1, §§ 1-8 / Initiative No.  
6 593, approved November 2, 1993].

7 In sum, Initiative Measure 593 amended the Sentencing  
8 Reform Act/9.94A by adding a new subsection which requires  
9 trial courts to sentence "persistent offenders" to life  
10 imprisonment without possibility of parole. Codified RCW  
11 9.94A.120(4).

12 A "Persistent Offender" is defined as one convicted  
13 of any felony considered a 'most serious offense' under  
14 RCW 9.94A.030(21) and who has, in addition, been twice  
15 convicted of an offense falling under that category.  
16 Codified RCW 9.94A.030(25).

17 A "Most Serious Offense" includes the following: (a)  
18 Any class A felony; (b) Any class B felony with a find<sup>ing</sup> of  
19 'sexual motivation' as defined by statute; (c) Any felony  
20 with a deadly weapon finding; and (d) seventeen other named  
21 offenses. Codified RCW 9.94A.030(21)(a)-(u).

22 The statutes mandatory life sentence applies to any  
23 persistent offender "notwithstanding the maximum sentence  
24 under any other law." Codified RCW 9.94A.120(4).

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -10-

1 II. SYMPOSIUM/ARGUMENT

2 a. Standard of Review

3 An exercise of the initiative power is an exercise  
4 of the reserved power of the people to legislate. State  
5 ex rel. Heavey v. Murphy, 138 Wn.2d 800, 808 (1999); Belas  
6 v. Kiga, 135 Wn.2d 913, 920 (1998). In approving an  
7 initiative measure, the people exercise the same power of  
8 sovereignty as the Legislature does when enacting a statute.  
9 Wash. Fed'n of State Employees v. State, 127 Wn.2d 544,  
10 556 (1995). The fact that the legislative body has the  
11 power to achieve a particular result does not necessarily  
12 render its actions constitutional; it must follow  
13 constitutional procedures. State ex rel. Living Servs.,  
14 Inc. v. Thompson, 95 Wn.2d 753, 755 (1981). The people  
15 acting in their legislative capacity are subject to  
16 constitutional mandates. State ex rel. Heavey, 138 Wn.2d  
17 at 808; Gerberding v. Munro, 134 Wn.2d 188, 196 (1998);  
18 Culliton v. Chase, 174 Wash. 363, 373-74 (1933).

19 A statute enacted through the initiative process is,  
20 as are other statutes, presumed to be constitutional. Brower  
21 v. State, 137 Wn.2d 44, 52 (1998); Gerberding, 134 Wn.2d  
22 at 196; State ex rel. O'Connell v. Meyers, 51 Wn.2d 454,  
23 458 (1957). A party challenging the statute's  
24 constitutionality bears the heavy burden of establishing  
25

1 its unconstitutionality beyond a reasonable doubt. State  
2 ex rel. Heavey, 138 Wn.2d at 808; Gerberding, 134 Wn.2d  
3 at 196. This standard is met if argument and research show  
4 that there is no reasonable doubt that the statute violates  
5 the constitution. Belas, 135 Wn.2d at 920; Island County  
6 v. State, 135 Wn.2d 141, 147 (1998).

7 Rules of statutory construction apply to initiatives.  
8 Seeber v. Wash. State Pub. Disclosure Comm'n, 96 Wn.2d 135,  
9 139 (1981); Gibson v. Dep't of Licensing, 54 Wn.App. 188,  
10 192 (1989). As with the interpretation of a statute, the  
11 interpretation of an initiative is a question of law.  
12 Amalgamated Transit Union Local 587 v. State ("ATU"), 142  
13 Wn.2d 183, 204-06 (2000). Thus, in determining the meaning  
14 of a statute enacted through the initiative process, the  
15 court's purpose is to ascertain the collective intent of  
16 the voters who, acting in their legislative capacity, enacted  
17 the measure. Wash. State Dep't of Revenue v. Hoppe, 82  
18 Wn.2d 549, 552 (1973).

19 Where the voters' intent is clearly expressed in the  
20 statute, the court is not required to look further. Senate  
21 Republican Campaign Comm. v. Pub. Disclosure Comm'n, 133  
22 Wn.2d 229, 242 (1997); City of Tacoma v. State, 117 Wn.2d  
23 348, 356 (1991); see Biggs v. Vail, 119 Wn.2d 129, 134 (1992)  
24 (if statutory meaning is clear from plain and unambiguous  
25

1 language, that meaning must be accepted by the court).  
2 In determining intent from the language of the statute,  
3 the court focuses on the language as the average informed  
4 voter voting on the initiative would read it. State v.  
5 Brown, 139 Wn.2d 20, 28 (1999); Senate Republican Campaign  
6 Comm., 133 Wn.2d at 243. Where the language of an initiative  
7 enactment is 'plain, unambiguous, and well understood  
8 according to its natural and ordinary sense and meaning,  
9 the enactment is not subject to judicial interpretation.'  
10 State v. Thorne, 129 Wn.2d 736, 762-63 (1996).

11 However, if there is ambiguity in the enactment, the  
12 court may examine the statements in the voters pamphlet  
13 in order to determine the voters' intent. ATU, 142 Wn.2d  
14 at 205-06 (where the language of the initiative is clear  
15 and unambiguous, a court may not look beyond the text of  
16 the measure; however, if the initiative is susceptible to  
17 more than one reasonable interpretation, a court may  
18 determine the voters' intent by applying canons of statutory  
19 construction or by 'examin[ing] the statements in the voters  
20 pamphlet'); Thorne, 129 Wn.2d at 763; see Lynch v. Dep't  
21 of Labor & Indus., 19 Wn.2d 802, 812-13 (1944); see Biggs,  
22 199 Wn.2d at 134 (if there is ambiguity, extrinsic aids,  
23 such as legislative history, may be used to determine  
24 legislative intent).

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -13-

1                   b. Article II, § 19

2           Article II, § 19 of the Washington State Constitution  
3 provides that "no bill shall embrace more than one subject,  
4 and that shall be expressed in the title." Our Supreme  
5 Court has interpreted two distinct prohibitions in Article  
6 II, § 19:

7           The first is that no bill shall embrace more than one  
8 subject (single subject rule). The purpose of this  
9 prohibition is to prevent 'logrolling or hodgepodge  
10 legislation,' the tactic of attaching an unpopular bill  
11 to a popular one on an unrelated subject. Wash. Fed'n,  
12 127 Wn.2d at 552-54 (citing Fritz v. Gorton, 83 Wn.2d 275,  
13 at 333 (Rosellini, J., dissenting)(quoting State v. Waggoner,  
14 80 Wn.2d 7, 9 (1971)); ATU, 142 Wn.2d at 207 (citing Power,  
15 Inc. v. Huntley, 39 Wn.2d 191, 198 (1951); see also State  
16 v. Broadway, 133 Wn.2d 118, 124 (1997); State v. Thorne,  
17 129 Wn.2d at 757; Flanders v. Morris, 88 Wn.2d 183, 187  
18 (1977).

19           The second prohibition is that no bill shall have a  
20 subject which is not expressed in the title (subject-in-title  
21 rule). ATU, 142 Wn.2d at 207; Patrice v. Murphy, 136 Wn.2d  
22 845, 851-52 (1998); State ex rel. Wash. toll Bridge Auth.  
23 v. Yelle, 32 Wn.2d 13, 23 (1948). The purpose of this  
24 prohibition is to notify members of the Legislature and  
25

1 the public of the subject matter of the measure. ATU, 142  
2 Wn.2d at 207; Power, 39 Wn.2d at 198; see also Broadway,  
3 133 Wn.2d at 124; Thorne, 129 Wn.2d at 757; Flanders, 88  
4 Wn.2d at 187; Wash. Const. Article II, § 1 (proper notice  
5 is an inherent part of the "the power to ... approve or  
6 reject at the polls any act, item, section, or part of any  
7 bill, act or law ....").

8 Article II, § 19 applies to initiatives, Thorne, 129  
9 Wn.2d at 757, and violation of either the subject or the  
10 title requirement alone is sufficient to render the relevant  
11 bill provisions unconstitutional. Patrice, 136 Wn.2d at  
12 852.

13 Here, Defendant BROCK is not challenging I-593 based  
14 on the single subject rule. Instead, he is contending I-  
15 593 violates the subject-in-title rule.

16 c. What is the "Title" of I-593?

17 Where an initiative to the people is concerned, the  
18 relevant title for an Article II, § 19 inquiry is the ballot  
19 title, because it is the 'ballot title' with which the voters  
20 are faced in the voting booth. Wash. Fed'n, 127 Wn.2d at  
21 551-55 (also noting that not all initiatives have legislative  
22 titles). "Under Const. Article II, § 19, the title is  
23 construed with reference to the language used in the title.  
24 Moreover, a court examines the body of the act to determine  
25

1 whether the title reflects the subject matter of the act."

2 Id. at 556. Here, the official ballot title of I-593 reads:

3  
4 SHALL CRIMINALS WHO ARE CONVICTED OF "MOST SERIOUS  
5 OFFENSES" ON THREE OCCASIONS BE SENTENCED TO LIFE  
6 IN PRISON WITHOUT PAROLE?

7 Id. APPENDIX B - Voters Pamphlet, p. 4; Thorne, 129 Wn.2d  
8 757; State v. Cloud, 95 Wn.App. 606 (1999). Here, this  
9 title is the relevant title for purposes of an Article II,  
10 § 19 inquiry. ATU, 142 Wn.2d at 211 (where an initiative  
11 to the people is concerned ... the relevant title for the  
12 art. II, § 19 inquiry is the ballot title).

13 d. The "Ballot Title" of I-593 is Restrictive?

14 In Thorne our Supreme Court held the title of I-593  
15 restrictive. Thorne, 129 Wn.2d at 757-58. A restrictive  
16 title "is one where a particular part or branch of a subject  
17 is carved out and selected as the subject of the  
18 legislation." Broadaway, 133 Wn.2d at 127 (quoting Gruen  
19 v. State Tax Comm'n, 35 Wn.2d 1, 23 (1949)). Restrictive  
20 titles are not given the same liberal construction as general  
21 titles and "provisions which are not fairly within its  
22 subject will not be given force." ATU, 142 Wn.2d at 210  
23 (citing Broadaway, 133 Wn.2d at 127; Thorne, 129 Wn.2d at  
24 758; State ex rel. Wash. Toll Bridge Auth., 32 Wn.2d at  
25 26); see also Cloud, 95 Wn.App. 606 (1999). A restrictive

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -16-

S C A N N E D

1 title is 'narrow,' as opposed to broad. ATU, 142 Wn.2d  
2 at 210 (citing Gruen, 35 Wn.2d at 22; Wash. Fed'n, 127 Wn.2d  
3 at 555; State Fin. Comm. v. O'Brien, 105 Wn.2d 78, 80  
4 (1986)). It is of specific rather than generic import.  
5 ATU, 142 Wn.2d at 210 (citing Olympic Motors, Inc. v.  
6 McCroskey, 15 Wn.2d 665, 672 (1942); DeCano v. State, 7  
7 Wn.2d 613, 627 (1941)). A restrictive<sup>title</sup> expressly limits  
8 the scope of the act to that expressed in the title. ATU,  
9 142 Wn.2d 210 (citing Daviscourt v. Peistrup, 40 Wn.App.  
10 433, 439-440 (1985); Broadaway, 133 Wn.2d at 127); see also  
11 Blanco v. Sun Ranches, 38 Wn.2d 894, 901-02 (1951).

12 Examples of restrictive titles were compiled in ATU,  
13 142 Wn.2d at 210-11: "An act relating to the acquisition  
14 of property by public agencies ...." Daviscourt, 40 Wn.App.  
15 at 437. "An act relating to local improvements in cities  
16 and towns ...." Cory v. Nethery, 19 Wn.2d 326, 329-31  
17 (1943). "An act relating to the rights and disabilities  
18 of aliens with respect to land ...." DeCano, 7 Wn.2d at  
19 623. "An act relating to the venue of civil actions in  
20 justice courts." National Ass'n of Creditors v. Brown,  
21 147 Wash. 1, 7 (1928). "An act giving workmen's compensation  
22 benefits to persons engaged in hazardous and extrahazardous  
23 occupations in charitable institutions." Swedish Hosp.  
24 v. Department of Labor & Indus., 26 Wn.2d 819, 830-31 (1947).

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -17-

S C A N N E D

1 "An<sup>act</sup> relating to increasing penalties for armed crime ...."  
2 Broadaway, 133 Wn.2d at 126-27. And finally, in Thorne  
3 the title of I-593 was held restrictive: "Shall criminals  
4 who are convicted of 'most serious offenses' on three  
5 occasions be sentenced to life in prison without parole?"  
6 Thorne, 129 Wn.2d at 757-758.

7 In general, violations of Art. II, § 19 are more readily  
8 found where a restrictive title is used. ATU, 142 Wn.2d  
9 at 211. For example, an act providing criminal penalties  
10 for dognapping and the recovery of attorney fees in some  
11 civil replevin actions violated art. II, § 19. Barde v.  
12 State, 90 Wn.2d 470 (1978). An act which included a civil  
13 rights provision and regulation of cemeteries violated art.  
14 II, § 19. Price v. Evergreen Cemetery Co., 57 Wn.2d 352,  
15 357 (1960). Restrictive title "An act relating to townships  
16 and amending ..." held not broad enough to embrace provision  
17 placing bridges costing more than \$300 under the sole  
18 jurisdiction and control of the county. Potter v. Whatcom  
19 County, 138 Wash. 571, 576 (1926). Restrictive title "An  
20 act relating to the venue of civil actions in justice courts'  
21 ..." not broad enough to encompass provision that if an  
22 action was prosecuted contrary to the venue requirements,  
23 no jurisdiction was obtained. Brown, 147 Wash. at 7.

24 In State v. Cloud, supra, the court declared RCW

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -18-

1 9.94A.120(4) as amended by I-593, unconstitutional because  
2 it violated Article II, § 19. Because the title referred  
3 only to 'persistent offenders,' the court struck down those  
4 provisions of the initiative that increased punishment for  
5 first time offenders. Cloud, 95 Wn.App. at 618. In reaching  
6 this opinion, the court stated:

7 The ballot title of Initiative 593 states, "Shall criminal  
8 who are convicted of 'most serious offenses' on three  
9 occasions be sentenced to life in prison without parole?"  
10 In State v. Thorne, the Washington Supreme Court concluded  
11 that because this title "refers only to criminals who have  
12 committed serious offenses on three occasions," the  
13 initiative is "restrictive," meaning that "the provisions  
14 which are not fairly within it will not be given force."  
15 The Court conducted this analysis in response to a challenge  
16 identical to Cloud's, but because the defendant in Thorne  
17 was a persistent offender and clearly covered by the  
18 initiative, the Thorne court stated that it "need not decide  
19 whether the part of the Initiative which concerns early  
20 release is beyond the scope of the ballot title ...." The  
21 court did, however, suggest that any parts of the initiative  
which do not relate to persistent offenders were not  
legitimately included: "The ballot title to Initiative 593  
contains only one subject, persistent offenders; hence,  
any provisions in the law which relate to that subject are  
valid under article II, sections 19." Implicit in this  
statement is that Initiative 593 provisions which are  
unrelated to persistent offenders are invalid, and  
accordingly, should be stricken. We hold that RCW  
9.94A.120(4) violates article II, section 19 of the  
Washington Constitution and cannot be enforced. Because  
Cloud was sentenced under this unconstitutional provision,  
we remand for imposition of sentence which permits Cloud  
early release, and direct the trial court credit Cloud with  
good time credit he has already earned.

22 Cloud, 95 Wn.App. 617-18, fns. 21-25 (citing Thorne, 129 Wn.2d at  
23 757-58)(emphasis added); see also State v. Musgrave, No. 53257-0-1  
24 (2004)(clarifying the holding in State v. Cloud).

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -19-

1           The court's in both Thorne and Cloud focused on the  
2 'single subject' rule of article II, § 19. As emphasized  
3 above in underline, in Thorne the court stated that it "need  
4 not decide whether the part of the initiative which concerns  
5 early release is beyond the scope of the ballot title ...."  
6 Despite the court's failure to reach the 'subject-in-title'  
7 issue, it suggested that any parts of the initiative which  
8 do not relate to persistent offenders were not legitimately  
9 included. In Cloud the court found "implicit in this  
10 statement is that Initiative 593 provisions which are  
11 unrelated to persistent offenders are invalid and ... should  
12 be stricken." Cloud, 95 Wn. App. at 618.

13           While both Thorne and Cloud determined the ballot title  
14 of I-593 was 'restrictive,' neither court determined whether  
15 "any ... item, section, or part" of I-593 exceeded the scope  
16 of the ballot title. Const. Article II, § 1 & 19 (power  
17 to accept or reject at polls and notice of content). In  
18 fact, no Washington court has reached an opinion on this  
19 issue, and this will be a case of first impression.

20           e. What is the "Subject" of I-593?

21           Interestingly enough, no court has actually determined  
22 the "official subject" of I-593. In Thorne our Supreme  
23 Court held: "The ballot title to Initiative 593 contains  
24 only one subject, persistent offenders; hence, any provisions  
25

1 in the law which relate to that subject are valid under  
2 Article II, § 19." Thorne, 129 Wn.2d at 758; see also Cloud,  
3 95 Wn. App. at 618. Later, in Amalgamated Transit Union  
4 Local 587 v. State, the court compared the holding in Thorne  
5 to Fritz v. Gorton, 83 Wn.2d 275, 290-91 (1974), where the  
6 court identified the 'generic subject' of I-276 as 'openness  
7 in government,' though those words never appeared in the  
8 title. Likewise, in Thorne the subject matter was found  
9 to be 'persistent offenders' even though the words never  
10 appeared in the title. ATU, 142 Wn.2d at 216-17.

11 Even later, in Citizens for Responsible Wildlife  
12 Management v. State, 149 Wn.2d 622 (2003), the court said  
13 "... restrictive titles tend to deal with issues that are  
14 subsets of an overarching subject. Thus, "Shall criminals  
15 who are convicted of 'most serious offenses' on three  
16 occasions be sentenced to life in prison without parole?"  
17 is aimed at a subset issue (three-time "most serious offense"  
18 offenders) of an overarching subject (criminal offenders  
19 generally)."

20 Here, BROCK concedes that the ballot title of 1-593  
21 deals with issues that are subsets of an overarching subject.  
22 The ballot title is aimed at a subset issue (three-time-  
23 violent "most serious offense" offenders) of an overarching  
24 subject (persistent offenders generally). Therefore, as  
25

1 the court stated in Thorne, the subject of I-593 is  
2 'persistent offenders,' but what did the term "persistent  
3 offender" actually mean to the average voter.

4  
5 f. What did the phrase "Most Serious Offense" in the  
Ballot Title Mean to the Average Voter?

6 In order to evaluate the meaning of "persistent  
7 offender," the meaning of the phrase "Most Serious Offense"  
8 used in the ballot title of I-593 must be addressed, because  
9 -- according to the initiative, a 'persistent offender'  
10 is one who has been convicted of three 'Most Serious  
11 Offenses.' The initiative itself does not define what the  
12 term 'most serious offense' means, instead it merely lists  
13 offenses deemed "most serious" for the purposes of  
14 application of I-593.

15 Here, BROCK contends that the meaning of the phrase  
16 "most serious offense" as used in the title of I-593 is  
17 governed by that presented in the voter's pamphlet, and  
18 NOT articulated in the text of the initiative because the  
19 text merely recites a "BROAD" list of offenses (both violent  
20 and non-violent), but the Voter's Pamphlet uses a  
21 "RESTRICTED-NARROW" meaning of the term (3-violent offenses);  
22 therefore, the term "most serious offense in the text of  
23 the initiative has a meaning broader than that used in the  
24 Ballot Title. Literally, nothing about the Ballot Title

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -22-

1 gives any notice that would indicate to the voters that  
2 the content of the initiative would include voter approval  
3 for a life sentence to be imposed for a non-violent offense,  
4 or suggest that an inquiry into the body of the act be made  
5 to learn the broad meaning of the term "most serious offense"  
6 really meant that a "persistent offender" was, or could  
7 be, one convicted of two non-violent felonies and a single  
8 violent felony.

9 This contention is clearly supported by the widely  
10 publicized campaign "3-Strikes and You're Out" and the voters  
11 pamphlet, which states:

12 It's time to get tougher on violent criminals.

13 INITIATIVE 593 GETS TOUGH ON VIOLENT CRIME. Under 593,  
14 anyone convicted of a third violent offense goes to prison  
15 for life. No early release. No parole. No furloughs.  
16 No loopholes. Three strikes and you're out.

17 In aiming at three time violent offenders, it targets the  
18 "worst of the worst" criminal who most deserve to be behind  
19 bars. With 593 that's where they'll stay.

20 The crimes covered by 593 are serious, violent felonies.

21 Id. APPENDIX B - Voters Pamphlet, p. 4.

22 The underlying intent of the statute, as shown through  
23 the voters pamphlet, show that the people in enacting the  
24 Persistent Offender Accountability Act intended that it  
25 provide a mandatory life sentence based on a "third violent  
26 offense." and there is no room for "non-violent" offenses.

1 This fact, brings into question the actual subject of the  
2 initiative as expressed in State v. Thorne. To the average  
3 voter, a "persistent offender" meant an offender convicted  
4 of three violent offenses. The terms "most serious offense"  
5 in the ballot title and "3-violent offenses" are synonymous.  
6 Thus, the term "most serious offense" in the ballot title  
7 has a very narrow and restricted meaning which is limited  
8 to 'three violent offenses,' but in the text of the  
9 initiative "most serious offense" has a broader meaning  
10 (i.e., both violent and non-violent offenses). Therefore,  
11 the OFFICIAL SUBJECT of I-593 is violent persistent  
12 offenders, and not persistent offenders generally as  
13 expressed in State v. Thorne.

14 A title complies with the 'subject-in-title' rule if  
15 it provides "notice that would lead to an inquiry into the  
16 body of the act, or indicate to an inquiring mind the scope  
17 and purpose of the law." Young Men's Christian Association  
18 v. State, 62 Wn.2d 504, 506, 383 P.2d 497 (1963).

19 As explained in more detail below, a reviewing court  
20 must evaluate the sufficiency of the title by considering  
21 the meaning that the title would convey to the typical  
22 reader. Then the court determines whether the contents  
23 of the text of the legislation are reflected in the title.

24 Any analysis of voter intent must necessarily begin  
25

1 with what legislation the voters adopted, i.e., what was  
2 actually presented to the voters. See Louthan v. King  
3 County, 94 Wn.2d 422, 430, 617 P.2d 977 (1980) ("What is  
4 authorized depends upon what is submitted to the  
5 electorate."); ATU, 142 Wn.2d at 205 ("In determining intent  
6 from the language of the statute, the court focuses on the  
7 language as the average informed voter voting on the  
8 initiative would read it").

9 In both Petroleum Lease Properties Co. v. Huse, 195  
10 Wash. 254, 257-58, 80 P.2d 774 (1938) and DeCano v. State,  
11 7 Wn.2d at 623-24, the State Supreme Court construed the  
12 title of an act according to the common and ordinary meaning  
13 of the terms therein and then compared the subject expressed  
14 in the title with the contents of the act. The Petroleum  
15 Lease court considered the meaning of the term "security,"  
16 while the DeCano court considered the meaning of the word  
17 "alien." Petroleum Lease, 195 Wash. at 257-58; DeCano,  
18 7 Wn.2d at 623-24. The Petroleum Lease and DeCano court's  
19 both recognized that:

20 Words in a title must be taken in their common and ordinary  
21 meanings, and the legislature cannot in the body of an act  
22 impose another or unusual meaning upon term used in the  
23 title without disclosing such special meaning therein.

23 Petroleum Lease, 195 Wash. at 261; DeCano, 7 Wn.2d at 626.

24 The Petroleum Lease court looked to the 'meaning of  
25

1 the word 'security' as that term is commonly understood  
2 and defined by standard dictionaries.' Petroleum Lease,  
3 195 Wash. at 258. The DeCano court found that the title  
4 in that case gave no intimation that the body of the act  
5 contained an amended definition of the word "alien" which  
6 brings within its purview a whole new class of persons who  
7 are not in fact aliens in common understanding, by judicial  
8 construction, or under the express definition contained  
9 in the prior law. DeCano, 7 Wn.2d at 624.

10 The court has applied a similar analysis in recent  
11 cases, as well. In Washington Federation of State Employees  
12 v. State, 127 Wn.2d at 556, the court again articulated  
13 the test for determining whether the subject of an act is  
14 reflected in its title. First, "[U]nder Const. Article  
15 II, § 19, the title is construed with reference to the  
16 language used in the title." Id. (citing Great N. Ry. Co.  
17 v. Cohn, 3 Wn.2d 672, 680, 101 P.2d 985 (1940)(the title  
18 must be construed with reference to the language used in  
19 the title only and not in the light of the context of the  
20 act). Then, the [reviewing] court must 'examine the body  
21 of the act to determine whether the title reflects the  
22 subject matter of the act.' Id. 127 Wn.2d at 556. As  
23 recently as 2003, the State Supreme Court reiterated that  
24 this is the proper analysis for determining whether a  
25

1 "subject-in-title" violation has occurred. Citizens for  
2 Responsible Wildlife Management v. State, 149 Wn.2d 622,  
3 632, 71 P.2d 644 (2003); See also Washington State Grange  
4 v. Locke, No. 75384-9 (2005)(citation not available yet).

5 In addition, in ATU, one issue raised was whether the  
6 title of I-695 adequately reflected the subject of the  
7 initiative. ATU, 142 Wn.2d at 192. The State Supreme Court  
8 first discussed the meaning of the term 'tax' as defined  
9 in the text of I-695 and then compared that definition to  
10 the common and ordinary meaning of 'tax' as used in the  
11 title. Id. 142 Wn.2d at 218-20, 222-23. The term 'tax'  
12 was defined, for the purposes of application of I-695, in  
13 the text of the initiative itself. Id. 142 Wn.2d at 218-  
14 19. Once the court had established the meaning of the term  
15 'tax' as defined in the text of I-695, its ultimate inquiry  
16 was 'whether, for purposes of the article II, § 19  
17 subject-in-title rule, the term 'tax' had a broader meaning  
18 than its commonly understood, traditional meaning.' Id.  
19 142 Wn.2d at 223.

20 The court concluded that the I-695 definition was  
21 broader than the common and ordinary meaning of the term.  
22 Id. 142 Wn.2d at 226. Therefore, the title of the initiative  
23 did not adequately reflect the contents of the initiative.  
24 The court affirmed the trial court's holding that I-695  
25

1 violated the subject-in-title rule of article II, § 19 on  
2 the basis that the ballot title of I-695 states "[s]hall  
3 voter approval be required for any tax increase" without  
4 any indication in the title that 'tax' has a meaning broader  
5 than its common meaning. "Nothing about this ballot title  
6 gives any notice that would indicate to the voters that  
7 the contents of the initiative would include voter approval  
8 for charges other than taxes or suggest inquiry into the  
9 act be made to learn the broad meaning of 'tax.'" Id. 142  
10 Wn.2d at 227.

11 Thus, after comparing the common and ordinary meaning  
12 of the word 'tax,' to the broader meaning assigned to the  
13 term in the text of the initiative, id. at 220, 222, 225-  
14 27, the ATU court concluded that the ballot title was  
15 misleading because the average voter would not anticipate  
16 the broader application of the initiative to fees that  
17 ordinarily fell outside of the definition of tax. In  
18 conclusion, the court held "the title fail[ed] to disclose  
19 that the term 'tax' [did] not have its common meaning in  
20 the body of the initiative. The disparity between the title  
21 and the text fail[ed] to notify voters of the breadth of  
22 the laws reach."

23 Here, the ballot title of I-593 states "Shall criminals  
24 who are convicted of "most serious offenses" on three  
25

1 occasions be sentenced to life in prison without parole?"  
2 Id. APPENDIX B. The voters pamphlet states, "Under 593,  
3 anyone convicted of a third violent offense goes to prison  
4 for life. .... In aiming at three time violent offenders,  
5 it targets the "worst of the wrost" criminals ...." Id.  
6 There is no doubt the phrase 'most serious offense' in the  
7 ballot title means "three violent offenses." Therefore,  
8 the 'official subject' of I-593 is "three-time violent  
9 persistent offenders." If there is any DOUBT about the  
10 subject being "three-time violent persistent offenders,"  
11 see APPENDIX D - CAMPAIGN SHEET & INSTRUCTIONS FOR FOLDING  
12 AND MAILING PETITION. The campaign sheet states, "INITIATIVE  
13 593 / FOR CRIMINALS IT'S THREE STRIKES, YOU'RE OUT! ...  
14 Initiative 593 will put three-time violent offender's AWAY  
15 FOR LIFE. No parole, no furloughs, no work release." Id.  
16 APPENDIX D (emphases in underline added).

17 After comparing the narrow and restricted meaning of  
18 the phrase 'most serious offense,' as used in the campaign  
19 for gaining signatures, ballot title and expressed in the  
20 voters pamphlet, to the broader meaning in the text of the  
21 initiative, it is clear that the ballot title was misleading  
22 because the average voter would not anticipate the broader  
23 application of the phrase meant the list of specified most  
24 serious offenses 'in the text' included non-violent offenses.  
25

1 See APPENDIX A - COMPARE THE BALLOT TITLE & VOTER'S PAMPHLET  
2 WITH THE TEXT OF I-593, Section 3-(21)(a-u). Then note  
3 that Section 3 (21)(m)(promoting prostitution in the First  
4 Degree/RCW 9A.88.070) is a "non-violent" offense. See  
5 APPENDIX E - Sentencing Worksheet, PROMOTING PROSTITUTION,  
6 FIRST DEGREE RCW 9A.88.070, Class B Felony, "NonViolent,"  
7 Adult Sentencing Guidelines Manual 2003, III-159.

8 Here, similar to the violation in ATU, the ballot title  
9 failed to disclose that the term 'most serious offense'  
10 did not have the same meaning in the body of the initiative.  
11 The disparity between the restricted meaning in the title,  
12 and the broader meaning in the text, failed to notify voters  
13 of the breadth of the laws reach. The voting public had  
14 no idea a person could be struck out and receive a life  
15 sentence without the possibility of release or parole for  
16 a non-violent offense.

17 The subject of I-593 is clearly expressed in the title,  
18 criminals convicted of 'most serious offenses' on three  
19 occasions means "three-time violent persistent offenders."  
20 Therefore, I-593's title must indicate to the average voter  
21 that the body of the Act has to do with sentencing "three-  
22 time violent persistent offenders" to life imprisonment  
23 without possibility of release or parole. The title fails  
24 miserably. It is determinative that the title, "Shall  
25

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -30-

1 criminals who are convicted of 'most serious offenses' on  
2 three occasions ..." is not sufficient to notify members  
3 of the legislature and public of the Act's substantive effect  
4 in that it does not inform even the most intelligent, astute  
5 reader that the effect of the Act includes non-violent  
6 offenses. I-593's ballot title is constitutionally  
7 insufficient because it fails to give notice to an inquiring  
8 mind, the scope and purpose of the law, that sending  
9 "three-time violent persistent offender's" to prison for  
10 life, no parole, no furloughs, no work release, really meant  
11 non-violent offenders as well. Id. APPENDIX B - Section  
12 3, (21)(m), and E. Even an average voter with an inquiring  
13 mind who understood the meaning of the term "most serious  
14 offense" in the title meant "three-time violent persistent  
15 offenders" was the subject of the Act, and who delved into  
16 the body of the Act itself, would have no clue the list  
17 of 'most serious offenses' (Section 3, (21)(a-u)) contained  
18 non-violent offenses.

19 g. I-593, Section 3 (21)(m) violates the subject-in-title  
20 rule of Article II, § 19 because use of the term 'most  
21 serious offense' in the title provides insufficient  
notice of what the contents of the measure includes.

22 The second requirement of section 19 is that the subject  
23 of the act must be expressed in the title. ATU, 142 Wn.2d  
24 at 207, 217. The purpose of this provision is to ensure  
25

1 the legislature and the public are on notice as to what  
2 the contents of the act are. Id. This requirement has  
3 particular importance in the context of initiatives since  
4 voters will often make their decision based on the title  
5 of the act alone, without ever reading the body of it.  
6 Id. A title complies with this requirement if it gives  
7 notice to voters which would lead to an inquiry into the  
8 body of the act or indicates the scope and purpose of the  
9 law to an inquiring mind. Id.

10 Washington has long recognized that, 'the object of  
11 the constitutional requirement that the subject of an act  
12 shall be expressed in the title is that no person may be  
13 deceived as to what matters are being legislated upon.'  
14 Thayer v. Snohomish Logging Co., 101 Wash. 458, 461, 172  
15 P. 552 (1918)(citing Seymour v. City of Tacoma, 6 Wash.  
16 138, 32 P. 1077 (1893). Article II, § 19 is designed to  
17 prevent "surprise or fraud upon the [voting public] by means  
18 of provisions in [initiatives] of which the title gave no  
19 intimation, and which might therefore be overlooked and  
20 carelessly and unintentionally adopted ...." DeCano, 7  
21 Wn.2d at 626 (quoting 1 Thomas M. Cooley, A Treatise on  
22 the Constitutional Limitations, ch. VI, at 296 (8th Ed.  
23 1927)).

24 Here, Defendant BROCK contends that Section 3 (21)(m)  
25

1 (promoting prostitution in the First Degree/9A.88.070) of  
2 I-593 violates the subject-in-title rule of Article II,  
3 § 19 because it is a "non-violent" offense and falls squarely  
4 outside the scope of the 'restrictive' ballot title.

5 As previously discussed in part II, d., supra (p. 16),  
6 a restrictive title "is one where a particular part or branch  
7 of a subject is carved out and selected as the subject of  
8 the legislation." Gruen v. State Tax Comm'n., 35 Wn.2d  
9 1, 23, 211 P.2d 651 (1949). A restrictive title will not  
10 be regarded as liberally (as a general title) and provisions  
11 not fairly within it will not be given force. State ex  
12 rel. Toll Bridge Auth. v. Yelle, 32 Wn.2d 13, 26, 200 P.2d  
13 467 (1948). Moreover, a restrictive title expressly limits  
14 the scope of the act to that expressed in the title. Blanco  
15 v. Sun Ranches, 38 Wn.2d 894, 90102, 234 P.2d 499, 235 P.2d  
16 830 (1951); Daviscourt v. Peistrup, 40 Wn.App. 433, 439-440,  
17 698 P.2d 1093 (1985).

18 Here, the ballot title of I-593 carves out and selects  
19 "three-time violent persistent offenders" as the subject  
20 of the initiative; therefore, its scope is expressly limited  
21 to imposing a life sentence without the possibility of  
22 release or parole on criminals convicted of a "third violent  
23 offense."

24 Rules of statutory construction apply to initiatives.  
25

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -33-

1 Seeber v. Wash. State Pub. Disclosure Comm'n., 96 Wn.2d  
2 135, 139, 634 P.2d 303 (1981); Gibson v. Dep't of Licensing,  
3 54 Wn.App. 188, 192, 773 P.2d 110 (1989). Thus, in  
4 determining the meaning of a statute enacted through the  
5 initiative process, the court's purpose is to ascertain  
6 the collective intent of the voter's who, acting in their  
7 legislative capacity, enacted the measure. Wash. State  
8 Dep't of Revenue v. Hoppe, 82 Wn.2d 549, 552, 512 P.2d 1094  
9 (1973). Where the voter's intent is clearly expressed in  
10 the statute, the court is not required to look further.  
11 Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n.,  
12 133 Wn.2d 229, 242, 943 P.2d 1358 (1997); City of Tacoma  
13 v. State, 117 Wn.2d 248, 356, 816 P.2d 7 (1991).

14 However, when ambiguous as to what the proposed  
15 initiative actually is, "arguments made in the voters  
16 pamphlets for and against the initiative might be considered  
17 by the court in determining the purpose and intent of the  
18 act." Bayha v. Pub. Util. Dist. No. 1 of Grays Harbor  
19 County, 2 Wn.2d 85, 98, 97 P.2d 614 (1939); ATU, 142 Wn.2d  
20 at 205-06; Thorne, 129 Wn.2d at 763 (...court may examine  
21 statements in the voters pamphlet in order to determine  
22 voters' intent). Here, looking at the body of the act only,  
23 there is no way to ascertain whether the collective intent  
24 of the voters' was to include "non-violent" offenses among  
25

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -34-

1 the list of 'most serious offenses' in Section 3 (21) of  
2 the Act. Clearly, the term "most serious offense" in the  
3 text of the act is ambiguous, in that it defines a broad  
4 list of offenses which include both "violent" and  
5 "non-violent" offenses. State ex rel. Royal v. Board of  
6 Yakima County Comm'rs., 123 Wn.2d 451, 459, 869 P.2d 56  
7 (1994)(an ambiguity exists if the language of the enactment  
8 is susceptible to more than one reasonable interpretation).  
9 The term 'most serious offense' in the text of the initiative  
10 can be interpreted to mean "violent offense" or "non-violent  
11 offense," and thus is susceptible to more than one reasonable  
12 interpretation. On the other hand, the term "most serious  
13 offense on three occasions" in the ballot title has a  
14 restricted meaning which is limited to three violent  
15 offenses. Was it the collective intent of the voters' to  
16 adopt a measure where a non-violent offense could be used  
17 to impose a life sentence?

18 To answer this question, the intent behind the enactment  
19 becomes relevant, and judicial interpretation should focus  
20 on the collective intent of the people in enacting the law.  
21 City of Spokane v. Taxpayers of City of Spokane, 111 Wn.2d  
22 91, 97-98, 758 P.2d 480 (1988). Statements contained in  
23 the official voters pamphlet may be considered to ascertain  
24 the collective purpose and intent of the people. Hi-Starr,

1 Inc. v. Liquor Control Board, 106 Wn.2d 455, 460, 722 P.2d  
2 808 (1986). Here, the restricted meaning of the term "most  
3 serious offense on three occasions," as used in the title,  
4 best reflects the intent of the voters in enacting the law.  
5 In relevant part, the law itself contains the following  
6 statement of "Findings and intent":

7 (1) The people of the state of Washington find and declare  
8 that:

9 (a) Community protection from persistent offenders is a  
10 priority for any civilized society.

11 (c) Punishments for criminal offenses should be proportionate  
12 to both the seriousness of the crime and the prior criminal  
13 history.

14 (2) By sentencing three-time, most serious offenders to  
15 prison for life without the possibility of parole, the people  
16 intend to:

17 (a) Improve public safety by placing the most dangerous  
18 criminals in prison.

19 Id. APPENDIX B - TEXT OF INITIATIVE, Section 1, p. 14  
20 (emphasis in underline added). The voters pamphlet gave  
21 this additional explanation:

22 This initiative would create a new category of "persistent  
23 offenders" consisting of persons who have been convicted  
24 three or more times of "most serious crimes." ... When  
25 a "persistent offender" is sentenced, the initiative would  
26 require the Judge to impose a sentence of total confinement  
for life without possibility of parole.

27 Id. APPENDIX B - Voters Pamphlet, p. 5 (emphasis in  
28 underlined added).

1 The statement in favor of the Initiative stated in  
2 part:

3 INITIATIVE 593 GETS TOUGH ON VIOLENT CRIME

4 Under 593, anyone convicted of a third violent offense goes  
5 to prison for life. No early release. No parole. No  
furloughs. No loopholes. Three strikes and you're out.

6 In aiming at three time violent offenders, it targets the  
7 "worst of the worst" criminals who most deserve to be behind  
bars.

8 Id. APPENDIX B - Voters Pamphlet, p. 4 (emphasis in underline  
9 added); see also APPENDIX D - CAMPAIGN ADVERTISEMENT, which  
10 states, "Initiative 593 / For Criminals its Three Strikes,  
11 You're Out! ... Initiative 593 will put three-time violent  
12 offenders AWAY FOR LIFE. No parole, no furloughs, no work  
13 release." (emphasis in underline added).

14 Both the language of the statute and the underlying  
15 intent of the statute, as shown through the law itself,  
16 campaign advertisement, and voters pamphlet, show that the  
17 people in enacting the Persistent Offender Accountability  
18 Act (I-593) intended that it provide a mandatory life  
19 sentence based on a third violent conviction; and the term  
20 'most serious offense on three occasions' in the ballot  
21 title is not broad enough to encompass provision permitting  
22 a mandatory life sentence based upon a non-violent offense.

23 The ballot title of I-593 states, "Shall criminals who  
24 are convicted of 'most serious offenses' on three occasions,  
25

1 be sentenced to life in prison without parole?" In State  
2 v. Thorne, the Washington Supreme Court concluded that  
3 because this title "refers only to criminals who have  
4 committed serious offenses on three occasions," the  
5 initiative is "restrictive," meaning that "the provisions  
6 which are not fairly within it will not be given force."  
7 Thorne, 129 Wn.2d at 757-58. In Thorne the Court stated  
8 that it "need not decide whether the part of the Initiative  
9 which concerns early release is beyond the scope of the  
10 ballot title .... Id. (emphasis added). The Court did,  
11 however, suggest that any parts of the initiative which  
12 do not relate to persistent offenders were not legitimately  
13 included: "The ballot title to I-593 contains only one  
14 subject, persistent offenders; hence, any provisions in  
15 the law which relate to that subject are valid under article  
16 II, § 19." Id.

17 Implicit in this statement is that I-593 provisions  
18 which are unrelated to "three-time violent persistent  
19 offenders" are invalid, and accordingly, should be stricken.  
20 Power, Inc. v. Huntly, 39 Wn.2d 191, 200, 235 P.2d 173  
21 (1951)(quoting Jackson v. State ex rel. S. Bend Motor Bus  
22 Co., 194 Ind. 248, 258, 142 N.E. 423 (1924)("if only one  
23 subject is embraced in the title, then any subject not  
24 expressed in the title that is embraced in the body of the  
25

1 act, may be rejected, and the part that is expressed in  
2 the title should be allowed to stand ...."). As shown,  
3 the subject of I-593 is "three-time violent persistent  
4 offenders." The collective intent of the people was to  
5 strike criminals out based on a third violent conviction.  
6 Thus, any provisions in the law which are NOT RELATED to  
7 "three-time violent persistent offenders" are invalid.  
8 E.g., State v. Cloud, 95 Wn.App. 606, 617-18, 976 P.2d 649  
9 (1999). Here, I-593 Section 3(21)(m)(promoting prostitution  
10 in the first degree) is a "non-violent" offense, is clearly  
11 NOT RELATED to the subject expressed in the restrictive  
12 title, and accordingly, must be stricken. The scope and  
13 purpose of the law is expressly limited to three violent  
14 convictions. Section 3(21)(m) is a non-violent offense  
15 and was not legitimately included.

16 I-593 Section 3(21)(m) is beyond the scope of the ballot  
17 title and was not legitimately included, therefore it  
18 violates Article II, § 19 and cannot be legally enforced.  
19 Thorne, 129 Wn.2d at 758 (citing State ex rel. Toll Bridge  
20 Auth. v. Yelle, 32 Wn.2d 13, 26, 200 P.2d 467 (1948)); See  
21 also Power, Inc. v. Huntley, 39 Wn.2d at 200 (where an act  
22 contains provisions not fairly encompassed within the title,  
23 such provisions are void); State v. Cloud, 95 Wn.App. at  
24 617-18 ("The ballot title to I-593 contains only one subject,  
25

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -39-

1 persistent offenders; hence, any provisions in the law which  
2 relate to that subject are valid under article II, § 19."  
3 Implicit in this statement is that I-593 provisions which  
4 are unrelated to persistent offenders are invalid, and  
5 accordingly, should be stricken. We hold that RCW  
6 9.94A.120(4) violates article II, § 19 of the Washington  
7 Constitution and cannot be enforced).

8 Because BROCK was sentenced under this unconstitutional  
9 provision (I-593, § 3(21)(m)), his persistent offender status  
10 and life sentence is void and must be reversed.

11 To illustrate even more fully that the title of the  
12 Act violates article II, § 19's purpose of providing notice,  
13 BROCK asserts the specific subject of I-593 was reasonably  
14 well known and understood by the public (three-time violent  
15 persistent offenders), and the drafters intentionally used  
16 specific terms with mass appeal (Three Strikes and You're  
17 Out! / I-593 will put three-time violent offenders away  
18 for life. / Under I-593, anyone convicted of a third-violent  
19 offense goes to prison for life. / In aiming at three-time  
20 violent offenders, it targets the worst of the worst. /  
21 Shall criminals who are convicted of most serious offenses  
22 on three occasions be sentenced to life?), only to  
23 unintentionally, carelessly and/or mistakenly broaden the  
24 title beyond its intended scope and purpose within the body  
25

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -40-

1 of the act by including non-violent offenses. (Recall,  
2 Article II, § 19 was designed to prevent "surprise or fraud  
3 upon the voting public by means of provisions ... which  
4 the title gave no intimation, and which might therefore  
5 be overlooked and carelessly and unintentionally adopted  
6 ...." DeCano, 7 Wn.2d at 626).

7 A conscientious voter who read every word of the text  
8 of I-593, the ballot title, the official explanation of  
9 the effect of the measure and the statement for the  
10 initiative would be surprised to learn that its impact  
11 included non-violent offenses. See AFFIDAVIT OF JERRY LEE  
12 BROCK IN SUPPORT OF CrR 7.8 MOTION TO VACATE POAA SENTENCE.  
13 Relying on the voter's pamphlet, no voter could possibly  
14 have suspected non-violent offenses were included among  
15 the list of most serious offenses. The voter's pamphlet  
16 unequivocally, unconditionally, and categorically promised  
17 the voters that "I-593 gets tough on violent crime, and  
18 anyone convicted of a third violent offense goes to prison  
19 for life, no early release, no parole, no furloughs and  
20 no loopholes -- three strikes and you're out." Id. APPENDIX  
21 B - Voters Pamphlet, p. 4. There was absolutely no mention  
22 that non-violent offenses were included. That the drafters  
23 elected to withhold any hint of the inclusion of non-violent  
24 offenses among the list of most serious offenses from the  
25

1 voters means that the power to impose a life sentence for  
2 a non-violent offense was neither submitted to nor approved  
3 by the voters.

4 The failure to provide this notice precludes its  
5 existence as a matter of law as the voters could not approve  
6 a power that was never submitted to them; a power which  
7 would substantially change the intended scope and purpose  
8 of the law. Louthan v. King County, 94 Wn.2d 422, 430,  
9 617 P.2d 977 (1980)("What is authorized depends upon what  
10 is submitted to the electorate."). Voters simply could  
11 not, and did not, approve something substantially different  
12 than what was expressly and without qualification represented  
13 in the voters pamphlet. The ballot title of I-593 carves  
14 out and specifically selects "three-time violent persistent  
15 offenders" as the subject of the initiative; therefore,  
16 its scope and purpose is expressly limited to imposing a  
17 life sentence on criminals convicted of a "third violent  
18 offense." Non-violent offenses were not included.

19 Therefore, the ballot title does not signal to the  
20 average voter that the list of most serious offenses  
21 enumerated in Section 3(21) of the Act include non-violent  
22 offenses, offenses that are not related to, nor fall within,  
23 the limited subject of the act. Swedish Hosp. v. Dep't  
24 of Labor & Indus., 26 Wn.2d 819, 822, 830, 832, 176 P.2d  
25

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -42-

1 429 (1947)(title 'An Act giving workman's compensation  
2 benefits to persons engaged in hazardous and extrahazardous  
3 occupations in charitable institutions' violated article  
4 II, § 19 because it did not give notice that provisions  
5 concerning nonprofit organizations and institutions were  
6 encompassed within the act).

7 Here, similar to Swedish Hospital, the title "Shall  
8 criminals who are convicted of "most serious offenses" on  
9 three occasions be sentenced to life in prison without  
10 parole," violates Article II, § 19 because it does not give  
11 notice that non-violent offenses are encompassed within  
12 provision 3(21) mandating a life sentence for three violent  
13 convictions only. The title gives no notice that there  
14 is embodied in the act matters not embraced within the  
15 meaning of the term "most serious offense on three  
16 occasions," as that term was defined by the voters pamphlet  
17 and commonly understood by the average voter. Literally,  
18 nothing about the ballot title gives any notice that would  
19 indicate to the voters that the contents of the initiative  
20 would include voter approval for a life sentence to imposed  
21 for a non-violent offense. Cf., ATU, DeCano and Petroleum  
22 Lease Properties, supra. Any voter who voted for I-593  
23 would be surprised to learn that a life sentence could be  
24 imposed for a non-violent offense; thus, the ballot title  
25

26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -43-

1 does not fairly apprise the legislature and public of the  
2 substantive consequences of the Act, and it violates the  
3 subject-in-title requirement of Article II, § 19.

4 The next question is whether, due to unconstitutionality  
5 under the subject-in-title rule, I-593 is unconstitutional  
6 in its entirety. The ballot title contains only one subject,  
7 sentencing three-time persistent offenders to life in prison  
8 for a third violent conviction. Any provision not fairly  
9 within this subject will not be given force. State ex rel.  
10 Toll Bridge Auth. v. Yelle, 32 Wn.2d at 26. I-593, Section  
11 3(21)(m)(Promoting Prostitution in the First Degree) is  
12 a non-violent offense, and was not fairly included within  
13 provision 3(21) mandating a life sentence for violent  
14 offenses only; therefore Section 3(21)(m) is invalid. An  
15 initiative is not unconstitutional in its entirety unless  
16 invalid provisions are unseverable and it cannot be  
17 reasonably believed that the enacting body would have passed  
18 one without the other, or unless elimination of the invalid  
19 part would render the remaining part useless to accomplish  
20 the Act's purpose. Gerberding v. Munro, 134 Wn.2d 188,  
21 197, 949 P.2d 1366 (1998); State v. Crediford, 130 Wn.2d  
22 747, 760, 927 P.2d 1129 (1996); Municipality of Metro. Seattle  
23 v. O'Brien, 86 Wn.2d 339, 348-49, 544 P.2d 729 (1976);  
24 Swedish Hospital, 26 Wn.2d at 832. A severability or saving

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -44-

S C A N N E D

1 clause may provide the assurance that the enacting body  
2 would have enacted remaining sections even if others are  
3 found invalid. Gerberding, 134 Wn.2d at 197; Swedish  
4 Hospital, 26 Wn.2d at 833.

5 I-593 has a saving clause. Id. APPENDIX B, Text of  
6 Initiative, Section 6, p. 22. BROCK asserts the provisions  
7 of I-593 are severable such that passage of valid portions  
8 may be presumed, and elimination of those provisions which  
9 are unconstitutional would not render the remainder of the  
10 Act incapable of accomplishing the collective purpose and  
11 intent of imposing a life sentence for a third violent  
12 conviction. The collective purpose and intent of the act  
13 and voters was that a criminal convicted of a third violent  
14 offense (termed "most serious offense on three occasions"  
15 in the Ballot Title) would be classified a "persistent  
16 offender" and sentenced to life in prison without the  
17 possibility of release or parole; hence, "Three Strikes  
18 and You're Out!" Non-violent offenses are not encompassed  
19 within the scope and purpose of the law.

20 From this it can be presumed that any 'violent offenses'  
21 which are encompassed within provision 3(21) would have  
22 been enacted by the people, and therefore invalidation of  
23 provision 3(21)(m)(a non-violent offense) would not render  
24 the remaining provisions invalid. For example, in Petroleum

25  
26 CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -45-

1 Lease Properties, the court said that the act was  
2 unconstitutional so far as it attempted to bring oil and  
3 gas leases within the scope of the title. In DeCano, the  
4 court similarly held that so far as the act tried to bring  
5 within its scope individuals not falling within the commonly  
6 understood meaning of 'alien,' it was unconstitutional.

7 Here, similar to Petroleum Lease Properties and DeCano,  
8 I-593 is unconstitutional so far as it attempts to bring  
9 a 'non-violent' offense (Section 3(21)(m)) within the scope  
10 of the title; a restrictive title that expressly limits  
11 persistent offender classification to criminals convicted  
12 of a third violent offense; thus, any remaining provisions  
13 under Section 3(21) which relate to 'violent offenses' are  
14 valid because it can be presumed the people would have  
15 enacted them.

16 **G. CONCLUSION**

17 Based on the foregoing reasons I-593, Section 3(21)(m)  
18 violates Article II, § 19 of the Washington State  
19 Constitution and cannot be enforced. Because BROCK was  
20 sentenced under this unconstitutional provision, his  
21 persistent offender classification and life sentence must  
22 be reversed.

23 DATED this 21th day of JULY, 2005.

24 Respectfully Submitted,

25 *Mr. Jerry L. Brock #632588*

26 JERRY LEE BROCK, DOC# 632588  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326-9723

CrR 7.8 / MOTION TO  
VACATE POAA SENTENCE -46-

S C A N N E D

# APPENDIX

## A

APPENDIX

A

SCANNED

SUPERIOR COURT OF WASHINGTON  
COUNTY OF THURSTON

FILED

STATE OF WASHINGTON, Plaintiff,

No. 95-1-402-8

FILED

vs.  
JERRY L. BROCK

JUDGMENT AND SENTENCE (JS)

Defendant.

- Prison  
 Jail One Year or Less  
 First Time Offender  
 Special Sexual Offender Sentencing Alternative  
 Special Drug Offender Sentencing Alternative

SID: WA11230537

If no SID, use DOB:

I HEARING BY DEPUTY

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 7/12/95  
(Date)  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	CHILD MOLESTATION FIRST DEGREE	9A.44.083	3/27/95

as charged in the (Amended) Information.

Additional current offenses are attached in Appendix 2.1.

A special verdict/finding for use of firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.125, 310

A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.125, 310

A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_ RCW 9.94A.127

A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) \_\_\_\_\_ RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public transit stop shelter.

The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

MICROFILMED

SCANNED

JUDGMENT AND SENTENCE (Felony)  
(RCW 9.94A.110, .120)(WPF CR 84.0400 (7/95))

Page 1 of 10

2

IASS

1100

7/7/79

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 STATUTORY RAPE 3°	1/29/80	Pierce/WA	7/13/79	A	
2 PROMOTE PROSTIT 1°	2/13/80	Pierce/WA	11/15/79	A	
3 VUCSA - Delivery	2/13/80	Pierce/WA	11/15/79	A	
4 VUCSA - Poss Cocaine	6/14/89	King/WA	9/11/88	A	
5 Theft 1°	11/23/88	King/WA	10/4/88	A	

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus Enhancement for Firearm (F), other deadly weapon finding (D) or VUCSA (V) in a protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
I		X	Persistent offender			LIFE

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence

[ ] above [ ] within [ ] below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: \_\_\_\_\_

SCANNED

III JUDGMENT

WHOLESALE

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [ ] The Court DISMISSES Counts \_\_\_\_\_

3.3 [ ] The defendant is found NOT GUILTY of Counts \_\_\_\_\_

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE	\$ _____	Restitution to: _____	
RTN/RJN	\$ _____	Restitution to: _____	
	\$ _____	Restitution to: _____	(Name and Address—address may be withheld and provided confidentially to Clerk's Office).
PCV	\$ 100.00	Victim assessment	RCW 7.68.035
CRC	\$ _____	Court costs, including	RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190
		Criminal filing fee \$ _____	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Other \$ _____	
PUB	\$ _____	Fees for court appointed attorney	RCW 9.94A.030
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.030
FCM	\$ _____	Fine RCW 9A.20.021; [ ] VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LD/FGD	\$ _____	Drug enforcement fund of _____	RCW 9.94A.030
NTF/SAD/SDI	\$ _____	Crime lab fee [ ] deferred due to indigency	RCW 43.43.690
CLF	\$ _____	Extradition costs	RCW 9.94A.120
EXT	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	Other costs for: _____	
	\$ 100.00	TOTAL	RCW 9.94A.145

[ ] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing: [ ] shall be set by the prosecutor [ ] is scheduled for \_\_\_\_\_

[ ] RESTITUTION. Schedule attached, Appendix 4.1.

[ ] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant CAUSE NUMBER (Victim name) (Amount-\$)

RJN

[ ] The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

SCANNED

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than

\$ \_\_\_\_\_ per month commencing \_\_\_\_\_ . RCW 9.94A.145

[ ] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

[ ] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73

4.2 ~~X~~ HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

\*X DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperats in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120

4.4 The defendant shall not have contact with REGINA L. RUSH, DOB 10/29/83 (name, DOB) *and her family* including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE of years (not to exceed the maximum statutory sentence) *Defendant*

~~X~~ Domestic Violence Protection Order or Anti-Harassment Order is attached as Appendix 4.4.

4.5 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
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V. NOTICES AND SIGNATURES

- 5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 LENGTH OF SUPERVISION. The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145
- 5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030
- 5.4 RESTITUTION HEARING.  
 Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200

Cross off if not applicable:

- 5.6 FIREARMS. You may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047
- 5.7 SEX OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense, you are required to register with the sheriff of the county of the state of Washington where you reside. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.  
 If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.  
 If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 10 days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county and you must give written notice of your change of address to the sheriff of the county where last registered, both within 10 days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

5.8 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: November 3, 1995

Jean E. Meyn  
 Deputy Prosecuting Attorney  
 WSBA # 15990  
 Print name: JEAN E. MEYN

John Sinclair  
 Attorney for Defendant  
 WSBA # 9660  
 Print name: JOHN SINCLAIR

W. T. McPhee  
 JUDGE - Print name: McPhee  
Joseph C. Block  
 Defendant

Translator signature/Print name: \_\_\_\_\_  
 I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

SCANNED

CAUSE NUMBER of this case: 95-1-402-8

I, \_\_\_\_\_, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF DEFENDANT**

SID No. WA11230537  
(If no SID take fingerprint card for State Patrol)

Date of Birth 7/8/59

FBI No. 26651T5

Local ID No. \_\_\_\_\_

PCN No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, SSN, DOB: \_\_\_\_\_

Race:  
 Asian/Pacific Islander     Black/African-American     Caucasian  
 Native American     Other: \_\_\_\_\_

Ethnicity:                      Sex:  
 Hispanic                       Male  
 Non-Hispanic                   Female

**FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints

and signature thereto. Clerk of the Court: *Stephanie M. [unclear]*, Deputy Clerk. Dated: 11-03-85

DEFENDANT'S SIGNATURE: \_\_\_\_\_

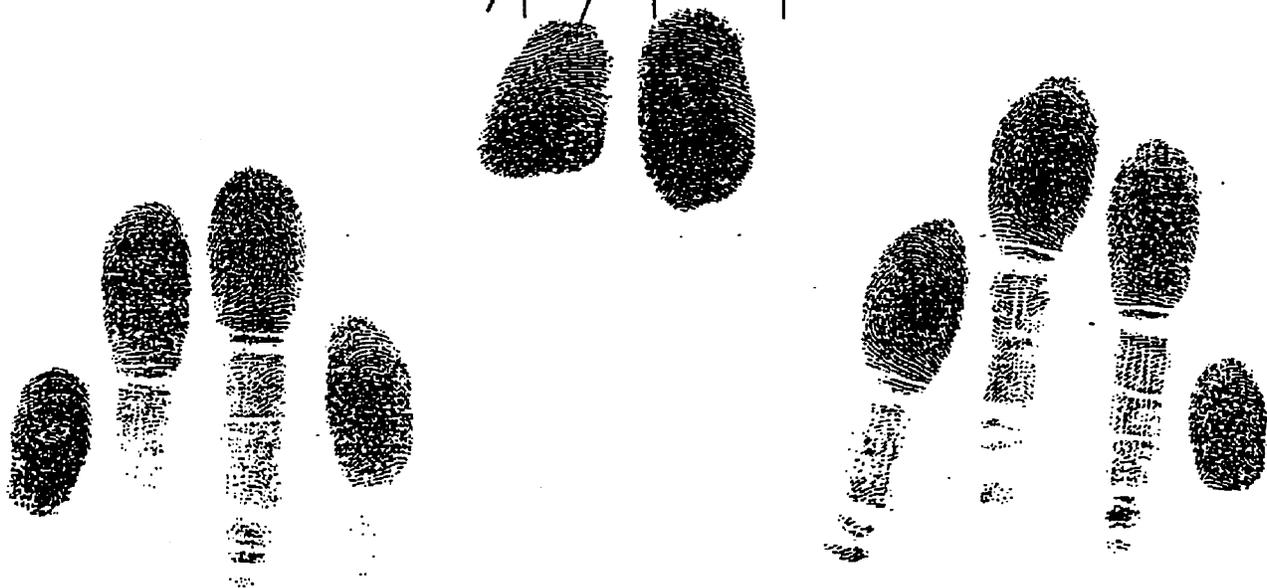
*[Handwritten Signature]*

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



JUDGMENT AND SENTENCE (Felony)

(RCW 9.94A.110, .120)(WPF CR 84.0400 (7/95)) S E A N N E D  
MICROFILMED

SUPERIOR COURT OF WASHINGTON  
 COUNTY OF

STATE OF WASHINGTON, Plaintiff,

No. 95-1-402-8

vs.  
JERRY L. BROCK  
 Defendant

**ADDITIONAL CURRENT OFFENSES, CRIMINAL  
 HISTORY AND CURRENT OFFENSE SENTENCING DATA  
 APPENDIX 2.1, 2.2 and 2.3, JUDGMENT AND SENTENCE  
 (APX)**

2.1 The additional current offenses of defendant are as follows:

COUNT	CRIME	RCW	DATE OF CRIME

2.2 The defendant has the following prior criminal convictions (RCW 9.94A.100):

#	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
6	BURGLARY 1°	5/24/91	King/WA	4/1/91	A	

2.3 The additional current offense sentencing data is as follows:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus Enhancement for Firearm (F), or other deadly weapon finding (D) or VUCSA (V) in a zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM

[ ] See additional sheets for more current offenses, criminal history and current offense sentencing data.

SCANNED

JUDGMENT AND SENTENCE (Appendix 2.1, 2.2, 2.3)  
 (RCW 9.94A.110, .120)(WPF CR 84.0400 (7/95))

Page 8 of 10

9

MICROFILMED

SUPERIOR COURT OF WASHINGTON  
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

vs.  
JERRY L. BROCK  
Defendant.

No. 95-1-402-8

ORDER FOR PROTECTION FROM CIVIL HARASSMENT  
(UNLAWFUL HARASSMENT) (ORAH)

APPENDIX 4.4. JUDGMENT AND SENTENCE

This Order for Protection from Civil Harassment (Unlawful Harassment) is entered as an appendix to the Judgment and Sentence. The victim protected by this order is: REGINA L. RUSH, DOB 10/29/83

Any willful disobedience of the above provisions of this order with actual notice of its terms shall subject the Defendant to criminal penalties. Willful disobedience of this order may also subject the Defendant to being found in contempt of court.

L FINDINGS

1.1 Based upon the Information, testimony, if any, and case record, the court finds that the Defendant committed unlawful harassment based on the following:

- Current contact between the Defendant and above-named victim was initiated by  the Defendant only  
[ ] by both the Defendant and the above-named victim.
- The Defendant has been given clear notice that all further contact with the above-named victim is unwanted.
- [ ] The Defendant's course of conduct appears designed to alarm, annoy or harass the above-named victim.
- [ ] The Defendant is not acting pursuant to any statutory authority.
- The Defendant's course of conduct unreasonably interferes with the above-named victim's privacy.
- [ ] The Defendant's course of conduct creates an intimidating, hostile, or offensive living environment for the above-named victim.
- [ ] Contact by the Defendant with the above-named victim, or the victim's family, has not been limited in any manner by any previous court order.
- [ ] Other: \_\_\_\_\_

1.2 The court further finds that good cause has been shown to enter an Anti-Harassment Order.

II. ORDER

IT IS ORDERED THAT:

2.1 The Defendant is RESTRAINED from:

- making any attempts to contact the above-named victim.
- making any attempts to keep the above-named victim under surveillance.
- going within 100 yards (distance) of the above-named victim's residence and workplace, and school
- [ ] other: \_\_\_\_\_

It is further ordered that the Clerk of the Court shall forward a copy of this order (Appendix 4.4) on or before the next judicial day to: \_\_\_\_\_ (X) County Sheriff's Office [ ] Police Department where the above-named victim lives, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

THIS ORDER FOR PROTECTION EXPIRES ON is in effect for the LIFE of defendant

Done in Open Court in the presence of the Defendant this date: November 8, 1995

W. Thomas McPhee

JUDGE Print name:

Wm. THOMAS MCPHEE

Jean E. Meyn  
Deputy Prosecuting Attorney  
WSBA # 15990  
Print name: JEAN E. MEYN

John Sinclair  
Attorney for Defendant  
WSBA # 9660  
Print name: JOHN SINCLAIR

Wm. Thomas McPhee  
Defendant

A completed law enforcement information sheet must be attached for identification purposes by the police or sheriff.

MICROFILMED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON, )  
 )  
 Plaintiff, ) NO. 95-1-402-8  
 )  
 vs. )  
 )  
 JERRY L. BROCK, ) WARRANT OF COMMITMENT  
 ) ATTACHMENT TO JUDGMENT  
 ) AND SENTENCE (PRISON)  
 Defendant. )

DOB: 7/8/59  
SID: WA11230537  
RACE: B  
SEX: M  
BOOKING NO: B49905

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant JERRY L. BROCK has been convicted in the Superior Court of the State of Washington for the crime(s) of:

CHILD MOLESTATION IN THE FIRST DEGREE

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

W. J. Gould  
JUDGE

BETTY J. GOULD

CLERK

By: Rolanne Moulton  
DEPUTY CLERK

WARRANT OF COMMITMENT  
ATTACHMENT TO JUDGMENT  
AND SENTENCE (PRISON)

SCANNED

INDEXED

MICROFILMED

12

# APPENDIX

## B

APPENDIX  
**B**

SCANNED

**INTRODUCTION TO THE 1993 VOTERS PAMPHLET**

It is my pleasure to introduce you to the 1993 Washington State Voters Pamphlet. I am especially pleased to extend a very special welcome to the 348,000 new voters who have registered under the state's "Motor Voter" program at numerous locations around Washington.

As you will note by the cover, this year's pamphlet commemorates the Sesquicentennial of the Oregon Trail. From 1843 to the early 1860s, more than 300,000 emigrants traveled over the 2,000-mile Oregon Trail to start a new life in the Pacific Northwest. Many of these travelers branched off the Trail in northern Oregon to head for what is now the state of Washington—founding towns such as Walla Walla, New Market (Tumwater), Clewiston (near Chehalis), Sallisacoom and Lynden.

These emigrants and their descendants brought to the West new thoughts about government and citizen rights. They established a unique state government which diffused power among a host of elective offices, and gave greater rights and privileges to the public.

This voters pamphlet is a direct result of the populist movement which grew from the new ideas of those who came here along the Oregon Trail. Washington's Constitution gives its citizens the right to a voters pamphlet containing information on issues appearing at each general election. Our state was one of the first in the nation to provide a voters pamphlet to its citizens.

And we continue on with this heritage of bringing new ideas and innovative programs to make state government and our elections system more accessible and convenient for citizens. In addition to Motor Voter, we have also seen reforms such as the expansion of the ongoing absentee ballot program to all citizens, a reduction in the 30-day voter registration deadline, and, in the coming year, voter registration by mail.

These efforts reflect our state's rich tradition of promoting voter awareness and voter participation. In the coming days, I urge you to join in this tradition by making use of this voters pamphlet. It contains extensive information on the measures appearing on the statewide ballot and on election procedures and voting. Please study it thoroughly, and be sure to cast your vote on November 2.

With best wishes,

  
RALPH MUNIRO  
Secretary of State



This pamphlet was prepared by the State's Adult Assessment Program. For more information, contact the Department of Social Services, 1100 North 36th Street, Olympia, WA 98501.

**TABLE OF CONTENTS**

Introduction .....	2	Text of State Measures .....	14
Voter's Checklist .....	3	Voting in the State of Washington .....	33
Initiative Measure 583 .....	4	Voter Information .....	34
Initiative Measure 601 .....	6	Absentee Voting .....	35
Initiative Measure 602 .....	8	Absentee Ballot Requests .....	36
House Joint Resolution 4200 .....	10	Comment Sheet .....	37
House Joint Resolution 4201 .....	12	Organic Act of 1853 .....	38

**VOTER'S CHECKLIST**

	YES	NO
<b>INITIATIVE MEASURE 583</b> Shall criminals who are convicted of "most serious offenses" on three occasions be sentenced to life in prison without parole?	<input type="checkbox"/>	<input type="checkbox"/>
<b>INITIATIVE MEASURE 601</b> Shall state expenditures be limited by inflation rates and population growth, and taxes exceeding the limit be subject to referendum?	<input type="checkbox"/>	<input type="checkbox"/>
<b>INITIATIVE MEASURE 602</b> Shall state revenue collections and state expenditures be limited by a factor based on personal income, and certain revenue measures repealed?	<input type="checkbox"/>	<input type="checkbox"/>
<b>HOUSE JOINT RESOLUTION 4200</b> Shall counties and public hospital districts be permitted to employ chaplains for their hospitals, health care facilities, and hospices?	<input type="checkbox"/>	<input type="checkbox"/>
<b>HOUSE JOINT RESOLUTION 4201</b> Shall the constitutional provision which gives jurisdiction in "cases in equity" to superior courts be amended to include district courts?	<input type="checkbox"/>	<input type="checkbox"/>
<b>LOCAL ELECTIONS</b>		

Secretary of State Toll-Free Hollines  
1-800-448-4881 TDD (Hearing Impaired) 1-800-422-8683

Printed on recycled paper.  
Please recycle this Voters Pamphlet!



# INITIATIVE MEASURE 593

TO THE PEOPLE

Note: The ballot title and explanatory statement were written by the Attorney General as required by law. The complete text of Initiative Measure 593 begins on page 14.

## Official Ballot Title:

Shall criminals who are convicted of "most serious offenses" on three occasions be sentenced to life in prison without parole?

## The law as it now exists:

Criminal sentencing is now governed by the Sentencing Reform Act (Chapter 9.94A RCW). The judge determines the sentence for each person convicted of a crime, based on standard sentencing ranges set down in the law. The

### Statement for

It's time to get tougher on violent criminals.

The problem is clear: the overwhelming majority of violent crime is committed by less than 10% of violent criminals. And most of them will re-offend again when released.

#### CURRENT STATE LAW IS MUCH TOO WEAK

Under current state laws, the average prison term recommended for a child molester with two previous sex felony convictions on his record is just 9 years, six months. *That's for a third offense.*

For someone convicted of 1st degree robbery with two violent felony convictions already on his record, the recommended sentence is just 5 years. That doesn't count time off for "good behavior."

Why let proven repeat offenders out to offend again? Let's make sure that nobody becomes their 4th, 5th or 6th victim.

#### INITIATIVE 593 GETS TOUGH ON VIOLENT CRIME

Under 593, anyone convicted of a third violent offense goes to prison for life. No early release. No parole. No furloughs. No loopholes. Three strikes and you're out.

Initiative 593 brings accountability and the certainty of punishment back to our criminal justice system. In aiming at three time violent offenders, it targets the "worst of the worst" criminals who most deserve to be behind bars. With 593 that's where they'll stay. Without it, most of them won't.

### INITIATIVE 593 SENDS THE RIGHT MESSAGE TO CRIMINALS

Not only does 593 keep our most serious offenders off the streets, it also sends a clear and unmistakable message to all other criminals in Washington: either obey the law or leave the state — for good.

People from all over the state are supporting 593 to make our streets and neighborhoods safer.

For more information, call (206) 462-7353.

### Rebuttal of Statement against

593's opponents claim that violent offenders can already be locked up for life. The problem is, they aren't. That will change when 593 becomes law. Three time serious felons will stay behind bars for life. Only a pardon issued by the Governor could authorize their release.

The crimes covered by 593 are serious, violent felonies, not "barfights" or car accidents. 593 keeps the "worst of the worst" in prison. Isn't that where they belong?

#### Voters Pamphlet Statement Prepared by:

JOHN CARLSON, Washington Institute for Policy Studies, KVI Radio; IDA BALLASIOTES, State Representative; BRIAN EBERSOLE, Speaker, House of Representatives.

Advisory Committee: HELEN HARLOW, Tennis Shoe Brigade; PAM ROACH, State Senator; JOHN LADENBURG, Pierce County Prosecutor; TERRY MANGAN, Spokane Police Chief; TOM CAMPBELL, State Representative.

standard sentence range is determined by calculating an "offender score," which takes into account the nature of the crime committed as well as prior convictions for other crimes. Prior convictions for serious offenders increase the "offender score" and the standard sentencing range if there is a later conviction. Under special circumstances the judge may give a sentence outside the sentencing range. Current law does not require a specific sentence for repeat offenders.

## The effect of Initiative Measure 593, if approved into law:

This Initiative would create a new category of "persistent offenders" consisting of persons who have been convicted three or more times of "most serious crimes." The Initiative specifies which crimes will be defined as "most serious crimes" (section 3 of the Initiative), essentially consisting of all class A felonies and all class B felonies involving harm

or threats of harm to persons. When a "persistent offender" is sentenced, the initiative would require the judge to impose a sentence of total confinement for life without possibility of parole. For the crime of aggravated murder in the first degree, the initiative would preserve present law allowing the death sentence in some cases.

"Persistent offenders" would not be eligible for community custody, earned early release time, furlough, detention, partial confinement, work crew, work release, or any other form of early release. Judges and correctional facilities would be authorized to warn about the consequences of becoming a "persistent offender." The governor could still issue pardons or clemency orders on a case-by-case basis, and would be required to issue periodic reports on the progress of any offenders released through pardons or clemency.

## Statement against

### INITIATIVE 593: REVIVING FAILED AND REJECTED LAWS

Washington used to have a law like "three strikes you're out." It didn't work. It was extremely costly, locked up people who didn't need to be locked up to protect us, and locked up people long past the age when they were a risk. Washington's citizens and legislature have wisely chosen *not* to endorse recent, similar proposals.

### INITIATIVE 593: VERY COSTLY, WITHOUT INCREASING OUR SAFETY

Repeat "serious offenders" after middle age are not the norm. 593 will unnecessarily result in expensive geriatric wards in our prisons for people who are long past the age when they are a threat.

593 needlessly forces us to spend nearly \$26,000 per person, per year, for an average of thirty years, to feed, clothe and house people who aren't a risk to us. Nearly \$800,000 for each person!

We can use current law *now* to put away, for a long time, those who need to be put away. 593 takes away the power to *choose* who should be locked up for life.

### INITIATIVE 593: INCLUDES OFFENSES NOT MERITING LIFE IMPRISONMENT

Proponents claim 593 only applies to "most serious" offenses. Not true! 593 also includes reckless car accidents with injuries, as well as bar fights if a blow accidentally, recklessly injures someone.

### INITIATIVE 593: NEEDLESSLY HIGH COST

593 falsely offers the appearance of a quick fix solution to a serious problem.

593 *won't* reduce crime. Repeat, serious offenders can *already* be locked up until they are no longer a danger.

593 *will* increase your taxes, or force the legislature to take away money from jobs, healthcare, education and other programs that *do* serve to prevent crime.

## Rebuttal of Statement for

593's proponents aren't telling the whole truth. Current law already keeps violent criminals in prison an average of 15-25 years. Under 593, reckless car accidents with injuries are treated the same as rape and murder. \$12,000,000 will be required over the next few years for additional prisons for people *not* likely to re-offend. 70-year-olds don't repeat violent crimes, *but* have enormous medical costs. 593 plays on our fears, but is in truth expensive and ineffective.

### Voters Pamphlet Statement Prepared by:

JOHN A. STRAIT, Associate Professor of Law; CARL MAXEY, Attorney at Law.

Advisory Committee: REVEREND JOHN BOONSTRA, Executive Minister, Washington Association of Churches; JUDGE ROBERT WINSOR, retired; JUDGE SOLIE M. RINGOLD, retired; MONICA ZUCKER; JOHN M. JUNKER, Professor of Law.



## COMPLETE TEXT OF Initiative Measure 593

AN ACT Relating to persistent offenders; reenacting and amending RCW 9.94A.120 and 9.94A.030; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

### NEW SECTION. Sec. 1. FINDINGS AND INTENT. (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.

Sec. 2. RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992 c 45 s 5 are each reenacted and amended to read as follows:

**ENFORCEMENT OF MANDATORY MINIMUM SENTENCES.** When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard 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 range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of

total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. 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. 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. 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 ~~(, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-year term except for the purpose of commitment to an inpatient treatment facility)~~. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or 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.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the 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. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

(a) Devote time to a specific employment or occupation;

(b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;

(c) Pursue a prescribed, secular course of study or vocational training;

(d) 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;

(e) Report as directed to the court and a community corrections officer; or

(f) Pay all court-ordered legal financial obligations as

The above text is an exact reproduction of the text submitted by the sponsor. The Office of the Secretary of State has no editorial authority.



**COMPLETE TEXT OF  
Initiative Measure 593  
(cont.)**

provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision 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 if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is 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 and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(A) Frequency and type of contact between offender and therapist;

(B) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(D) Anticipated length of treatment; and

(E) Recommended crime-related prohibitions.

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 evaluator shall be selected by the party making the motion. The defendant 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.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative

and consider the victim's opinion whether the offenders should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three 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, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) 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;

(iii) Report as directed to the court and a community corrections officer;

(iv) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(v) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant'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, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) 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. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements,



COMPLETE TEXT OF  
Initiative Measure 593  
(cont.)

and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) Except as provided in (a)(vii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(vii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (7) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if 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; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (7) and the rules adopted by the department of health.

For purposes of this subsection, "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.

(b) When an offender is convicted of any felony sex offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health

services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) 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;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place con-



## COMPLETE TEXT OF Initiative Measure 593 (cont.)

ditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) 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;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(B)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant 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 on or after July 1, 1988, 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 early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection 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.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement 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 early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

- (i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;
- (ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing



## COMPLETE TEXT OF Initiative Measure 593 (cont.)

court, upon recommendation of the department of corrections.

(9) 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.

(10) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(13) All offenders sentenced to terms involving community

supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(14) 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.

(15) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(16) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(17) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(18) In any sentence of partial confinement, the court may require the defendant 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.

(19) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Sec. 3. RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each reenacted and amended to read as follows:

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

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the



## COMPLETE TEXT OF Initiative Measure 593 (cont.)

department of corrections, means that the department 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.

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

(3) "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.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "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 early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

(7) "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 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). 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.

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

(9) "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.

(10) "Court-ordered 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.

(11) "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.

(12)(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" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense 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 or serious traffic offenses, 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.

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

(14) "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 legal financial obligation. 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.

(15) "Disposable earnings" means that part of the earnings of an individual 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.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except



**COMPLETE TEXT OF  
Initiative Measure 593  
(cont.)**

possession of a controlled substance (RCW 69.50.401(d)) 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.

(17) "Escape" means:

(a) 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.

(18) "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), or felony hit-and-run injury-accident (RCW 46.52.020(4)); 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.

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

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the 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 the selling for profit ~~((of))~~ of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana, 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 except for adjudications of sex offenses.

(21) "Most 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 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) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault;

(r) 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;

(s) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;

(u) Any felony offense in effect at any time prior to the effective date of this section, 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.

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

~~((22))~~ (23) "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.

~~((23))~~ (24) "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 or work crew has been ordered by the court, 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, and a combination of work crew and home detention as defined in this section.



**COMPLETE TEXT OF  
Initiative Measure 593  
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~~((24))~~ (25) "Persistent offender" is an offender who:

(a) Has been convicted in this state of any felony considered a most serious offense; and

(b) 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.360; 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.

(26) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((25))~~ (27) "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.

~~((26))~~ (28) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), 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.

~~((27))~~ (29) "Serious violent offense" is a subcategory of violent offense and means:

(a) 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, assault of a child in the first degree, or 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.

~~((28))~~ (30) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((29))~~ (31) "Sex offense" means:

(a) 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;

(b) A felony with a finding of sexual motivation under

RCW 9.94A.127; or

(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 sex offense under (a) of this subsection.

~~((30))~~ (32) "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.

~~((31))~~ (33) "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.

~~((32))~~ (34) "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.

~~((33))~~ (35) "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, 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, robbery in the second degree, vehicular assault, and 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.

~~((34))~~ (36) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, 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. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection ~~((29))~~ (31) of this section are not



**COMPLETE TEXT OF  
Initiative Measure 593  
(cont.)**

eligible for the work crew program.

~~((35))~~ (37) "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. 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.

~~((36))~~ (38) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) 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: (i) Successfully completing twenty-one days in a work release program, (ii) 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, (iii) 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, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) 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, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. 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.

tion. 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.

**NEW SECTION. Sec. 4. 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.

**NEW SECTION. Sec. 5. GOVERNOR'S POWERS.** (1) Nothing in this act 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.

**NEW SECTION. Sec. 6. SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 7. SHORT TITLE.** This act shall be known and may be cited as the persistent offender accountability act.

**NEW SECTION. Sec. 8. CAPTIONS.** Captions as used in this act do not constitute any part of the law.



FILED

JAN 6 1993 *ac*

SECRETARY OF STATE  
STATE WASHINGTON

State of Washington

AFFIDAVIT FOR  
PROPOSED INITIATIVE OR REFERENDUM

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

IDA BALLASLOTES, being duly sworn, says:  
Enter your name as recorded on your voter registration - Please Print

I am a duly registered and legal voter of the state of Washington residing at  
6415 W. MERCEK WAY - MERCEK ISLAND  
Enter your residence address as recorded on your voter registration - Please Print

I herewith submit a proposed Initiative to the People  
Initiative/Referendum People/Legislature

in the form appended hereto and request the Secretary of State to file same and assign a(n)  
Initiative number, and further request that the Attorney General supply  
Initiative/Referendum  
a ballot title.

Ida Ballaslotes  
Sponsor's signature

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
signed this instrument and acknowledged it to be (his/her) free and voluntary act for the  
uses and purposes mentioned in the instrument.

Dated: Jan. 6, 1993 Valda J. Hammer  
Notary Public in and for the state of Washington, residing at  
Olympia  
My commission expires Feb. 24, 1995



Sponsor's Phone Number 454-3054  
1-800-775-3201

SCANNED

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# APPENDIX

## C

APPENDIX  
C

SCANNED

## FINAL BILL REPORT

I 593

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Brief Description: Relating to persistent offenders; life sentence on third conviction.

By People of the State of Washington

## BACKGROUND:

Any person who was convicted of a crime committed before July 1, 1984, which involved fraud or an intent to defraud as an element, or larceny or any felony, could be sentenced to life imprisonment as a habitual criminal if he or she had two prior felony convictions, or had been convicted four times of any crime which involved fraud or intent to defraud as an element. Any person sentenced to life imprisonment as a habitual criminal was still eligible for parole.

The Sentencing Reform Act applies to felonies committed on or after July 1, 1984. The sentencing grid used pursuant to the Sentencing Reform Act counts prior felony convictions as part of the offender's criminal history score. Offenders with previous convictions receive higher scores under the grid, and as a result are given longer sentences. The sentencing judge can give an exceptional sentence that varies from the presumptive sentence if aggravating or mitigating circumstances are present. Certain offenses (i.e., first degree murder, first degree rape and first degree assault) have mandatory minimum sentences.

The Sentencing Reform Act does not provide a punishment of life imprisonment for habitual offenders.

## SUMMARY:

A person who meets the definition of a persistent offender must be sentenced to a term of life imprisonment without the possibility of parole, unless the offender is sentenced to death for the crime of aggravated murder.

"Persistent offender" is defined as an offender who has been convicted of a felony considered a "most serious offense," and has been previously convicted on at least two separate occasions of felonies that would be considered as most serious offenses.

"Most serious offense" is defined to include the following felonies or attempted felonies:

- Any Class A felony;
- Assault 2nd degree (Class B, Level IV);
- Assault of a child 2nd degree (Class B, Level IX);
- Child molestation 2nd degree (Class B, Level VII);
- Controlled substance homicide (Class B, Level IX);

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- Extortion 1st degree (Class B, Level V);
- Incest with child under age 14 (sexual intercourse - Class B, Level VI; sexual contact - Class C, Level V);
- Indecent liberties (Class B, forced - Level IX, unforced - Level VII);
- Kidnapping 2nd degree (Class B, Level V);
- Leading organized crime (Class B, Level X);
- Manslaughter 1st degree (Class B, Level IX);
- Manslaughter 2nd degree (Class C, Level VI);
- Promoting prostitution 1st degree (Class B, Level III);
- Rape 3rd degree (Class C, Level V);
- Robbery 2nd degree (Class B, Level IV);
- Sexual exploitation (Class B, Level IX);
- Vehicular assault (Class C, Level IV);
- Vehicular homicide when proximately caused by driving under the influence or by driving recklessly (Class B, Level VII);
- Any other Class B felony with a finding of sexual motivation; and
- Any felony with a deadly weapon finding.

Persons convicted of first degree murder, first degree rape, and first degree assault are not eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release or authorized leave of absence unless it is for emergency medical treatment or inpatient treatment because of a first degree rape conviction.

Sentencing judges, law enforcement agencies, and correctional facilities are authorized, but not required, to give offenders who have been convicted of a serious offense notice of sanctions imposed upon persistent offenders.

The Governor is urged to refrain from pardoning or granting clemency to anyone sentenced as a persistent offender until the offender has reached the age of at least 60 and is judged to no longer be a threat to society. The Governor must provide reports at least twice a year on the status of persistent offenders who are released during the Governor's tenure. The reports must continue for at least ten years after the offender's release or until the death of the offender.

EFFECTIVE: December 2, 1993

S C A N N E D

# APPENDIX

## D

APPENDIX  
D

SCANNED

**IMPORTANT:**  
DO NOT CUT PETITION!  
FOLD AND MAIL ENTIRE FOUR PAGES OR  
SIGNATURES WILL BE INVALID.

**INSTRUCTIONS FOR FOLDING  
AND MAILING ENTIRE PETITION:**

- 1) Fold in half, top to bottom.
- 2) Fold in half, top to bottom, again.
- 3) Fold again so mailing address shows  
and staple, or tape, closed. →
- 4) Place 29¢ stamp in corner.
- 5) Thank you!

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

PLEASE  
PLACE  
29¢ STAMP  
HERE

**YES ON 593**  
Washington Citizens for Justice  
223 - 105th NE, Suite 201  
Bellevue, WA 98004

**WANNA HELP?**

- ✓ PLEASE ASK YOUR NEIGHBORS AND FRIENDS TO SIGN BEFORE YOU SEND IN PETITION.
- ✓ CALL OUR OFFICE AT (206) 462-7353 OR (800) 775-3201 FOR ADDITIONAL PETITIONS. THIS IS A VOLUNTEER POWERED CAMPAIGN.
- ✓ A SMALL CONTRIBUTION WILL HELP PAY FOR PRINTING AND POSTAGE EXPENSES. PLEASE SEND IN A SEPARATE ENVELOPE.

\$15    \$25    \$50    \$75

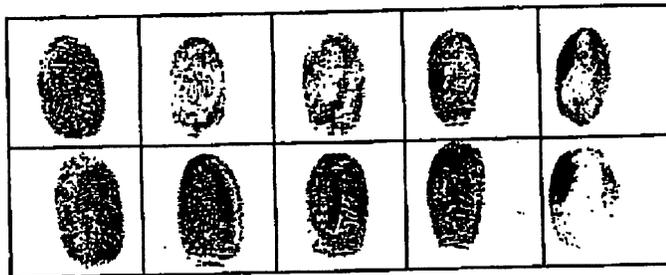
TO:  
WASHINGTON CITIZENS FOR JUSTICE  
223 - 105th NE, Suite 201  
BELLEVUE, WA 98004

**VERY IMPORTANT:**  
Please return the petition as soon as possible. Every signature counts!

**INITIATIVE 593**

**FOR CRIMINALS IT'S THREE STRIKES, YOU'RE OUT!**

- ✓ 70% of all violent crime is committed by only 6% of violent criminals.
- ✓ An estimated 76% of three time offenders will re-offend again if they are released.
- ✓ Current state law is too weak. Here are the prison terms recommended by the state for three time offenders:
  - A child molester with two previous sex offenses: **9 years, six months.**
  - A criminal convicted of 1st degree robbery with two previous violent offenses: **5 years.**
  - A rapist with two previous violent sex offenses: **14 years, two months.**They would serve even less with time off for good behavior.
- ✓ Initiative 593 will put three-time violent offenders AWAY FOR LIFE. No parole, no furloughs, no work release.



RIGHT  
HAND

LEFT  
HAND

Name: **CLYDE\***

Date of Birth: March 1957

Current Status: Incarcerated, eligible for early release in 2009

### CRIMINAL HISTORY

<u>Year</u>	<u>Crime</u>	<u>Sentence</u>
1975	Robbery	Served less than 3 years
mid-1978	Theft 3	60-days suspended
late-1978	Robbery 2	10 years, served about 5 years
1984	DWI	1 day
1984	Robbery 2	Served less than 2 1/2 years
1986	Taking a Motor Vehicle and attempting to elude Police	180 days
1986	Parole Violation	Served less than 2 years
1989	Robbery 1	Sentenced to 30 years
	Kidnapping 1	
	Attempted Kidnapping 1	
	Rape 1	

**UNDER INITIATIVE 593**  
 CLYDE WOULD HAVE RECEIVED A LIFE SENTENCE IN 1984 HIS CRIMES - INCLUDING RAPE & KIDNAPPING - IN 1986 AND 1989 WOULD HAVE BEEN PREVENTED.

\*NOTE: These are real criminals, as is "John" in the enclosed letter. We've changed the names of "John" and "Danny" to protect innocent victims.

SCANNED

# APPENDIX

## E

APPENDIX  
E

SCANNED

**PROMOTING PROSTITUTION, FIRST DEGREE**

(RCW 9A.88.070)

CLASS B FELONY

NONVIOLENT

*(If sexual motivation finding/verdict, use form on page III-13)*

**I. OFFENDER SCORING (RCW 9.94A.525(7))**

**ADULT HISTORY:**

Enter number of felony convictions.....  $\underline{\hspace{2cm}}$  x 1 =  $\underline{\hspace{2cm}}$

**JUVENILE HISTORY:**

Enter number of serious violent and violent felony dispositions.....  $\underline{\hspace{2cm}}$  x 1 =  $\underline{\hspace{2cm}}$

Enter number of nonviolent felony dispositions.....  $\underline{\hspace{2cm}}$  x 1/2 =  $\underline{\hspace{2cm}}$

**OTHER CURRENT OFFENSES:** (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other felony convictions.....  $\underline{\hspace{2cm}}$  x 1 =  $\underline{\hspace{2cm}}$

**STATUS:** Was the offender on community placement on the date the current offense was committed? (if yes),  $\underline{\hspace{2cm}}$  + 1 =  $\underline{\hspace{2cm}}$

Total the last column to get the **Offender Score**  
(Round down to the nearest whole number)

--

**II. SENTENCE RANGE**

<b>A. OFFENDER SCORE:</b>	0	1	2	3	4	5	6	7	8	9 or more
<b>STANDARD RANGE (LEVEL VIII)</b>	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	41 - 54 months	46 - 61 months	67 - 89 months	77 - 102 months	87 - 116 months	108 - 120* months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.595).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-8 to calculate the enhanced sentence.
- D. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 18 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
  - *Statutory maximum sentence is 120 months (ten years) (RCW 9A.20.021).*

**III. SENTENCING OPTIONS**

- A. If "First-time Offender" eligible: 0-90 days confinement and up to one year of community custody. If treatment is ordered, the period of community custody may include up to the period of treatment, but shall not exceed two years.
- B. If eligible, Work Ethic Camp may be recommended (RCW 9.94A.690).
- C. If Drug Offender Sentencing Alternative (DOSA) eligible: see DOSA form for alternative sentence on page III-7 (RCW 9.94A.660).
  - *The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules*

Section 1. Sentencing Worksheets

PROMOVING PROSTITUTION, FIRST DEGREE  
(RCW 9A.08.070)  
NONVIOLENT

I. OFFENDER SCORING (RCW 9.94A.260 (8))

ADULT HISTORY: (All adult offenses served concurrently count as ONE offense; those served consecutively are counted separately)

Enter number of felony convictions ..... x 1 = \_\_\_\_\_

JUVENILE HISTORY: (All adjudications entered on the same date count as ONE offense)

Enter number of felony adjudications ..... x 1/2 = \_\_\_\_\_

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same criminal conduct count in offender score)

Enter number of other felony convictions ..... x 1 = \_\_\_\_\_

Total the last column to get the TOTAL OFFENDER SCORE  
(round down to the nearest whole number)

II. STANDARD SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE:	21 - 27	24 - 34	31 - 41	38 - 48	41 - 54	46 - 61	67 - 89	77 - 102	87 - 116	108 - 144
(Seriousness Level VIII) months	months	months	months	months	months	months	months	months	months	months

- B. The range for attempt, solicitation, and conspiracy is 75% of the standard sentence range for the completed crime (RCW 9.94A.010)
- C. Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021 (1)(b))
- D. Financial obligations may be added: fines, restitution, court costs, attorney's fees, assessments (SIB 1247 Section 23, RCW 9.94A.140, 9.94A.120 (8), 9.94A.270 (1))

III. SENTENCING OPTIONS FOR FIRST DEGREE PROMOVING PROSTITUTION

- A. If "First-time offender" eligible: 0-90 days confinement and up to two years of community supervision with conditions (RCW 9.94A.120 (5))
- B. Exceptional sentence (RCW 9.94A.120 (2))

THIS OFFENSE REFERENCE SHEET IS FOR USE WITH THE NONVIOLENT SCORING FORM

FILED  
SUPERIOR COURT  
THURSTON COUNTY WASH.

'07 APR 12 AM 51

BETTY J. GOULD CLERK

BY [Signature] DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,  
Plaintiff,

vs.

JERRY LEE BROCK,  
DEFENDANT.

No. 95-1-00402-8

OBJECTION TO STATE'S MOTION  
TO TRANSFER DEFENSE MOTION  
TO COURT OF APPEALS  
(Evidentiary/ Reference hearing requested)

I. IDENTITY

COMES NOW, JERRY LEE BROCK, Pro-Se defendant, requesting to be heard in regards to State's Motion to transfer current CrR 7.8 Motion to the Court of Appeals.

II. ARGUMENT

Defendant would first broach the subject of Plaintiffs defective Motion. The State appears to be making a fresh Motion- distinctive from Brock's CrR 7.8. Yet, no calendar date, nor timetable has been established for opposing party to object. Defendant is not aware of any exception to this practice in neither the State or local rules of Court. Being that law and equity are based on an adversarial system it would seem only appropriate that ex-parte Motions are inappropriate in the litigation at hand.

OBJECTION TO STATES MOTION

-1-

BROCK

Although transferring a CrR 7.8 Motion to the Court of Appeals is a discretionary choice under the same rule, this does not negate the adversarial nature of attempts to SWAY the Judges DISCRETION.

Being that Brock is objecting to this procedural defect of the States Motion, it should be noted he would request a conclusion of law on this issue concerning the validity of the same. The written finding should be included with the finding concerning the merits of defendant's original CrR 7.8 Motion contained hereinafter.

Without going indepth on the clear and concise argument layed out before this Court in the original Motion, Brock disputes the rationale and merits used in requesting a transfer.

In the States Motion(p.11) it informs this Court that they " could simply deny the defendant's Motion for resentencing", the Motion then continues on, " However, such a decision would be subject to appeal". Besides this being the obvious chain of procedure, what is the point?

It is obvious that the intent of the State is in Judicial economy and the possible appointment of counsel and accompanying cost of Appeal. Unfortunately, CrR 7.8 does not provide such a provision for denial. the relevant part of CrR 7.8 is section (c)(2) which provides for transfer if "the facts alleged in the affidavits do not establish grounds for relief", it then provides a very broad, " if such transfer would serve the ends of justice".

If Judicial enconomy fit into the above categories, it would seem that any case that a Judge disagreed with the merits, would be transfered to the Court of Appeals to save the county money. Hence, any CrR 7.8 he disagreed with would be found to "not

establish grounds for relief".

The State also relies on HOLT v. MORRIS, 84 Wn 2d, 841, 529 P.2d 1081 (1974). This archaic case is prior to what we know today in Washington as CrR 7.8. This case dates back to CrR 7.7 which was rescinded in 1976.

MORRIS deals with a State Habeas Corpus petitioner and the jurisdiction question between the State Supreme Court and the County. A Personal Restraint Petition is similar to a Habeas Corpus, but the fact they both exist still (independantly), lends credence to some sort of distinction.

Nothing in MORRIS makes reference to a CrR 7.8 Motion since it did not exist. However, the plain language in the STATE COURT RULES is explanation enough. CrR 7.8 (B)(4), if "The Judgement is void", CrR 7.8 (B)(5) "Any other reason justifying relief from the operation of a judgement".

Lastly to this document will be a very quick overview of certain legal theorems addressed in the States Motion to transfer concerning defendants original CrR 7.8 Motion.

The main issue being the difference between a "most serious offense" and a "violent offense". The State asserting that basically any class A offense is a "most serious" and therefore "violent".

If in fact class A is the only relevant factor in determining a strike then why not simply say such and leave it be?

This is even better demonstrated in the question at hand where RCW 9A.88.070(1), Promoting Prostitution First Degree, becomes involved. Two alternatives are given for the same; (a)

compelling a person by threat or force (b) profits from prostitution of person less than eighteen years old.

The above is a even more compelling a reason for the Court to decide this CrR 7.8 Motion in this Court. Possibly even holding an evidentiary hearing to determine which means defendant was convicted of.

The State cites STATE vs. FARMER, 116 Wn 2d 414, 805 P.2d 200 (1991) assumably to prove that any sexual exploitation of a child is violent or could be deemed as such by government intrest.

FARMER does not say this-only that "the governemnt has an interest in protecting children from sexual exploitation". Infact, FARMER provides solid instruction and a good question for the case at hand. FARMER was a Pornography case where no force was used, only a question of if a 16 or 17 year old had the right to consent to pose for explicit photographs? So the question is was FARMER a violent offender? The answer is no. Infact his sexual exploitation of a minor was only-in result-a class B offense. These facts muddy the water of the States contention, because this sexual exploitation case (FARMER) is not a class A offense and therefor under their analysis would not be a strike. So one of the alternative means of Promoting Prostitution could be construed as most serious/violent, while the other could possibly not. The question is did this Court inquire into which means the fifteen year old conviction was under.

This situation is analogous to other prior conviction situations put before sentencing Courts in this State. Out of State conviction comparison is instructive to this argument. See generally, In re LAVERY, 154 Wn 2d 249 111 P.3d 837 (2005).

Before this Court used Brocks past conviction as a strike, an inquiry should have been held to assure that it was in conformity with a violent offense as argued by Petitioner in his original Motion.

### III. CONCLUSION

This Court should grant the relief requested in original Motion. Also this Court should make a ruling on if infact the States Motion is defective. If so it should be stricken from the record-- regardless of if it is a moot point. This Court should also grant a evidentiary/reference hearing to decide what alternative means of the Promoting Prostitution chargs Brock was convicted under.

Respectfully Submitted this 6th day of April, 2007



JERRY LEE BROCK

#132588