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Division III  
State of Washington

No. 33790-1-III

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,  
Plaintiff/Respondent/Cross-Appellant,

vs.

RIGOBERTO IVAN VAZQUEZ,  
Defendant/Appellant/Cross-Respondent.

APPEAL FROM THE GRANT COUNTY SUPERIOR COURT  
Honorable John D. Knodell, Judge

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REPLY/RESPONSE BRIEF OF APPELLANT/CROSS-RESPONDENT

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A. ARGUMENT IN REPLY TO BRIEF OF RESPONDENT

Mr. Vazquez relies upon his Brief of Appellant to address the arguments made in the state's brief of respondent. Brief of Appellant, pp. 7–12.

B. CROSS-APPELLANT'S ASSIGNMENT OF ERROR

The trial court erred in striking the firearm enhancement from the defendant's riot while armed conviction. Brief of Respondent/Cross Appellant (BOR-CA), p. 1.

C. CROSS-RESPONDENT'S ISSUES REGARDING CROSS-APPEAL

1. The decision in *State v. Soto* is correct under Art. II § 19 of the Washington Constitution and when deadly weapon enhancements are considered in the context of the Sentencing Reform Act.

2. When considered in context of the statutory history and scheme as a whole, an unranked felony is not a strike offense under RCW 9.94A.030(33)(t).

D. SUPPLEMENTAL STATEMENT OF FACTS

Mr. Vazquez incorporates as if set forth fully herein the statement of facts in his Brief of Appellant, pp. 1–6.

E. ARGUMENT

These issues require interpretation of multiple provisions of the Sentencing Reform Act (SRA). Interpretation of the SRA is a question of

law that is reviewed de novo. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). When interpreting a statute, “the court's objective is to determine the legislature's intent.” *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). If the meaning of a statute is plain on its face, the court “ ‘give[s] effect to that plain meaning.’ ” *Id.* (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). To determine the plain meaning, a reviewing court looks to the text of the statute, as well as “the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.* An undefined term is “given its plain and ordinary meaning unless a contrary legislative intent is indicated.” *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920–21, 969 P.2d 75 (1998). If after this inquiry the statute is susceptible to more than one reasonable interpretation, it is ambiguous and the court “may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.” *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

1. The decision in *State v. Soto*<sup>1</sup> is correct under Art. II § 19 of the Washington Constitution and when deadly weapon enhancements are considered in the context of the Sentencing Reform Act.

a. The deadly weapon enhancement provisions of Laws of 1995, c 129 are constitutional.

In 1995, Initiative 159 entitled “Hard Time for Armed Crime” was submitted to the Legislature, which enacted it without amendment. Laws of 1995 c 129; *State v. Broadaway*, 133 Wn.2d 118, 124, 942 P.2d 363 (1997). The purpose of the initiative was to increase sentences for armed crime. *Broadaway*, 133 Wn.2d at 128, 942 P.2d 363. “The new law increases the sentence enhancement required when an offender is found to have been armed with a deadly weapon at the time of the offense. The length of the enhancement varies according to the class of felony committed; whether such an enhancement was imposed after an offender had previously been sentenced for a deadly weapon enhancement; and whether the weapon was a firearm or another deadly weapon. The enhancement is to be served consecutively to the base sentence. [Former] RCW 9.94A.310 [(1995)].” *Matter of Charles*, 135 Wn. 2d 239, 246, 955 P.2d 798 (1998).

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<sup>1</sup> *State v. Soto*, 177 Wn. App. 706, 309 P.3d 596 (2013).

In *Broadway*, the court determined the legislative title of Initiative 159, “An Act Relating to increasing penalties for armed crimes . . . ,” contained only one subject—increasing penalties for armed crimes—and held the deadly weapon enhancement provisions of the Act were not violative of article II, section because penalty enhancements for crimes involving use of deadly weapons “fall squarely within the restrictive legislative title of Initiative 159.” *Broadway*, 133 Wn.2d at 124, 128–29. The provisions of Laws of 1995 c 129 relating to deadly weapon enhancements are constitutional under Wash. Const. Art. II § 19. *Id.*

b. As enacted, the deadly weapon enhancement provisions of Laws of 1995, c 129 did not apply to unranked felonies.

The State begins from the faulty premise that “when [Initiative 159 was] originally passed the deadly weapon enhancements clearly applied to all felonies, including unranked ones.” Brief of Respondent-Cross Appellant (BOR-CA), p. 20. The State offers no analysis and cites no authority for this mistaken assumption. *Id.*, pp. 19–23. As discussed below, the 1995 legislation was structured, and remains so structured today, to apply only to ranked felonies. Relevant excerpts from Laws of 1995 c 129 are attached as Appendix D.

The enactment of Initiative Measure No. 159 by the 1995 Legislature split the previous deadly weapon enhancement codified in former RCW 9.94A.310 (Laws of 1992 c 145 s 9) into “separate enhancements for firearms and for other deadly weapons, and broadened their application to *all* felonies except those in which using a firearm is an element of the offense.” Washington Sentencing Guidelines Comm'n, Adult Sentencing Guidelines Manual, cmt. at II-70 (1996) (emphasis added); *see* Appendix C. The Commission’s use of the phrase “all felonies”— suggesting application to both ranked and unranked felonies— is unfortunate, misleading and erroneous when the legislation is considered in context of the then-current statutory scheme.

Table 1. The 1995 legislation amended data on former RCW 9.94A.310(1), entitled “Table 1 - Sentencing Grid,” while keeping its interpretative “NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent **presumptive sentencing ranges** in months, or in days if so designated. 12+ equals one year and one day. Codified at former RCW 9.94A.310(1), (Table 1) (Laws of 1995 c 129 s 2) (emphasis added); *see* Appendix D, pages 1–2.

Table 2. The 1995 legislation amended data on former RCW 9.94A.320, entitled “Table 2 – Crimes Included Within Each Seriousness Level.” Codified at former RCW 9.94A.320, (Table 2) (Laws of 1995 c 129 s 3); *see* Appendix D, pages 4–9. Table 2 includes in addition to certain listed felonies a number of felony drug offenses to which various seriousness levels have been assigned. *Passim.*

Former RCW 9.94A.310. The 1995 legislation added new section (3) to former RCW 9.94A.310, providing that:

The following additional times shall be added to the **presumptive sentence** for felony crimes committed after the effective date of this section if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime.” ...

(a) Five years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) Three years for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Eighteen months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

... (f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first

degree, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

...

Former RCW 9.94A.310(3) (Laws of 1995 c 129 s 2) (emphasis added); *see* Appendix D, p. 3.

The 1995 legislation renumbered former subsection (3), which had been the single deadly weapon enhancement, to (4). Subsection (4), now setting forth the “deadly weapon other than a firearm” counterpart to the firearm enhancement, contained new language similar to that in Subsection (3). Importantly, the legislation kept some of the prior statute’s language intact: “The following additional times shall be added to the **presumptive sentence,**” and the enhancement applied where “the offender is being sentenced for one of the crimes listed in this subsection as eligible.” Former RCW 9.94A.310(4) (Laws of 1995 c 129 s 2) (emphasis added); *see* Appendix D, p. 3.

Subsection (5), addressing certain drug offenses committed while in a county jail or state correctional facility, was renumbered by the 1995 legislation from its prior designation as subsection (4) and similarly retained the prior statute’s language that “[t]he following additional times shall be added to the **presumptive sentence,**” and the enhancement

applied where “the offender is being sentenced for one of the crimes listed in this subsection as eligible.” Former RCW 9.94A.310(5) (Laws of 1995 c 129 s 2) (emphasis added); *see* Appendix D, p. 4.

Subsection (6), addressing certain drug offenses committed within a protected zone, was renumbered by the 1995 legislation from its prior designation as subsection (5) and similarly retained the prior statute’s language that “[a]n additional twenty-four months shall be added to the **presumptive sentence.**” Former RCW 9.94A.310(6) (Laws of 1995 c 129 s 2) (emphasis added); *see* Appendix D, p. 4.

Thus the 1995 (and prior) legislation provided the authorized enhancements could only be added to a presumptive sentence. Former RCW 9.94A.310(3), (4), (5) and (6). “Presumptive sentence” was defined as follows: “(1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)).” Former RCW 9.94A.370 (*see* Appendix E). This statutory scheme necessarily required an offense have a “seriousness score” before a presumptive sentence range could be determined. Offenses without an established seriousness level on Table 2 were considered “unranked” and had no

presumptive sentence range. Washington Sentencing Guidelines Comm'n, Adult Sentencing Guidelines Manual, at I-19 (1995) (“For an offender convicted of a crime without an established seriousness level (i.e., an unranked crime), no standard sentence range applies.”). See “Table 2,” codified at former RCW 9.94A.320, and Appendix D, pp. 4-9; accord Washington Sentencing Guidelines Comm'n, Adult Sentencing Guidelines Manual, cmt. at II-71 (1995)(“The most common felonies have been included in the Seriousness Level Table. The Commission decided not to rank certain felonies which seldom occur. The Commission will continue to recommend adjustments in seriousness levels as new felonies are created by the Legislature. If, in the future, a significant number of persons are convicted of offenses not included in the Seriousness Level Table, the Commission will recommend appropriate seriousness levels to the Legislature for those crimes.”); see Appendix D, p. 9.

When interpreting a statute, “if the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d at 9-10. “All words must be read in the context of the statute in which they appear, not in isolation.” *State v. Lilyblad*, 163 Wn.2d 1, 9, 177 P.3d 686 (2008). A statute is deemed ambiguous when the language

is susceptible to more than one interpretation. *Jacobs*, 154 Wn.2d at 600–01.

Reading all subsections of former RCW 9.94A.310 (1995) in the context of the statute requires the conclusion that the statute as enacted did not apply to unranked offenses. The scope of the statute’s application was, and still is today, limited to the “presumptive sentence” (changed to “standard sentence range” by Laws of 2000 c 28 s 11 (effective July 1, 2000)), which by definition is the standard range sentence determined for a ranked offense. Former RCW 9.94A.370 (Appendix E), recodified as RCW 9.94A.530 by Laws of 2001 c 10 s 6.

The State suggests the 1995 legislature’s inclusion of one unranked felony, “child luring,” in its “Findings and Intent” statement meant “the deadly weapon enhancements clearly applied to all felonies, including unranked ones.” BOR-CA, p. 19–20. The class C offense, officially titled “Luring,” had been recently created. Laws of 1993 c 509 s 1, effective July 25, 1993; codified at RCW 9A.40.090. As disclosed by the statutes discussed above, the enhancements authorized in the 1995 legislation could only be added to the presumptive sentence established for a ranked felony. The Sentencing Guidelines Commission has apparently not seen a need to recommend ranking to the legislature because the offense of luring

is and always has been an unranked felony. Although the luring statute has been amended three times since it was enacted, the legislature has taken no steps to otherwise ensure the deadly weapon enhancements apply to that unranked crime. *See* Laws of 1995 c 156 s 1; Laws of 2012 c 145 s 1; Laws of 2016 c 11 s 1. The inclusion of the offense of luring in the findings and intent statement of the 1995 legislation appears simply to be an anomaly.

c. The substitution of “RCW 9.94A.515 or RCW 9.94A.517” in place of “Table 1” by Laws of 2002 c 290 s 11 did not change former RCW 9.94A.310 (1995)’s non-application to unranked felonies.

After 1995, the legislature made a number of technical reorganizations but did not change the substance of the statute. “Table 1 - Sentencing Grid” and the other sections of RCW 9.94A.310 were recodified as RCW 9.94A.510 and “Table 2 – Crimes Included Within Each Seriousness Level” was recodified as RCW 9.94A.515.” Laws of 2001 c 10 s 6.

In 2002, the legislature kept Table 2 at RCW 9.94A.515 (Laws of 2002 c 290 s 2) but moved all of the drug offenses into a newly created “Table 4 – Drug Offenses Seriousness Level.” Laws of 2002 c 290 s 9, codified at RCW 9.94A.518. The legislature created an accompanying

“Table 3 – Drug Offense Sentencing Grid.” Laws of 2002 c 290 s 8, codified at RCW 9.94A.517. “Table 1 – Sentencing Grid” was left at RCW 9.94A.510 (Laws of 2002 c 290 s 10). The remaining subsections (2) through (7) of RCW 9.94A.510 were placed into a new section of chapter 9.94A RCW, later codified at RCW 9.94A.533. Laws of 2002 c 290 s 11. A new subsection (1) was added at that time:

**NEW SECTION. Sec. 11.** A new section is added to chapter 9.94A RCW to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or section 8 of this act. ...

*Id.* RCW 9.94A.530 – “Standard Sentence Range” was similarly amended to read in part, “(1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.510, (Table 1) and section 8 of this act, (Table 3).” Laws of 2002 c 290 s 11. As discussed above, “Section 8” refers to RCW 9.94A.517.

The 2002 legislation reorganized and simplified the statutory scheme put into place as a result of Initiative 159. The base requirement that the authorized enhancements may only be added to the presumptive/standard range sentence did not change. The directive to calculate an offender’s standard range sentence based on criminal history

and the crime's assigned seriousness level did not change. The sentencing grid reflecting the current standard range and the list of current assigned seriousness levels were each split in two and they now separately reflected standard range and seriousness levels for non-drug and drug felonies. The new sentencing grids became codified at RCW 9.94A.515 and RCW 9.94A.517.

The substitution of "RCW 9.94A.515 and RCW 9.94A.517" in place of "Table 1" by Laws of 2002 c 290 s 11 did not substantively change RCW 9.94A.533 or former RCW 9.94A.310 (1995)'s non-application to unranked felonies. The State's claim the replacement was either an unconstitutional unintended amendment or an unconstitutional conscious overruling of existing law is unsupported by the statutory history. BOR-CA, pp. 21–22. The legislature simply did not intend the authorized enhancements to apply to unranked offenses.

This conclusion is bolstered by the fact that in the same 2002 legislation, the legislature assigned a seriousness level III (on the newly created Table 4) to previously unranked felony drug offenses under chapter 69.50 RCW if they had a deadly weapon special verdict. Laws of 2002 c 290 s 9. This demonstrates the legislature knew how to accomplish

application of the deadly weapon enhancements to previously unranked felonies should it choose to do so. “Under *expressio unius est exclusio alterius*, a canon of statutory construction, to express one thing in a statute implies the exclusion of the other. Omissions are deemed to be exclusions.” *In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (citation omitted).

This conclusion is supported by the fact that when the legislature created in 2003 the unranked crime at issue here it did not “exempt” the offense from application of the enhancements authorized by the 1995 legislation, as it did with certain ranked felonies which involved the use of a firearm as an element of the crime. “*State v. Workman*, 90 Wn.2d 4[4]3[, 584 P.2d 382] (1978), prohibits “double counting” an element of an offense for the purpose of proving the existence of the crime and using it to enhance the sentence, without specific legislative intent to so allow. Consistent with *Workman*, neither the firearm enhancement nor the “other deadly weapon” enhancement applies to specified crimes where the use of a firearm is an element of the offense (listed in [former] RCW 9.94A.310(f) and (4)(f)).” Washington Sentencing Guidelines Comm'n, Adult Sentencing Guidelines Manual, at II-31 (1995); *see* Appendix B, p. 2.

The conclusion is also reinforced by the legislature's acceptance of the *Soto* decision. *State v. Soto*, 177 Wn. App. 706, 309 P.3d 596 (2013). As our Supreme Court explained in *State v. Ervin*, 169 Wn.2d 815, 825, 239 P.3d 354 (2010),

Any lingering doubts about the correctness of [a party's] interpretation are allayed by the legislature's acquiescence in it. We presume the legislature is 'familiar with judicial interpretations of statutes and, absent an indication it intended to overrule a particular interpretation, amendments are presumed to be consistent with previous judicial decisions.'

(quoting *State v. Bobic*, 140 Wn.2d 250, 264, 996 P.2d 610 (2000)). *Soto* interpreted language in RCW 9.94A.533(1): "The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517." Since the time of the opinion published in part, filed August 22, 2013, the legislature has amended RCW 9.94A.533 two times, but has in no way altered the language interpreted in *Soto*. See Laws of 2016 c 203 § 7, eff. June 9, 2016; Laws of 2015 c 134 § 2, eff. April 29, 2015. This legislative acquiescence in *Soto*'s interpretation of subsection (1) strongly favors Mr. Vazquez' interpretation of the statute.

The jury convicted Mr. Vazquez of the crime of riot while armed regarding the events of June 23, 2013. Former RCW 9A.84.010(2)(b)(2003). The name of the crime was later changed to

criminal mischief. The crime remained elevated from a misdemeanor to a class C felony upon the finding of being armed with a deadly weapon.

Laws of 2013 c 20 § 1, 3 (effective January 1, 2014). Being armed with a deadly weapon is an element of the offense.

The statutory requirement that the accused be armed for a felony riot conviction is also reflected in our pattern to-convict instruction. According to the instruction, in order to convict on felony riot, the State must prove that “the defendant was armed with a deadly weapon.” 11A Washington Practice: Washington Pattern Jury Instructions: Criminal 126.02, at 323 (2d ed.1994) (emphasis added). The comment section goes on to state: “If the *defendant was armed* with a deadly weapon, riot is a *class C felony*; otherwise it is a gross misdemeanor. *Being so armed is an element of the felony offense.*” *Id.* cmt. at 324 (emphasis added)..

*State v. Montejano*, 147 Wn. App. 696, 700, 196 P.3d 1083, 1084 (2008)

(some emphasis omitted). Had the 2003 legislature believed the unranked felony offense of riot while armed was potentially subject to a deadly weapons enhancement in violation of the *Workman* prohibition, logically it would have amended the enhancement statute to exempt the unranked offense as it previously did for certain ranked offenses. That it did not do so supports a conclusion the legislature never intended the authorized enhancements to apply to unranked offenses.

In *State v. Soto*, 177 Wn. App. 706, 709–16, 309 P.3d 596 (2013), this Court analyzed RCS 9.94A.533. It concluded a sentencing court lacks

statutory authority to impose deadly weapon enhancements upon a conviction for a class C unranked felony where the statute, which permits adjustments to standard sentences, does not apply to unranked felonies. Therefore the trial court's 18-month increase of Mr. Soto's sentence imposed for the animal cruelty conviction was unauthorized and void. The court reversed the firearm sentence enhancement and remanded to the trial court to strike the enhancement from Mr. Soto's judgment and sentence. *Id.* at 709, 716. For the reasons stated, the *State v. Soto* decision was correct.

2. When considered in context of the statutory history and scheme as a whole, an unranked felony is not a strike offense under RCW 9.94A.030(33)(t).

The State acknowledges the riot while armed conviction is an unranked felony and may not be subject to enhancement under RCW 9.94A.533 pursuant to *Soto*. Nevertheless, the State claims the *Soto* decision prevents the jury's special verdict finding Mr. Vazquez was armed with a deadly weapon during the commission of that offense from being noted on the Judgment and Sentence which would indicate it was a "strike offense" under the Persistent Offender Accountability Act (POAA). The State further asserts *Soto* should be overruled because the inability to assess deadly weapon enhancements under RCW 9.94A.533 and/or "strike

offense” status under RCW 9.94A.030(33)(t) to sentences for unranked felonies conflicts with the “entire point of the [POAA] to permanently remove from society those who failed to respond to the rehabilitation and specific deterrence provided by the criminal justice system and continued their dangerous criminal activities.” BOR-CA, pp. 13–19, 23–24.

For the reasons discussed below, the State misconstrues the holding in *Soto* and must look to the legislature to address any perceived inconsistencies between the POAA and RCW 9.94A.533 regarding unranked felonies. “Any other felony” under RCW 9.94A.030(33)(t) refers to ranked felonies or alternatively, under the rule of lenity, ambiguities must be resolved in Mr. Vazquez’ favor to affirm the trial court’s determination the jury’s deadly weapon special verdict for the unranked felony is unauthorized and void and should be stricken from the judgment and sentence.

a. Under *State v. Soto*, the firearm and deadly weapon enhancements under RCW 9.94A.533 cannot apply to an unranked felony.

As to the State’s first concern, the only issue before the *Soto* court was whether a firearm enhancement under RCW 9.94A.533(3) applied to the unranked class C felony of first degree animal cruelty. The court correctly concluded it did not and thus found “the trial court’s 18-month

increase of Mr. Soto's sentence imposed for the animal cruelty conviction was unauthorized and void." It reversed the firearm sentence enhancement and remanded to the trial court to strike the enhancement from Mr. Soto's judgment and sentence. *Soto*, 177 Wn. App. at 716. This author was counsel for Mr. Soto in that appeal, Court of Appeals No. 30121-4-III. She has reviewed the record and confirms the subject of whether the trial court's bench finding that Mr. Soto was armed with a firearm during commission of the offense could or should remain noted on the judgment and sentence for POAA purposes was never discussed, acted upon or decided by any court.

b. An unranked felony is not a strike offense.

This is an issue of first impression. As a starting point, over the time since its enactment the procedure for obtaining a deadly weapon special verdict has remained the same: a court's finding of fact or a jury's finding by special verdict that the offender or an accomplice was armed with a deadly weapon at the time of the commission of the crime. RCW 9.94A.825 [Laws of 1983 c 163 § 3. Formerly RCW 9.94A.602, 9.94A.125.] Historically,

[t]he SRA did not originally provide sentence enhancement for all crimes involving a deadly weapon. In 1983, the Legislature adopted the Commission's recommendations that additional time

be added to the offender's presumptive sentence for some crimes where the use of the deadly weapon warranted additional punishment. These crimes were Kidnapping 1 and 2, Rape 1, Robbery 1, Burglary 1, Burglary 2 (non-dwelling), Assault 2, Escape 1, and delivery or possession with intent to deliver a controlled substance (RCW 9.94A.310). The Legislature added Theft of Livestock 1 and 2 to this list in 1988 and added Assault of a Child 2 in 1992. The Legislature also clarified in 1986 that the deadly weapon enhancements apply to anticipatory offenses and to all the drug offenses enumerated in RCW 9.94A.030(18).

Washington Sentencing Guidelines Comm'n, *Adult Sentencing Guidelines Manual*, cmt. at II-30, 31 (1995); *see* Appendix B, pp. 1-2.

Thus, prior to enactment of the POAA in 1994, the deadly weapon special verdicts authorized in former RCW 9.94A.125 could only act to enhance certain ranked crimes specified by the legislature in former RCW 9.94A.310.

Against this backdrop, in November 1993, the voters of the state of Washington were asked in Initiative 593 to decide the question:

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

Seventy-six percent of the voters of this state answered “yes” to this question. *State v. Thorne*, 129 Wn.2d 736, 746, 921 P.2d 514, 518 (1996). Initiative 593, titled the “Persistent Offender Accountability Act” and commonly known as the “three strikes and you're out” law, amended sections of the Sentencing Reform Act of 1981(SRA). RCW 9.94A; Laws

of 1994, c 1 (Initiative 593, approved November 2, 1993). The complete text of Initiative Measure 593 is found in the 1993 Official Voters Pamphlet at 14–22 (2d ed.), which can be viewed online at <https://www.sos.wa.gov/elections/Voters-Pamphlets.aspx>.

The Findings and intent in enacting the POAA are now codified at RCW 9.94A.555:

- (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.

Laws of 2001 c 10 s 6 [Laws of 1994 c 1 § 1 (Initiative Measure No. 593, approved November 2, 1993). Formerly RCW 9.94A.392.]. The new law added the following language to former RCW 9.94A.120(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.

Initiative 593 defined the terms “persistent offender” and “most serious offense.” A “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.

Former RCW 9.94A.030(27); *see* Appendix A, p. 4. “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 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.

Former RCW 9.94A.030(23); *see* Appendix A, pp. 3–4. The voters pamphlet explained that “most serious crimes” essentially consist of all class A felonies and all class B felonies involving harm or threats of harm to persons. 1993 Official Voters Pamphlet at 5 (2d ed.); *see* Voters Pamphlet excerpt attached as Appendix F, p. 5.<sup>2</sup>

Thus, upon enactment of the POAA in 1994, the deadly weapon special verdicts authorized in former RCW 9.94A.125 could only act to

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<sup>2</sup> It is interesting to note Professor John Strait and Spokane attorney Carl Maxey, now deceased, prepared the Voter Pamphlet Statement against Initiative 593. *Id.* at p. 5.

grant a sentence enhancement to the ranked crimes specified in former RCW 9.94A.310 and grant “strike offense” status to the crimes listed in the newly created definition of “most serious offense” in former RCW 9.94A.030(27). All but one of the listed offenses in the new definitional subsection are clearly ranked offenses. At issue here is whether “any other felony with a deadly weapon verdict under [former] RCW 9.94A.125” applies to unranked felonies. For the following reasons, “any other felony” does not apply to unranked felonies.

The 1994 legislature did not amend former RCW 9.94A.310 to apply to unranked felonies. And prior to the POAA only certain ranked felonies specified in former RCW 9.94A.310 were subject to deadly weapon enhancements under former RCW 9.94A.125. Washington Sentencing Guidelines Comm'n, *Adult Sentencing Guidelines Manual*, cmt. at II-30, 31 (1995); *see* Appendix B, pp. 1-2 (listing the specific felonies subject to enhancement). The POAA established a list of the offenses that would be granted “strike offense” status, which was broader than the ranked felonies specified in former RCW 9.94A.310 as being eligible for enhancement. Former RCW 9.94A.030(23). Except for minor addition or subtraction of words in a few of the eligible offenses, that list remains the same today. RCW 9.94A.030(33) (2016). Based on the

statutory scheme, those offenses on the POAA list (former RCW 9.94A.030(23)) but not specified in former RCW 9.94A.310 as eligible for enhancement under former RCW 9.94A.125 remained ineligible for enhancement. However, upon conviction they would automatically be granted “strike offense” status for future POAA purposes.

The unranked offense at issue here, riot while armed, is not on the POAA list. *Soto* determined unranked offenses had never been eligible for deadly weapons enhancements under RCW 9.94A.533. As discussed in a preceding section, the legislature’s failure to alter the interpreted language in RCW 9.94A.533 in several subsequent amendments represents acquiescence in *Soto*’s interpretation. Accordingly, unranked offenses could not be the recipient of a deadly weapon verdict under former RCW 9.94A.125 or its present codification at RCW 9.94A.825. Unranked offenses therefore do not fit the POAA definition of “[a]ny other felony with a deadly weapon verdict under RCW 9.94A.125.” RCW 9.94A.030(33)(t). The statutory scheme fully supports the conclusion an unranked felony does not qualify as a “strike offense.”

The 1995 legislation, “Hard Time for Armed Crime” Act, did significantly broaden the list of felonies eligible for deadly weapon

enhancements under former RCW 9.94A.310. Part of the motivation for expanding application of the enhancements was that “[c]urrent law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestations and many other sex offenses . . .,” and by increasing the penalties the people intended to “[s]tigmatize the carrying and using of any deadly weapons for all felonies with proper deadly weapon enhancements.” Laws of 1995 c 129 s 1, Findings and Intent; *see* Appendix D, p. 1. Despite this stated motivation and intent, the 1995 legislature similarly did not amend former RCW 9.94A.310 to apply to unranked felonies. *See* discussion *supra*.

The State reasons the jury’s special verdict finding makes the unranked felony offense of riot while armed a “most serious offense” under RCW 9.94A.030(33)(t) because the offense literally is “any felony” and the jury factually returned a deadly weapon verdict. BOR-CA, pp. 13–15. The State offers no analysis why the definition should be considered in isolation instead of in context of the voters’ approval of the POAA by initiative in 1993 and the POAA’s relation to the larger and complementary provisions of the Sentencing Reform Act including

historical eligibility for deadly weapon enhancements. As demonstrated above, the definition when considered in context of the statutory scheme grants “strike offense” status only to ranked felonies.

The statutory scheme has remained constant. Even if the legislature did not intend to omit unranked felonies from application of the “strike offense” status, the matter must be left to the legislature to correct the error. *See In Re Pers. Restraint of Acron*, 122 Wn. App. 886, 891, 95 P.3d 1272 (2004). “Appellate courts do not supply omitted language even when the legislature’s omission is clearly inadvertent, unless the omission renders the statute irrational. . . . [W]here the legislature’s omission ‘did not undermine the purposes of the statute [but] simply kept the purposes from being effectuated comprehensively,’ we will not read omitted language into a statute. *Id.*, quoting *State v. Taylor*, 97 Wn.2d 724, 729, 649 P.2d 633 (1982).

Here, omitting unranked felonies from application of a “strike offense” designation does not undermine the statutory scheme. The felony criminal mischief (formerly riot) while armed offense under RCW 9A.84.010(2)(b) (2013)—as well as all other unranked felonies—can still be enforced; violations can still be punished. The statutes permitting imposition of a sentence of life without possibility of parole based on three

“strike offenses” continues to be part of the sentencing scheme, which is not made irrational by the exclusion of unranked felony offenses.

This Court should affirm the trial court’s determination the jury’s deadly weapon special verdict for the unranked felony should be stricken from the judgment and sentence.

F. CONCLUSION

For the reasons stated herein and in his opening brief, this Court should grant the relief previously requested and also uphold the sentencing decision by denying the state’s cross-appeal.

Respectfully submitted on December 19, 2016.

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PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on December 19, 2016, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of reply/response brief of appellant/cross-respondent:

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**RCW 9.94A.010 Purpose.** The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to add a new chapter to Title 9 RCW designed to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself; and
- (6) Make frugal use of the state's resources. [1981 c 137 § 1.]

**Report on Sentencing Reform Act of 1981:** "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

Comment

*In 1983, the Legislature considered enumerating specific factors which could not be considered in sentencing the offender, including race, creed, and gender. However, the Legislature decided that to list such factors could narrow the scope of their intent, which was to prohibit discrimination as to any element that does not relate to the crime or the previous record of the defendant. For this reason, the statute requires that the sentencing guidelines and prosecuting standards be applied equally "without discrimination."*

**RCW 9.94A.020 Short title.** This chapter may be known and cited as the sentencing reform act of 1981. [1981 c 137 § 2.]

**RCW 9.94A.030 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 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 or imposed pursuant to RCW 9.94A.120(6) 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 Post-release supervision, which begins either upon completion of the term of confinement (Post-release 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 Post-release 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 16.52.200(6) or 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. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to the provisions in RCW 38.52.430.

(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 serious violent 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(9); (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) "Day fine" means a fine imposed by the sentencing judge that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(14) "Day reporting" means a program of enhanced supervision designed to monitor the defendant's daily activities and compliance with sentence conditions, and in which the defendant is required to report daily to a specific location designated by the department or the sentencing judge.

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

(16) "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.

(17) "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.

(18) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(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.

(19) "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.

(20) "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.

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

(22)(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, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, 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 and serious violent offenses.

(23) "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 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.

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

(25) "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.

(26) "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.

(27) "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.

(28) "Post-release supervision" is that portion of an offender's community placement that is not community custody.

(29) "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.

(30) "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.

(31) "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.

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

(33) "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 a felony 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 13.40.135; 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.

(34) "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.

(35) "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.

(36) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(37) "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.

(38) "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.

(39) "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 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 or the state are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (33) of this section are not eligible for the work crew program.

(40) "Work ethic camp" means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(41) "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.

(42) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. [1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16. Prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

#### Comment

##### The 1986 Amendments:

*To reflect the serious nature of Class A felonies, the term "criminal history" was amended so that prior juvenile Class A felonies do not "wash out" when the defendant becomes 23 years of age. See RCW 9.94A.360(4).*

*The term "drug offense" as defined in the SRA, excludes simple possession, forged prescriptions, and violations of the Legend Drug Act.*

*The term "First-Time Offender" confused practitioners and raised questions concerning whether prior juvenile convictions precluded an adult offender from being sentenced as a "First-Time Offender." Changes in the definition make it clear that a juvenile adjudication committed at the age*

of 15 years or after disqualifies the offender from being sentenced under the First-Time Offender Waiver. The exclusion of sex offenders from this option was previously cited in RCW 9.94A.120(5) and was moved to this section to improve clarity.

The term "serious violent offense" has been expanded to include attempts, solicitations and conspiracies to commit any of the felonies listed in the definition. Previously, the law was not clear in three areas: 1) if anticipatory crimes were included in this definition, 2) if anticipatory crimes are eligible for a deadly weapon enhancement, and 3) how anticipatory crimes are to be scored in the offender score. The statutes in this section make clear that anticipatory offenses are considered the same as the completed crime in determining whether the crime is a serious violent offense, warrants a longer sentence for a deadly weapon allegation, or increases the offender score.

The term "sex offense" has been added to this section to clarify which offenses qualify for the sex offender sentencing options and are precluded from the First-Time Offender Waiver. Anticipatory crimes are included within the definition.

The crime of Vehicular Assault has been added to the list of crimes within the definition of a "violent offense." The commission decided that this crime involves basically the same offender behavior as Vehicular Homicide, a violent offense, and therefore the crime needed to be added to this category.

#### The 1987 Amendments:

The definition of serious and violent offenses includes federal and out-of-state convictions.

Eluding a Police Officer was included in the definition of felony traffic offense in 1984, then removed in 1986. The 1987 amendments again defined this crime as a felony traffic offense.

The First-Time Offender definition was amended to exclude use of the waiver for persons convicted of Manufacture, Deliver, or Possess With Intent to Manufacture or Deliver Controlled Substances Classified as Schedule I or II Narcotics.

In order to make a certain type of Vehicular Homicide offenders eligible for the First-Time Offender Waiver, the definition of violent offenses was amended to include Vehicular Homicide only when caused by driving under the influence or by driving recklessly. Vehicular Homicide is not classified as a violent offense if caused by disregard for the safety of others.

#### The 1988 Amendments:

The 1988 Legislature added several definitions related to the community placement program following release from prison. These definitions included community custody, community placement, and Post-release supervision. The definition of escape was amended to include failure to comply with movement limitations while on community custody.

The Commission recommended the definition of juvenile criminal history (RCW 9.94A.030(12)(b)) be amended to include serious traffic offenses. The offender scoring rules (RCW 9.94A.360) include serious traffic offenses when determining the sentence range for felony traffic offenses, therefore this section was changed to be consistent.

The 1990 Amendments:

*The 1990 Legislature amended the definition of criminal history so juvenile convictions for sex offenses are always included in criminal history despite the offender's age or the class of the crime. The definition of sex offense was amended to include crimes committed with sexual motivation; a definition of this term was also added.*

*First Degree Child Molestation and Second Degree Rape were deleted from the violent offense definition because they were raised from Class B to Class A offenses (Chapter 3, Laws of 1990). All Class A offenses are defined as violent crimes.*

The 1993 Amendments:

*In 1993, the Legislature amended RCW 9.94A.030 to broaden work crew program eligibility. The Legislature removed the language limiting the performance of civic improvement tasks to public or private nonprofit property.*

*In 1993, the Legislature amended RCW 9.94A.030 to define Work Ethic Camps.*

*In 1993, the Legislature amended RCW 9.94A.030 to expand the range of financial obligation that may be imposed against offenders who are convicted of vehicular assault or vehicular homicide while under the influence of alcohol or drug. The court may now impose up to \$1000 in costs incurred by public agencies in an emergency response to the incident that resulted in conviction.*

*In 1993, Initiative Measure No. 593 added the definitions of "most serious offense" and "persistent offender." The definition of "persistent offender" requires two previous convictions, on separate occasions, "as an offender," of "most serious offenses." A persistent offender is sentenced to life imprisonment without possibility of release under RCW 9.94A.120(4).*

*The definition of "offender" in subsection (25) includes juveniles whose cases were transferred from juvenile court to criminal court when the juvenile court declined jurisdiction after a hearing under RCW 13.40.110. However, the definition does not appear to include juveniles whose cases were transferred automatically to criminal court under RCW 13.04.030(1)(e)(iv), a provision added by the Youth Violence Act of 1994. That legislation gave criminal courts exclusive original jurisdiction of certain cases involving juveniles 16 or older, without requiring juvenile court to decline jurisdiction. It is unclear whether a conviction of a 16- or 17-year-old in adult criminal court would count as a "strike" under Initiative 593 if the court's jurisdiction were based on RCW 13.04.030(1)(e)(v) instead of RCW 13.40.110.*

The 1995 Amendments:

*The 1995 Legislature amended the definition of "First-Time Offender" to exclude persons convicted of Manufacture, Delivery, or Possession with Intent to Deliver Methamphetamine.*

*The 1995 Legislature expanded the definition of "criminal history" in (12)(b) to include juvenile convictions for serious violent offenses (as defined in (31)), regardless of the offender's age at the time of the offense. The same legislation modified the definition of "First-Time Offender" in (22) to exclude persons with prior juvenile adjudications of serious violent offenses, regardless of age at the time of adjudication.*

*The 1995 Legislature also amended the definition of "sex offense" in (33) to include only felonies. However, a criminal attempt, solicitation, or conspiracy to commit a sex offense triggers the requirement to register as a sex offender under RCW 9A.44.130, even when the offense is classified as a gross misdemeanor.*

**RCW 9.94A.040 Sentencing guidelines commission--Established--Powers and duties--Assumption of powers and duties of juvenile disposition standards commission.** (1) A sentencing guidelines commission is established as an agency of state government.

(2) The commission shall, following a public hearing or hearings:

(a) Devise a series of recommended standard sentence ranges for all felony offenses and a system for determining which range of punishment applies to each offender based on the extent and nature of the offender's criminal history, if any;

(b) Devise recommended prosecuting standards in respect to charging of offenses and plea agreements; and

(c) Devise recommended standards to govern whether sentences are to be served consecutively or concurrently.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) In devising the standard sentence ranges of total and partial confinement under this section, the commission is subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.020.

(5) In carrying out its duties under subsection (2) of this section, the commission shall give consideration to the existing guidelines adopted by the association of superior court judges and the Washington association of prosecuting attorneys and the experience gained through use of those guidelines. The commission shall emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender.

(6) This commission shall conduct a study to determine the capacity of correctional facilities and programs which are or will be available. While the commission need not consider such capacity in arriving at its recommendations, the commission shall project whether the implementation of its recommendations would result in exceeding such capacity. If the commission finds that this result would probably occur, then the commission shall prepare an additional list of standard sentences which shall be consistent with such capacity.

(7) The commission may recommend to the legislature revisions or modifications to the standard sentence ranges and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity.

(8) The commission shall study the existing criminal code and from time to time make recommendations to the legislature for modification.

(9) The commission may (a) serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local sentencing

*alternative to the drug offender sentencing alternative created in this section, not for use in conjunction with it.*

**RCW 9.94A.123 Legislative finding and intent--Commitment of felony sexual offenders after July 1, 1987.** The legislature finds that the sexual offender treatment programs at western and eastern state hospitals, while not proven to be totally effective, may be of some benefit in positively affecting the behavior of certain sexual offenders. Given the significance of the problems of sexual assault and sexual abuse of children, it is therefore appropriate to review and revise these treatment efforts.

At the same time, concerns regarding the lack of adequate security at the existing programs must be satisfactorily addressed. In an effort to promote public safety, it is the intent of the legislature to transfer the responsibility for felony sexual offenders from the department of social and health services to the department of corrections.

Therefore, no person committing a felony sexual offense on or after July 1, 1987, may be committed under \*RCW 9.94A.120(7)(b) to the department of social and health services at eastern state hospital or western state hospital. Any person committed to the department of social and health services under \*RCW 9.94A.120(7)(b) for an offense committed before July 1, 1987, and still in the custody of the department of social and health services on June 30, 1993, shall be transferred to the custody of the department of corrections. Any person eligible for evaluation or treatment under \*RCW 9.94A.120(7)(b) shall be committed to the department of corrections. [1987 c 402 § 2; 1986 c 301 § 1.]

\*Reviser's note: RCW 9.94A.120 was amended by 1995 c 108 § 3, which deleted subsection (7)(b).

**RCW 9.94A.125 Deadly weapon special verdict--Definition.** In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas. [1983 c 163 § 3.]

#### Comment

*The SRA did not originally provide sentence enhancement for all crimes involving a deadly weapon. In 1983, the Legislature adopted the Commission's recommendations that additional time be added to the offender's presumptive sentence for some crimes where the use of the deadly weapon warranted additional punishment. These crimes were Kidnapping 1 and 2, Rape 1, Robbery 1, Burglary 1, Burglary 2 (non-dwelling), Assault 2, Escape 1, and delivery or possession with intent to deliver a controlled substance (RCW 9.94A.310). The Legislature added Theft of Livestock 1 and 2 to this list in 1988 and added Assault of a Child 2 in 1992. The Legislature also clarified in 1986*

that the deadly weapon enhancements apply to anticipatory offenses and to all the drug offenses enumerated in RCW 9.94A.030(18).

Initiative 159, enacted in 1995, made the deadly weapon enhancement applicable to nearly all felonies, doubled that enhancement for subsequent offenses, and created a separate, more severe enhancement where the weapon was a firearm. *State v. Workman*, 90 Wn.2d 433 (1978), prohibits "double counting" an element of an offense for the purpose of proving the existence of the crime and using it to enhance the sentence, without specific legislative intent to so allow. Consistent with *Workman*, neither the firearm enhancement nor the "other deadly weapon" enhancement applies to specified crimes where the use of a firearm is an element of the offense (listed in RCW 9.94A.310(3)(f) and (4)(f)). These sentence enhancements apply to crimes committed on and after July 23, 1995. They are to be served consecutively to any other sentence.

The sentencing court should first calculate the presumptive sentence range for the current offense, using the appropriate Offense Seriousness Level and Offender Score. Then the firearm or other deadly weapon enhancement is added to the entire range. See RCW 9.94A.310(3) and (4).

**RCW 9.94A.127 Sexual motivation special allegation--Procedures.** (1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case other than sex offenses as defined in \*RCW 9.94A.030(29) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in \*RCW 9.94A.030(29) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [1990 c 3 § 601.]

#### Comment

*A finding of sexual motivation was created by the 1990 Legislature applicable to any crime except a sex crime.*

**9.94A.130 Power to defer or suspend sentences abolished--Exceptions.** The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under \*RCW 9.94A.120(7)(a), the special sexual offender sentencing alternative, whose sentence may be suspended. [1984 c 209 § 7; 1981 c 137 § 13.]

\*Reviser's note: RCW 9.94A.120 was amended by 1995 c 108 § 3, changing subsection (7) to subsection (8).

The 1986 revisions also clarified that the deadly weapon penalties apply to anticipatory offenses to commit one of the crimes listed in subsection (3).

In 1989, the Legislature added two enhancements for some drug crimes committed in certain locations: (1) violations of RCW 69.50.401(a) committed within 1,000 feet of a school or school bus zone, and (2) violations of RCW 69.50.401(a) or (d) committed within a county jail or state correctional facility.

The 1990 Legislature amended the sentencing grid to add a new Level XII, and renumber Levels XII through XIV. The sentence ranges in Level XI were increased.

The 1990 Legislature amended the enhancement for certain drug crimes near schools to also apply to manufacturing, delivering, and possessing with the intent to deliver in parks, public transit vehicles, and transit stop shelters (RCW 69.50.435).

The 1992 Legislature added Second Degree Assault of a Child to the crimes eligible for deadly weapon penalties.

The 1994 Legislature amended subsection (4)(c) to apply the previous 12-month deadly weapon enhancement to all violent offenses not subject to a longer enhancement. This was repealed and replaced in 1995 by Initiative 159.

The enactment of Initiative Measure No. 159 by the 1995 Legislature split the previous deadly weapon enhancement into separate enhancements for firearms and for other deadly weapons, and broadened their application to all felonies except those in which using a firearm is an element of the offense. The enhancements double when the offender has previously (but on or after July 23, 1995) been sentenced to a deadly weapon enhancement under (3) or (4). The enhancements must run consecutively to any other sentence, as long as the period of total confinement does not exceed the statutory maximum for the offense. The amendment increased the enhancement (where the weapon is not a firearm) for Burglary 1 from 18 months to two years and reduced the enhancement for Theft of Livestock 2 from one year to six months.

Although the 1995 amendments to subsections (3) and (4) in Initiative 159 prohibit weapon enhancements from running concurrently to other sentencing provisions, the Initiative did not amend RCW 9.94A.400, which provides for concurrent sentencing of multiple counts except under circumstances specified in that section. It is unclear how these provisions interact when multiple counts are sentenced concurrently but include weapon enhancements.

Subsections (3) and (4) limit the total sentence for each count to the statutory maximum, even with weapon enhancements. However, it is unclear whether the maximum consists of the entire weapon enhancement plus the remainder of the base sentence, or of the base sentence plus whatever part of the weapon

1995 Wash. Legis. Serv. Ch. 129 (I.M. 159) (WEST)

WASHINGTON 1995 LEGISLATIVE SERVICE  
54th Legislature, 1995 Regular Session

Additions are indicated by <<+ Text +>>;  
deletions by <<- Text ->>  
Changes in tables are made but not highlighted. Vetoed provisions  
within tabular material are not displayed.

CHAPTER 129  
I.M. No. 159  
CRIMINAL SENTENCING—ARMED CRIMES—INCREASED PENALTIES

AN ACT Relating to increasing penalties for armed crimes; amending RCW 9.94A.310, 9.94A.150, 9A.36.045, 9A.52.020, 9A.56.—, 9A.56.030, 9A.56.040, 9A.56.150, 9A.56.160, 9.41.040, and 10.95.020; reenacting and amending RCW 9.94A.320; adding new sections to chapter 9.94A RCW; adding a new section to chapter 9A.56 RCW; creating new sections; repealing 1994 1st sp.s. c 7 s 510; repealing 1994 1st sp.s. c 7 s 511; repealing 1994 1st sp.s. c 7 s 512; 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) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.
  - (b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping.
  - (c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.
  - (d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.
- (2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:
- (a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.
  - (b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.
  - (c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.
  - (d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes.

Sec. 2. RCW 9.94A.310 and 1992 c 145 s 9 are each amended to read as follows:

<< WA ST 9.94A.310 >>

FIREARM AND OTHER DEADLY WEAPON ENHANCEMENTS INCREASED.

(1)

TABLE 1

Sentencing Grid

**Appendix D-1**

**RCW 9.94A.310(1)--SENTENCING GRID  
TABLE 1  
FOR CRIMES COMMITTED AFTER JUNE 30, 1990**

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XV	Life Sentence without Parole/Death Penalty									
XIV	23y 4m 240 - 320	24y 4m 250 - 333	25y 4m 261 - 347	26y 4m 271 - 361	27y 4m 281 - 374	28y 4m 291 - 388	30y 4m 312 - 416	32y 10m 338 - 450	36y 370 - 493	40y 411 - 548
XIII	12y 123 - 164	13y 134 - 178	14y 144 - 192	15y 154 - 205	16y 165 - 219	17y 175 - 233	19y 195 - 260	21y 216 - 288	25y 257 - 342	29y 298 - 397
XII	9y 93 - 123	9y 11m 102 - 136	10y 9m 111 - 147	11y 8m 120 - 160	12y 6m 129 - 171	13y 5m 138 - 184	15y 9m 162 - 216	17y 3m 178 - 236	20y 3m 209 - 277	23y 3m 240 - 318
XI	7y 6m 78 - 102	8y 4m 86 - 114	9y 2m 95 - 125	9y 11m 102 - 136	10y 9m 111 - 147	11y 7m 120 - 158	14y 2m 146 - 194	15y 5m 159 - 211	17y 11m 185 - 245	20y 5m 210 - 280
X	5y 51 - 68	5y 6m 57 - 75	6y 62 - 82	6y 6m 67 - 89	7y 72 - 96	7y 6m 77 - 102	9y 6m 98 - 130	10y 6m 108 - 144	12y 6m 129 - 171	14y 6m 149 - 198
IX	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	5y 51 - 68	5y 6m 57 - 75	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144	12y 6m 129 - 171
VIII	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144
VII	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116
VI	13m 12+ - 14	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 6m 46 - 61	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102
V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 41 - 54	5y 51 - 68	6y 62 - 82	7y 72 - 96
IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 2m 53 - 70	6y 2m 63 - 84
III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 51 - 68
II	0 - 90 Days	4m 2 - 6	6m 3 - 9	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
I	0 - 60 Days	0 - 90 Days	3m 2 - 5	4m 2 - 6	5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) <<+The following additional times shall be added to the presumptive sentence for felony crimes committed after the effective date of this section if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:+>>>

<<+(a) Five years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.+>>>

<<+(b) Three years for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.+>>>

<<+(c) Eighteen months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.+>>>

<<+(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after the effective date of this section under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, any and all firearm enhancements under this subsection shall be twice the amount of the enhancement listed.+>>>

<<+(e) Notwithstanding any other provision of law, any and all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall not run concurrently with any other sentencing provisions.+>>>

<<+(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.+>>>

<<+(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030.+>>>

<<+(4)+>>> The following additional times shall be added to the presumptive sentence <<+for felony crimes committed after the effective date of this section+>>> if the offender or an accomplice was armed with a deadly weapon as defined in this chapter <<+other than a firearm as defined in RCW 9.41.010+>>> and the offender is being sentenced for one of the crimes listed in this subsection <<+as eligible for any deadly weapon enhancements based on the classification of the completed felony crime+>>>. If the offender or an accomplice was armed with a deadly weapon <<+other than a firearm as defined in RCW 9.41.010+>>> and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection <<+as eligible for any deadly weapon enhancements+>>>, the following <<+additional+>>> times shall be added to the presumptive <<- range->>> <<+sentence+>>> determined under subsection (2) of this section <<+based on the felony crime of conviction as classified under RCW 9A.28.020+>>>:

(a) <<-24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)->>>

<<+Two years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.+>>>

(b) <<-18 months for Burglary 1 (RCW 9A.52.020)->>> <<+One year for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.+>>>

(c) <<-12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Assault of a Child 2 (RCW 9A.36.130), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense->>> <<+Six months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.+>>>

<<+(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after the effective date of this section under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, any and all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed.+>>>

<<+(e) Notwithstanding any other provision of law, any and all deadly weapon enhancements under this section are

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mandatory, shall be served in total confinement, and shall not run concurrently with any other sentencing provisions.+>>  
<<+(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.+>>

<<+(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030+>>.

<<-(4)->><<+(5)+>> The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following <<+ additional+>> times shall be added to the presumptive sentence <<- range->> determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1)(i) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1)(ii), (iii), and (iv);

(c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

<<-(5)->><<+(6)+>> An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

Sec. 3. RCW 9.94A.320 and 1992 c 145 s 4 and 1992 c 75 s 3 are each reenacted and amended to read as follows:

<< WA ST 9.94A.320 >>

#### PENALTIES INCREASED FOR OTHER CRIMES INVOLVING FIREARMS.

#### TABLE 2

#### CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV Aggravated Murder 1 (RCW 10.95.020)

XIV Murder 1 (RCW 9A.32.030)

Homicide by abuse (RCW 9A.32.055)

XIII Murder 2 (RCW 9A.32.050)

XII Assault 1 (RCW 9A.36.011)

Assault of a Child 1 (RCW 9A.36.120)

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RCW 9.94A.320 Table 2—Crimes included within each seriousness level.

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XIII	Murder 2 (RCW 9A.32.050)
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120)
XI	Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
X	Kidnapping 1 (RCW 9A.40.020) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Child Molestation 1 (RCW 9A.44.083) Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1)) Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a))
IX	Assault of a Child 2 (RCW 9A.36.130) Robbery 1 (RCW 9A.56.200) Manslaughter 1 (RCW 9A.32.060) Explosive devices prohibited (RCW 70.74.180) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Endangering life and property by explosives with threat to human being (RCW 70.74.270) Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406) Controlled Substance Homicide (RCW 69.50.415) Sexual Exploitation (RCW 9.68A.040) Inciting Criminal Profiteering (RCW 9A.82.060(1)(b)) Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
VIII	Arson 1 (RCW 9A.48.020) Promoting Prostitution 1 (RCW 9A.88.070) Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410) Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i)) Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))

- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- Introducing Contraband 1 (RCW 9A.76.140)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Child Molestation 2 (RCW 9A.44.086)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Reckless Endangerment 1 (RCW 9A.36.045)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- VI Bribery (RCW 9A.68.010)
- Manslaughter 2 (RCW 9A.32.070)
- Rape of a Child 3 (RCW 9A.44.079)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
- Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
- Incest 1 (RCW 9A.64.020(1))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Theft of a Firearm (RCW 9A.56.300)
- V Persistent prison misbehavior (RCW 9.94.070)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance I (RCW 9A.76.070)

- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Sexually Violating Human Remains (RCW 9A.44.105)
- Delivery of imitation controlled substance by person  
eighteen or over to person under eighteen (RCW  
69.52.030(2))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- IV Residential Burglary (RCW 9A.52.025)
- Theft of Livestock 1 (RCW 9A.56.080)
- Robbery 2 (RCW 9A.56.210)
- Assault 2 (RCW 9A.36.021)
- Escape 1 (RCW 9A.76.110)
- Arson 2 (RCW 9A.48.030)
- Commercial Bribery (RCW 9A.68.060)
- Bribing a Witness/Bribe Received by Witness (RCW  
9A.72.090, 9A.72.100)
- Malicious Harassment (RCW 9A.36.080)
- Threats to Bomb (RCW 9.61.160)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- Hit and Run — Injury Accident (RCW 46.52.020(4))
- Vehicular Assault (RCW 46.61.522)
- Manufacture, deliver, or possess with intent to deliver  
narcotics from Schedule III, IV, or V or  
nonnarcotics from Schedule I-V (except marijuana  
or methamphetamines) (RCW 69.50.401(a)(1)(ii)  
through (iv))
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080  
(1) and (2))
- Knowingly Trafficking in Stolen Property (RCW  
9A.82.050(2))
- III Criminal Mistreatment 2 (RCW 9A.42.030)
- Extortion 2 (RCW 9A.56.130)
- Unlawful Imprisonment (RCW 9A.40.040)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Custodial Assault (RCW 9A.36.100)
- Unlawful possession of firearm in the second degree (RCW  
9.41.040(1)(b))
- Harassment (RCW 9A.46.020)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Willful Failure to Return from Work Release (RCW  
72.65.070)
- Burglary 2 (RCW 9A.52.030)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW  
9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)

- Perjury 2 (RCW 9A.72.030)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II Unlawful Practice of Law (RCW 2.48.180)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Health Care False Claims (RCW 48.80.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Escape from Community Custody (RCW 72.09.310)
- I Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)

Possess Controlled Substance that is a Narcotic from  
Schedule III, IV, or V or Non-narcotic from  
Schedule I-V (except phencyclidine) (RCW  
69.50.401(d))

[1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159). Prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3.]

Comment

Crime Label: *Offense seriousness is established by the actual crime of conviction. The crime of conviction is therefore far more significant in determining a sentence than under the former indeterminate system.*

Crime Ranking: *One of the most significant and time-consuming decisions made by the Commission was its ranking of crimes by seriousness. The three mandatory minimum sentences originally established by the Sentencing Reform Act (First Degree Murder, First Degree Assault, First Degree Rape) served as bench marks for the Commission's work. The Commission was also assisted by the general felony classifications established by the Legislature (classes A, B, and C felonies - RCW 9A.20.020). The Commission decided that given the law's emphasis on violent crimes, the seriousness levels needed to reflect this priority. Certain class C felonies were eventually ranked higher than some Class B felonies because they constituted a crime against a person.*

Offense Date: *The date of the offense is important because it establishes whether the guidelines apply to a particular offender's case. If the date of offense is on or before June 30, 1984, the Indeterminate Sentence Review Board and its successors must make decisions with reference to the purposes, standards, and ranges of the Sentencing Reform Act and the minimum term recommendations of the sentencing judge and prosecuting attorney. See In Re Myers, 105 Wn.2d 257 (1986). The date of the offense also influences what portion of an offender's juvenile record will be used to calculate criminal history.*

Ranked Felonies: *The most common felonies have been included in the Seriousness Level Table. The Commission decided not to rank certain felonies which seldom occur. The Commission will continue to recommend adjustments in seriousness levels as new felonies are created by the Legislature. If, in the future, a significant number of persons are convicted of offenses not included in the Seriousness Level Table, the Commission will recommend appropriate seriousness levels to the Legislature for those crimes.*

*The 1990 Legislature created an additional seriousness level at Level XI, and renumbered Levels XI through XIV, making these Levels XII through XV.*

*The 1994 Legislature created a new class C felony offense, Theft of a Firearm (RCW 9A.56.300) at Level V of the scale, and increased the severity of Reckless Endangerment I (RCW 9A.36.045) from Level II to Level V. These amendments to this section were repealed and replaced in 1995 by Initiative Measure No. 159.*

The 1995 Legislature also modified (2) to prohibit "wash out" of a prior conviction if, within the prescribed time period, an offender commits a crime for which he or she is subsequently convicted. Thus the qualifying period is measured not from release until a subsequent conviction, but from release until a subsequent offense. Intervening misdemeanors, as well as felonies, appear to preclude "wash out." The legislation also amended (3) to classify federal convictions according to comparable Washington definitions and sentences, and to classify federal felony convictions as class C felonies, for purposes of calculating the offender score, when there is no clearly comparable Washington offense. In addition, (6) was amended to permit a sentencing court to presume that certain prior offenses did not encompass the same criminal conduct for scoring purposes. The term "served concurrently" in (6) was defined by adding (6)(b).

**RCW 9.94A.370 Presumptive sentence.** (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire presumptive sentence range. The court may impose any sentence within the range that it deems appropriate. All presumptive sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for in \*RCW 9.94A.390(2) (c), (d), and (e). [1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8.]

\*Reviser's note: RCW 9.94A.390 was amended by 1990 c 3 § 603, and the previous subsection (2)(e) was renumbered as subsection (2)(f).

#### Comment

*The Commission believed that defendants should be sentenced on the basis of facts which are acknowledged, proven, or pleaded to. Concerns were raised about facts which were not proven as an element of the conviction or the plea being used as a basis for sentence decisions, including decisions to depart from the sentence range. As a result, the "real facts policy" was adopted. Amendments in 1986 clarified that facts proven in a trial can be used by a court in determining a sentence.*

*If the defendant disputes information in the presentence investigation, it is anticipated that an evidentiary hearing will be held to resolve the issue.*

**RCW 9.94A.380 Alternatives to total confinement.** Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement: (1) One day of partial confinement may be substituted for one day of total confinement; (2) in addition, for

STATE OF WASHINGTON

# VOTERS PAMPHLET



# GENERAL ELECTION

NOVEMBER 2, 1993

Published By The

SECRETARY OF STATE



EDITION 2

Appendix F-1

# 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), Claquato (near Chehalis), Steilacoom 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 MUNRO  
Secretary of State

*This pamphlet was prepared by Erika E. Aust, Assistant Elections Director and  
Candace A. McDonald, Composition Coordinator, Office of the Secretary of State.*

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## VOTER'S CHECKLIST

	YES	NO
<b>INITIATIVE MEASURE 593</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 Hotlines**  
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# 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 9A 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 "bar fights" 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 BALLASIOOTES, State Representative; BRIAN EBERSOLE, Speaker, House of Representatives.

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

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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.

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