

FILED
Aug 22, 2016
Court of Appeals
Division I
State of Washington

No. 75083-6-I

**IN THE COURT OF APPEALS FOR THE
STATE OF WASHINGTON**

**IN RE PERSONAL RESTRAINT PETITION of
TROY DEAN STUBBS, Petitioner**

BRIEF OF RESPONDENT

**DAVID S. McEACHRAN,
Whatcom County Prosecuting Attorney
By HILARY A. THOMAS
Appellate Deputy Prosecutor
Attorney for Respondent
WSBA #22007**

**Whatcom County Prosecutor's Office
311 Grand Avenue, Second Floor
Bellingham, WA 98225
(360) 676-6784**

TABLE OF CONTENTS

A. AUTHORITY FOR RESTRAINT1

B. ISSUES PERTAINING TO APPELLANT'S
ASSIGNMENTS OF ERROR1

C. STATEMENT OF FACTS.....1

D. ARGUMENT.....3

1. The petition does not fall within the time bar
exception of RCW 10.73.100(5) for a sentence that's
in excess of the court's jurisdiction.5

2. Even if Stubbs's judgment and sentence is invalid on
its face, his remedy is limited to correction of the
sentence.7

 a. *The remedy for a facially invalid judgment and
sentence is correction of the invalidity.*.....7

 b. *Stubbs's judgment and sentence is valid on its
face.*.....10

E. CONCLUSION13

TABLE OF AUTHORITIES

Washington State Court of Appeals

<u>In re Smalls,</u> 182 Wn.App. 381, 335 P.3d 949 (2014), <i>rev. den.</i> , 182 Wn.2d 1015 (2015).....	8, 9
<u>In re Vehlewald,</u> 92 Wn. App. 197, 963 P.2d 903 (1998).....	6

Washington State Supreme Court

<u>In re Adams,</u> 178 Wn.2d 417, 309 P.3d 451 (2013).....	8
<u>In re Davis,</u> 152 Wn.2d 647, 101 P.3d 1 (2004).....	4
<u>In re Personal Restraint of Cook,</u> 114 Wn.2d 802, 792 P.2d 506 (1990).....	4, 5
<u>In re Personal Restraint of Hemenway,</u> 147 Wn.2d 529, 55 P.3d 615 (2002).....	11
<u>In re Personal Restraint of Rice,</u> 118 Wn.2d 876, 828 P.2d 1086 (1992).....	4
<u>In re Personal Restraint of Well,</u> 133 Wn.2d 433, 946 P.2d 750 (1997).....	7
<u>In re Personal Restraint of Williams,</u> 111 Wn.2d 353, 759 P.2d 436 (1988).....	4
<u>In re Richey,</u> 162 Wn.2d 865, 175 P.3d 585 (2008).....	6
<u>In re Runyan,</u> 121 Wn.2d 432, 853 P.2d 424.....	5
<u>In re Snively,</u> 180 Wn.2d 28, 320 P.3d 1107 (2014).....	8, 9, 11
<u>In re Thompson,</u> 141 Wn.2d 712, 10 P.3d 380 (2000).....	11
<u>In re Toledo-Sotelo,</u> 176 Wn.2d 759, 297 P.3d 51 (2013).....	8, 11
<u>Shumway v. Payne,</u> 136 Wn.2d 383, 964 P.2d 349 (1998).....	4
<u>State v. Ross,</u> 152 Wn.2d 220, 95 P.3d 1225 (2004).....	11

Statutes and Rules

RAP 16.4(d).....	5, 7
RCW 10.73.090	5
RCW 10.73.090(1).....	7
RCW 10.73.090(1), (2).....	5
RCW 10.73.090(3).....	5
RCW 10.73.100	5, 8
RCW 10.73.100(5).....	1, 3, 6
RCW 9.94A.310.....	12
RCW 9.94A.400(1)(a) (1985).....	12

A. AUTHORITY FOR RESTRAINT

Petitioner Troy Dean Stubbs is *not* restrained pursuant to judgment and sentence under Whatcom County Superior Court, #85-1-00369-4, which was entered on October 2, 1985. State's App. A. Stubbs is currently incarcerated under Pend Oreille County Superior Court No. 05-1-00071-9.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Whether an allegation that the judge sentenced petitioner with an incorrect offender score falls within the exception to the time bar under RCW 10.73.100(5).
2. Whether petitioner may seek to vacate his guilty plea entered over 20 years ago, rather than correction of the judgment and sentence, where the offender score listed in the judgment and sentence includes two juvenile adjudications that petitioner alleges he committed when he was fourteen years old and which would not have scored under the law at the time of his sentence.

C. STATEMENT OF FACTS

Petitioner acknowledges that he is not under restraint due to this conviction for Taking a Motor Vehicle, Whatcom County Superior Court No. 85-1-00369-4, and that he is attacking this conviction because it affects the offender score for the conviction under which he is currently serving time. See Petition at 1, 2, Affidavit in Support of Personal

Restraint Petition (“Affidavit”) at 2. The only relief he requests is vacation of his conviction. See Petition at 2, 6.

Stubbs asserts that he didn’t know that his juvenile convictions were included in his “sentence” until 2015, however the plea statement stated: “The standard range sentence for the crime is at least 2 and no more than 6 based upon my criminal history which I understand the Prosecutor says to be: 1985 Burglary Second Degree as an adult; 1980 Burglary Second Degree as a juvenile; 1980 Taking a Motor Vehicle as a juvenile.” App. B at 2. The plea statement also informed Stubbs that criminal history, which was used to calculate his standard range, “include[d] convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older.” App. B at 4. Stubbs had either read the plea statement or had it read to him. App. B. at 6. It appears as part of the plea agreement, one count of Burglary in the Second Degree was dismissed. App. A at 1; App. B at 1, 3. The same day he entered the plea, he was sentenced to 4 months. App. A at 5. The judgment and sentence listed his offender score as a 3 and his standard range as 2-6 months. App. A at 3. Neither the judgment and sentence nor the plea statement list his date of birth.

On the same day he entered a plea to, and was sentenced on, the Taking a Motor Vehicle offense, he also pleaded guilty to, and was

sentenced on, Burglary in the Second Degree under Whatcom County Superior Court No. 85-1-00348-1.¹ App. C; see Court of Appeals No. 75082-8. He was advised of the same information regarding his juvenile criminal history in that cause number as well.

D. ARGUMENT

Stubbs has filed two personal restraint petitions seeking to vacate his Whatcom County Superior Court convictions he committed in 1985 based on an alleged incorrect offender score. He asserts that his petition is not untimely, though he filed it over 20 years after conviction, because the judgement and sentence was “in excess of the court’s jurisdiction,” an exception to the time bar under RCW 10.73.100(5). The court did not exceed its “jurisdiction” in sentencing Stubbs even if the offender score was incorrect. Stubbs’s petition is untimely, and even if he could avoid the time bar by asserting that the judgment and sentence is invalid on its face, he has failed to demonstrate a non-constitutional error resulting in a complete miscarriage of justice because the prison term that was imposed is within the standard range on a corrected offender score. Furthermore, his remedy would be limited to correcting the sentence. As he only seeks vacation of his convictions, his petition should be dismissed.

¹ Stubbs has also filed a similar personal restraint petition related to this conviction, No. 75082-8.

Collateral relief “undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders.” Shumway v. Payne, 136 Wn.2d 383, 399, 964 P.2d 349 (1998). An appellate court, therefore, will grant substantive review of a personal restraint petition only when the petitioner makes a threshold showing of constitutional error from which he has suffered actual prejudice or nonconstitutional error which inherently results in a complete miscarriage of justice. In re Personal Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). “As a general rule, “collateral attack by [personal restraint petition] on a criminal conviction and sentence should not simply be a reiteration of issues finally resolved at trial and direct review, but rather should raise new points of fact and law that were not or could not have been raised in the principal action, to the prejudice of the defendant.” In re Davis, 152 Wn.2d 647, 670-71, 101 P.3d 1 (2004) (footnotes omitted). The petition must set forth the facts underlying the claim of unlawful restraint and the evidence available to support the factual allegations. In re Personal Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). Bald assertions and conclusory allegations are insufficient. *Id.*; In re Personal Restraint of Williams, 111 Wn.2d 353, 364-65, 759 P.2d 436 (1988). A court must decline to review

a petition where it fails to meet the threshold burden of providing facts and evidence upon which to decide the issue. In re Cook, 114 Wn.2d at 814.

- 1. The petition does not fall within the time bar exception of RCW 10.73.100(5) for a sentence that's in excess of the court's jurisdiction.**

Personal restraint petitions must comply with the provisions of RCW 10.73.090. RAP 16.4(d). Under RCW 10.73.090 a petition collaterally attacking a judgment and sentence may not be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.090(1), (2); In re Runyan, 121 Wn.2d 432, 444, 449, 853 P.2d 424 (1993 (upholding constitutionality of RCW 10.73.090 which imposes one-year time limit except in six enumerated circumstances set forth in RCW 10.73.100). A judgment is final once it is entered unless it is appealed. RCW 10.73.090(3).

Stubbs's pleas and judgment and sentences were entered on October 2, 1985. Stubbs's petition was filed on April 13, 2016, over 20 years after the judgment and sentence was entered. Stubbs is time-barred from asserting error regarding the validity of his plea or sentencing unless the judgment and sentence is invalid on its face or one of the exceptions under RCW 10.73.100 apply.

Stubbs asserts that the time bar does not apply because the judgment and sentence was in excess of the court's jurisdiction, which is language implicating subsection 5 of RCW 10.73.100. Stubbs misreads the import of the term "jurisdiction" within that exception. Under RCW 10.73.100(5), a sentence "is not jurisdictionally defective merely because it is in violation of a statute or is based on a misinterpretation of a statute." In re Richey, 162 Wn.2d 865, 872, 175 P.3d 585 (2008). Jurisdiction in the context of this exception means personal or subject matter jurisdiction. In re Vehlewald, 92 Wn. App. 197, 200-01, 963 P.2d 903 (1998). The difference between a decision that exceeds jurisdiction and one that exceeds statutory authority is significant:

A court has "subject matter jurisdiction where the court has the authority to adjudicate the *type of controversy* in the action, and ... it does not lose subject matter jurisdiction merely by interpreting the law erroneously." ... For example, the untimely imposition of restitution as a condition of a sentence is not a jurisdictional defect when the trial court has authority to adjudicate the type of controversy, but does so in violation of the statutory time limit.

Id. at 202 (footnote reference omitted).

Stubbs does not allege that the trial court did not have personal or subject matter jurisdiction. The exception under RCW 10.73.100 (5) does not apply to his petition.

2. Even if Stubbs's judgment and sentence is invalid on its face, his remedy is limited to correction of the sentence.

As Stubbs's petition does not fall within one of the exceptions to the time bar under RCW 10.73.100, it can only be considered if the judgment and sentence is invalid on its face². RAP 16.4(d); RCW 10.73.090(1); In re Personal Restraint of Well, 133 Wn.2d 433, 438, 946 P.2d 750 (1997). Stubbs does not rely on facial invalidity under RCW 10.73.090(1), but a case he relies on to support his argument that the court's sentence was in excess of its jurisdiction discusses facial validity under RCW 10.73.090(1). Even if Stubbs's judgment and sentence were facially invalid, he has failed to demonstrate a non-constitutional error resulting in a complete miscarriage of justice where the sentence the court imposed, 4 months, is within the standard range if the offender score were corrected. Moreover, his remedy at this point in time is limited to correcting the sentence, relief he does not seek.

a. The remedy for a facially invalid judgment and sentence is correction of the invalidity.

The two "preconditions" set forth in RCW 10.73.090 are additional, narrow exceptions to those set forth in RCW 10.73.100

² RCW 10.73.090 also asserts the time bar applies if the judgment and sentence was rendered by a court of competent jurisdiction. RCW 10.73.090(1). Stubbs does not allege and the court was not a court of competent jurisdiction.

regarding the one year time bar on collateral attacks. In re Adams, 178 Wn.2d 417, 424, 309 P.3d 451 (2013). “Because the “valid on its face” precondition is an exception, once the one-year time limit has run, a petitioner may seek relief only for the defect that renders the judgment not valid on its face.” Id. Asserting a claim under the invalid on its face precondition does not “open the door to other time-barred claims.” Id. at 425. The remedy for asserted sentencing errors in collateral attacks is limited to correction of the sentencing error. Id at 427.

An asserted claim of an involuntary plea is not an error related to facial invalidity and may not be raised in an untimely collateral attack unless it falls within one of the exceptions listed in RCW 10.73.100. In re Toledo-Sotelo, 176 Wn.2d 759, 770, 297 P.3d 51 (2013). “[M]isinformation as to sentencing is not by itself an exempt ground for relief under RCW 10.73.100.” In re Snively, 180 Wn.2d 28, 32, 320 P.3d 1107 (2014). A petitioner asserting an untimely claim of an involuntary plea based on misinformation as to sentencing is limited to correction of the sentence. Id.

For example, in In re Smalls, 182 Wn.App. 381, 335 P.3d 949 (2014), *rev. den.*, 182 Wn.2d 1015 (2015), the defendant filed an untimely collateral attack challenging his convictions for assault in the second degree and murder in the second degree, offenses to which he had pleaded

guilty. In re Smalls, 182 Wn. App. at 383-84. On review, the court accepted the State's concession that the assault conviction violated the statute of limitations and therefore the judgment and sentence was facially invalid. Id. at 386. The State also conceded that the sentence on the murder conviction was facially invalid because the offender score on the murder charge included two points for the assault charge that needed to be vacated. Id. The defendant, however, did not request a correction of his sentence, but instead sought to withdraw his guilty plea to murder. Id. at 386-87. The court found that the challenge was only as to the sentence for murder and not to the facial invalidity of the murder conviction itself. Id. at 38. The court rejected the defendant's claim that the trial court did not have subject matter jurisdiction over the murder plea because a court does not lack subject matter jurisdiction even though it may lack authority to enter a particular order. Id. at 387-88. The court concluded that the errors that rendered the judgment and sentence facially invalid could be corrected by dismissing the assault charge and correcting the sentence on the murder conviction. Id. at 389. The court concluded that "[a] petitioner who makes [a showing of facial invalidity] is entitled only to a remand to the trial court to correct the invalidity but is not entitled to assert a time-barred challenge to the validity of his plea." Id. at 391.

If Stubbs's judgment and sentence is facially invalid because his offender score resulted in an incorrect sentence, then he is entitled to, at most, correction of his sentence. This is a remedy he does not appear to seek. Moreover, the corrected offender score would result in a range that is only one month less on the maximum end, and the sentence he received was within the standard range the court could have imposed on the corrected offender score of two. (See argument below.) This non-constitutional error does not rise to the level of a complete miscarriage of justice.

b. Stubbs's judgment and sentence is valid on its face.

Stubbs claims that the offender score listed on the judgment and sentence was wrong because it included offenses that he committed as a juvenile when he was 14 years old. The law in effect at the time, as noted in his plea statement, provided that juvenile offenses only counted in the offender score if the defendant had been 15 at the time of the juvenile offense and was under 23 years old at the time of the current sentencing. The judgment and sentence, and even the plea statement, does not include Stubbs's date of birth on them. While the State has no reason to contest that Stubbs's date of birth is such that he was 14 at the time of those two juvenile adjudications, the invalidity does not appear on the face of the

judgment and sentence. Moreover, the court imposed a sentence of 4 months on the stated standard range of 2 to 6 months, within the standard range if the juvenile offenses had not been included in the offender score.

A judgment and sentence is constitutionally invalid on its face only if the judgment “without further elaboration evidences infirmities of a constitutional magnitude.” In re Thompson, 141 Wn.2d 712, 718, 10 P.3d 380 (2000). The error of law or fact must appear within the four corners of the judgment and sentence itself. State v. Ross, 152 Wn.2d 220, 231, 95 P.3d 1225 (2004). If the judgment and sentence reflects that the sentence imposed was within the trial court’s legal authority, the judgment and sentence is valid on its face. In re Personal Restraint of Hemenway, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); *see also*, In re Snively, 180 Wn. 2d at 32 (“A judgment and sentence is facially invalid if the trial court lacked authority to impose the challenged sentence.”). For a judgment and sentence to be invalid on its face, the sentence imposed must be a sentence not actually authorized by the Sentencing Reform Act (“SRA”): not every error within a judgment and sentence renders it invalid. In re Toledo-Sotelo, 176 Wn. 2d at 767. For example, if a court imposes a sentence that is within the SRA-mandated standard range, the judgment and sentence is not facially invalid simply because the maximum sentence was misstated. *Id.* at 767.

Stubbs's date of birth does not appear on the judgment and sentence, or even the plea statement. Looking just at the four corners of the judgment and sentence, the sentence appears to be valid. If Stubbs's juvenile offenses had not been included in his offender score when he was sentenced³, his offender score would be a two, one point for his prior adult conviction for second degree burglary and one point for the burglary in the second degree that he pleaded guilty to, under No. 85-1-00348-1, and was sentenced on the same day as this Taking a Motor Vehicle.⁴ An offender score of two with a seriousness level of one back in 1985 carried a standard range of two to five months, instead of two to six months. RCW RCW 9.94A.310, .320, .330 (1985) (See App. D). The sentence the court imposed was within its authority to impose even if the juvenile offenses had not counted towards his offender score.

Stubbs's judgment and sentence does not state his date of birth, and the sentence imposed was actually within the correct standard range for his offenses even if the juvenile offenses did not count towards his offender score. As the judgment and sentence is not invalid on its face, Stubbs's petition is untimely under RCW 10.73.090.

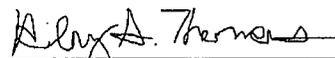
³ Stubbs has already challenged the inclusion of his juvenile offenses in the calculation of his offender score on the offense for which he is currently incarcerated, but the Court determined those prior offenses counted towards his offender score at the time he was sentenced for the Pend Oreille County conviction. COA No. 30115-0-III

⁴ Other current offenses count towards the offender score. RCW 9.94A.400(1)(a) (1985).

E. CONCLUSION

The exception Stubbs asserts removes his petition from the time bar, under RCW 10.73.100(5) “in excess of the court’s jurisdiction,” does not apply to his petition. Stubbs has failed to assert, never mind show, that the judgment is facially invalid. His petition therefore is procedurally barred from consideration. Even if his petition wasn’t procedurally barred, Stubbs is not entitled to the remedy he seeks. He would only be entitled to correction of the judgment and sentence. In addition, he has failed to demonstrate the alleged non-constitutional error has resulted in a complete miscarriage of justice. For the reasons set forth above, the State respectfully requests that this Court dismiss Stubbs’s petition.

Respectfully submitted this 16th day of August, 2016.



HILARY A. THOMAS, WSBA #22007
Attorney for Respondent
Appellate Deputy Prosecutor
Admin #941075

CERTIFICATE

I CERTIFY that on this date I placed in the U.S. mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the foregoing document to this Court, and Petitioner, addressed as follows:

Troy Dean Stubbs, #912082
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Ann Stromberg
Legal Assistant

Aug. 16, 2016
Date

APPENDIX A

J&S

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

JONIA BAWIDAN
COURT CLERK
5 OCT -2 AM 11:58
F

THE STATE OF WASHINGTON,) No. 85-1-00369-4
Plaintiff,)
vs.)
TROY STUBBS,) JUDGMENT AND SENTENCE
Defendant.) (FELONY)
SID No.:

I. HEARING

- 1.1 A sentencing hearing in this case was held: October 2, 1985, the honorable BYRON L. SWEDBERG presiding.
- 1.2 Present were:
Defendant: TROY STUBBS
Defendant's Lawyer: JON E. OSTLUND
(Deputy) Prosecuting Attorney: DAVID C. COTTINGHAM
Other:
- 1.3 The State has moved for dismissal of Count I.
- 1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the Court finds:

- 2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on October 2, 1985 by (plea) ~~(GUILTY)~~ ~~(GUILTY)~~ of: TAKING A MOTOR VEHICLE WITHOUT THE OWNER'S PERMISSION, COUNT II.

ENTERED DEC 13 1985

444 271

*Copy file
HBB 26-497*

JUDGMENT AND SENTENCE (FELONY) - 1
CONFINEMENT OVER ONE YEAR

Count No.: II Crime: TAKING A MOTOR VEHICLE WITHOUT
THE OWNER'S PERMISSION
RCW: (A.56.070(1))
Crime Code Class C
Date of Crime: August 20, 1985
Incident No. 85A 8910

Count No.: _____ Crime: _____
RCW: _____
Crime Code _____
Date of Crime: _____
Incident No. _____

Count No.: _____ Crime: _____
RCW: _____
Crime Code _____
Date of Crime: _____
Incident No. _____

With a special verdict/finding for use of deadly weapon on Count(s):

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

JUDGMENT AND SENTENCE (FELONY) - 2
CONFINEMENT OVER ONE YEAR

[] Additional current offenses are attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime: BURGLARY SECOND DEGREE
Sentencing Date: 5-30-85
Adult or Juvenile Crime: ADULT
Date of Crime: 5-14-85
Crime Type: Class B

Crime: BURGLARY SECOND DEGREE
Sentencing Date: 4-23-80
Adult or Juvenile Crime: JUVENILE
Date of Crime: 4-17-80
Crime Type: Class B

Crime: TAKING MOTOR VEHICLE
Sentencing Date: 7-20-80
Adult or Juvenile Crime: JUVENILE
Date of Crime: 5-9-80
Crime Type: Class C

Crime: _____
Sentencing Date: _____
Adult or Juvenile Crime: _____
Date of Crime: _____
Crime Type: _____

[] Additional criminal history is attached in Appendix B.

2.3 SENTENCING DATA:

	<u>Offender Score</u>	<u>Seriousness Level</u>	<u>Range</u>	<u>Maximum Term</u>
Count No. <u>II</u> :	<u>3</u>	<u>I</u>	<u>2 - 6</u>	<u>5 years</u>
Count No. _____ :	_____	_____	_____	_____
Count No. _____ :	_____	_____	_____	_____
Count No. _____ :	_____	_____	_____	_____

[] Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

[] Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____, Finding of Fact and Conclusions of Law are attached in Appendix D.

JUDGMENT AND SENTENCE (PELONY) - 3
CONFINEMENT OVER ONE YEAR

- 2.5 CATEGORY OF OFFENDER: The defendant is:
- (a) An offender who shall be sentenced to confinement over one year.
 - (b) An offender who shall be sentenced to confinement one year or less.
 - (c) A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12),.120(5)).
 - (d) A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and community will benefit from its use (RCW 9.94A.120(7)(a)).
 - (e) A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the crime(s) of:
TAKING A MOTOR VEHICLE WITHOUT THE OWNER'S PERMISSION,
COUNT II.

IV. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below.

- 4.1 Defendant shall pay to the Clerk of this Court:
- (a) \$70.00 court costs;
 - (b) \$50.00 victim fund assessment;
 - (c) \$to be determined restitution (with credit for amounts paid by co-defendants);
 Schedule of Restitution is attached as Appendix E.
 - (d) \$ 225.00 recoupment for attorney's fees;

- (e) \$ _____ fine;
- (f) \$ _____ drug enforcement fund;
- (g) \$ _____ other costs for:

- (h) \$ _____ TOTAL MONETARY OBLIGATIONS.
- (i) Payments shall be made in the following manner:

- (j) This Court shall retain jurisdiction over the defendant for a period of TEN (10) years to assure payment of the above monetary obligations.

4.2 The Court DISMISSES Count(s) I

4.3 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows commencing immediately:

- 4 months for Count No. II .
- _____ months for Count No. _____.
- _____ months for Count No. _____.
- _____ months for Count No. _____.

[] The terms in Counts No. _____ are concurrent for a total term of _____ months.

[] The terms in Counts No. _____ are consecutive for a total term of _____ months.

The sentence herein shall run (concurrently) (consecutively) with the sentence in 85-1-00348-1 [Count(s) or Cause No.(s)]

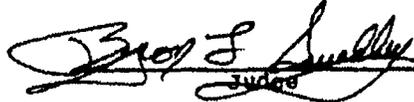
[] Credit is given for (time) (_____ days) served.

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- Appendix A, Additional Current Offenses
- Appendix B, Additional Criminal History
- Appendix C, Current Offense(s) Sentencing Information
- Appendix D, Findings of Fact and Conclusions of Law for an Exceptional Sentence
- Appendix E, Schedule of Restitution

That this judgment and sentence is signed in the presence of the defendant.

Date: October 2, 1985


Judge

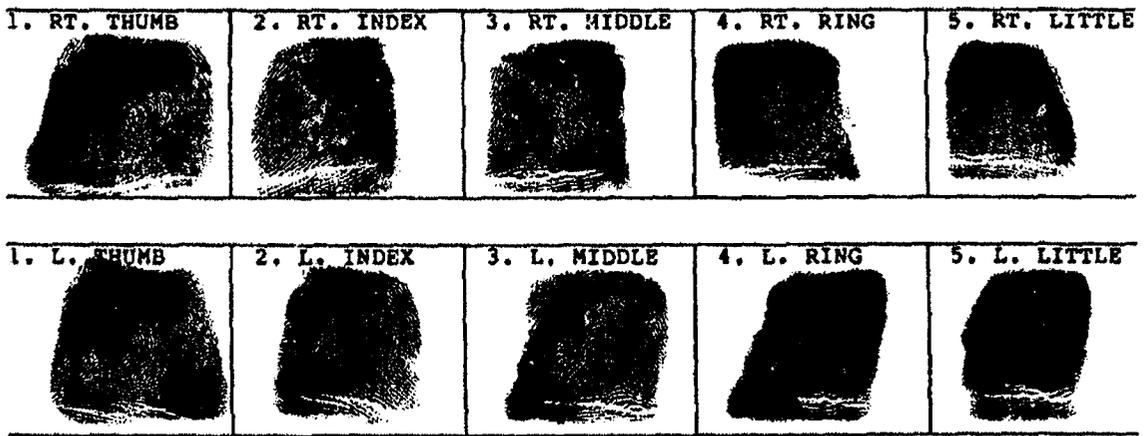
Presented by:

Approved as to form:


DAVID C. COTTINGHAM
(Deputy) Prosecuting Attorney


JON E. OSTLUND
Attorney for Defendant

FINGERPRINTS OF Irving Stubbins CAUSE NO. 85-100369-4



Sybil [Signature]
Officer Taking Fingerprints WA0370000

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

I, JENNA GRAHAM, County Clerk of Whatcom County and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Whatcom, do hereby attest that the fingerprints appearing on this order are those of the above-named defendant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office at Bellingham, this 27th day of Oct, 1985.

OFFENDER IDENTIFICATION

S.I.D. NO. _____
Date of Birth _____
Sex _____
Race _____
ORI _____
OCA _____
OIN _____
DOA _____

JENNA GRAHAM, Clerk
By Kay Baddley
Deputy Clerk

APPENDIX B

PLEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

TROY STUBBS,

Defendant.

No. 85-1-00369-4

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

1. My true name is TROY STUBBS.

2. My age is 19.

3. I went through the 11th grade in school.

4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is _____.

5. I have been informed and fully understand that I am charged with the crime(s) of BURGLARY IN THE SECOND DEGREE, COUNT I; TAKING A MOTOR VEHICLE WITHOUT THE OWNER'S PERMISSION, COUNT II.

that the elements of the crime(s) are: Ct II - That on or about the 20th day of August, 1985, the defendant took or drove away a motor vehicle without permission of the owner or person entitled to possession; that the defendant was acting intentionally; that the motor vehicle was the property of another; and that the acts occurred in Whatcom County, Washington.

and that the maximum sentence(s) for which is (are): _____

Statement of Defendant
on Plea of Guilty - 1

444 270

40826-499

FIVE (5) years
and/or \$10,000 fine(s).

In addition, I understand that I may have to pay restitution for crime(s) to which I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime is at least _____ and no more than _____

based upon my criminal history which I understand the Prosecutor says to be: 1985 Burglary Second Degree as an adult; 1980 Burglary Second Degree as a juvenile; 1980 Taking a Motor Vehicle as a juvenile.

() Criminal history attached as Appendix _____ and incorporated by reference.

I have been given a copy of the (Amended) Information.

() And I further understand that as a First Time Offender, the Court may decide not to impose the standard sentence range, and then the Court may sentence me to up to NINETY (90) days of total confinement and TWO (2) years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge.)

6. I have been informed and fully understand that:

(a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

Statement of Defendant
on Plea of Guilty - 2

(b) I have the right to remain silent before and during the trial, and I need not testify against myself.

(c) I have the right to hear and question any witness who testifies against me.

(d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.

(e) I am presumed innocent until the charge(s) is (are) proven beyond a reasonable doubt, or I enter a plea of guilty.

(f) I have the right to appeal a determination of guilt after a trial.

(g) If I plead guilty, I give up the rights in statements (a) through (f) of this paragraph 6.

7. I plead GUILTY to the crime(s) of TAKING A MOTOR VEHICLE WITHOUT THE OWNER'S PERMISSION

as charged in the (Amended) Information.

8. I MAKE THIS PLEA FREELY AND VOLUNTARILY.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the Court: Recommendation 13 months ; pay court costs; pay \$50 victim fund assessment; pay attorney's fee; pay restitution.

12. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed the present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the Court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and the Prosecuting Attorney's recommendation increases. _____

13. I have been informed and fully understand that the Court does not have to follow anyone's recommendation as to sentence. I have been fully informed and fully understand that the Court must impose a sentence within the standard sentence range unless the Court finds substantial and compelling reasons not to do so. If the Court goes outside the standard sentence range, either I or the State can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. I also

understand that the Court must sentence to a mandatory minimum term, if any, as provided in paragraph 14 and that the Court may not vary or modify that mandatory minimum term for any reason.

14. I have been informed and fully understand that the crime(s) of _____

with which I am charged carries with it a term of total confinement of not less than _____ years. I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. (If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge.)

15. I have been advised that the sentences imposed in Counts _____ will run consecutively/concurrently unless the Court finds substantial and compelling reasons to run the sentences concurrently/consecutively.

16. I understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a judge to revoke my probation or community supervision or for the Parole Board to revoke my parole. _____

17. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Statement of Defendant
on Plea of Guilty - 5

18. The Court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the (Amended) Information. This is my statement: _____

On Aug 20th, I took a car from the driveway of a residence located on Northwest Avenue in Bellingham. I did not have the owner's permission to take the car.

19. I have read or have had read to me and fully understand all of the numbered sections above (1 through 19) and have received a copy of this "Statement of Defendant on Plea of Guilty" form. I have no further questions to ask of the Court.

Troy Stubbs

TROY STUBBS
Defendant

David C. Cottingham

DAVID C. COTTINGHAM
Deputy Prosecuting Attorney

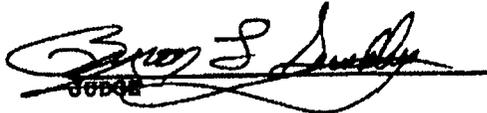
J. E. Ball

Attorney for Defendant

The foregoing statement was read by me or to the defendant and signed by the defendant in the presence of his or her attorney, and the undersigned Judge, in open court. The Court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the Court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

Statement of Defendant
on Plea of Guilty - 6

DATED this 2nd day of October, 1985.



JUDGE

I am fluent in the _____ language,
and I have translated this entire document for the defendant from
English into that language. The defendant has acknowledged his or
her understanding of both the translation and the subject matter
of this document. I certify under penalty of perjury under the
laws of the State of Washington that the foregoing is true and
correct.

DATED this _____ day of _____, 19____.

Interpreter

APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,)
) No. 85-1-00348-1
)
) Plaintiff,)
)
) vs.)
)
) TROY STUBBS,)
) STATEMENT OF DEFENDANT
) ON PLEA OF GUILTY
)
) Defendant.)

1. My true name is TROY STUBBS.

2. My age is 19.

3. I went through the 11th grade in school.

4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is _____.

5. I have been informed and fully understand that I am charged with the crime(s) of BURGLARY IN THE SECOND DEGREE

_____ ;
that the elements of the crime(s) are: _____

(SEE ATTACHED)

_____ ;
and that the maximum sentence(s) for which is (are): _____

48876-99
Statement of Defendant
on Plea of Guilty - 1

444 000

TEN (10) years
and/or \$20,000 fine(s).

In addition, I understand that I may have to pay restitution for crime(s) to which I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime is at least _____

_____ 12+ and no more than 14 _____

based upon my criminal history which I understand the Prosecutor says to be: 1985, Burglary Second Degree as an adult; 1980, Burglary Second Degree as a juvenile; 1980 Taking Motor Vehicle as a juvenile.

() Criminal history attached as Appendix _____ and incorporated by reference.

I have been given a copy of the (Amended) Information.

() And I further understand that as a First Time Offender, the Court may decide not to impose the standard sentence range, and then the Court may sentence me to up to NINETY (90) days of total confinement and TWO (2) years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge.)

6. I have been informed and fully understand that:

(a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

Statement of Defendant
on Plea of Guilty - 2

(b) I have the right to remain silent before and during the trial, and I need not testify against myself.

(c) I have the right to hear and question any witness who testifies against me.

(d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.

(e) I am presumed innocent until the charge(s) is (are) proven beyond a reasonable doubt, or I enter a plea of guilty.

(f) I have the right to appeal a determination of guilt after a trial.

(g) If I plead guilty, I give up the rights in statements (a) through (f) of this paragraph 6.

7. I plead GUILTY to the crime(s) of _____
BURGLARY IN THE SECOND DEGREE

as charged in the (Amended) Information.

8. I MAKE THIS PLEA FREELY AND VOLUNTARILY.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the Court: Prosecutor recommends 13 months; pay court costs; pay restitution; pay \$50 victim fund assessment; pay attorney's fee.

12. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed the present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the Court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and the Prosecuting Attorney's recommendation increases. _____

13. I have been informed and fully understand that the Court does not have to follow anyone's recommendation as to sentence. I have been fully informed and fully understand that the Court must impose a sentence within the standard sentence range unless the Court finds substantial and compelling reasons not to do so. If the Court goes outside the standard sentence range, either I or the State can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. I also

understand that the Court must sentence to a mandatory minimum term, if any, as provided in paragraph 14 and that the Court may not vary or modify that mandatory minimum term for any reason.

14. I have been informed and fully understand that the crime(s) of _____

_____ with which I am charged carries with it a term of total confinement of not less than _____ years. I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. (If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge.)

15. I have been advised that the sentences imposed in Counts _____ will run consecutively/concurrently unless the Court finds substantial and compelling reasons to run the sentences concurrently/consecutively.

16. I understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a judge to revoke my probation or community supervision or for the Parole Board to revoke my parole. _____

17. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

18. The Court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the (Amended) Information. This is my statement: _____

I was with Troy Cook and Joe McNeil at a residence located at 1316 Deer Creek Drive in Ferndale. We took some property from the garage of that residence, without the owners permission.

19. I have read or have had read to me and fully understand all of the numbered sections above (1 through 19) and have received a copy of this "Statement of Defendant on Plea of Guilty" form. I have no further questions to ask of the Court.

Troy Stubbs

TROY STUBBS
Defendant

[Signature]

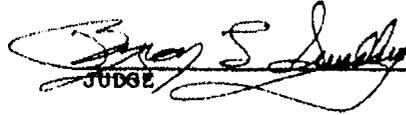
DAVID C. GOTTINGHAM
Deputy Prosecuting Attorney

[Signature]

Attorney for Defendant

The foregoing statement was read by me or to the defendant and signed by the defendant in the presence of his or her attorney, and the undersigned Judge, in open court. The Court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the Court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

DATED this 2nd day of October, 1985.



JUDGE

I am fluent in the _____ language,
and I have translated this entire document for the defendant from
English into that language. The defendant has acknowledged his or
her understanding of both the translation and the subject matter
of this document. I certify under penalty of perjury under the
laws of the State of Washington that the foregoing is true and
correct.

DATED this _____ day of _____, 19____.

Interpreter

BURGLARY IN THE SECOND DEGREE

ELEMENTS

To convict a person of the crime of burglary in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about the 15th day of August 1985, the defendant entered or remained unlawfully in a building; with intent to commit theft;
2. That the entering or remaining was with intent to commit a crime against a person or property therein; and
3. That the acts occurred in Whatcom County, Washington.

Count No.: I Crime: BURGLARY IN THE SECOND DEGREE

RCW: 9A.52.030(1)
Crime Code Class B
Date of Crime: August 15, 1985
Incident No. 85A 8690

Count No.: _____ Crime: _____

RCW: _____
Crime Code _____
Date of Crime: _____
Incident No. _____

Count No.: _____ Crime: _____

RCW: _____
Crime Code _____
Date of Crime: _____
Incident No. _____

With a special verdict/finding for use of deadly weapon on Count(s):

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

JUDGMENT AND SENTENCE (PELONY) - 2
CONFINEMENT OVER ONE YEAR

[] Additional current offenses are attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime: BURGLARY IN THE SECOND DEGREE
Sentencing Date: 5-30-85
Adult or Juvenile Crime: ADULT
Date of Crime: 5-14-85
Crime Type: Class C

Crime: BURGLARY SECOND DEGREE
Sentencing Date: 4-23-80
Adult or Juvenile Crime: JUVENILE
Date of Crime: 4-17-80
Crime Type: Class B

Crime: TAKING MOTOR VEHICLE
Sentencing Date: 7-20-80
Adult or Juvenile Crime: JUVENILE
Date of Crime: 5-9-80
Crime Type: Class C

Crime: _____
Sentencing Date: _____
Adult or Juvenile Crime: _____
Date of Crime: _____
Crime Type: _____

[] Additional criminal history is attached in Appendix B.

2.3 SENTENCING DATA:

	<u>Offender Score</u>	<u>Seriousness Level</u>	<u>Range</u>	<u>Maximum Term</u>
Count No. <u>1</u> :	<u>4.5</u>	<u>II</u>	<u>12+ 14</u>	<u>10 years</u>
Count No. _____ :	_____	_____	_____	_____
Count No. _____ :	_____	_____	_____	_____
Count No. _____ :	_____	_____	_____	_____

[] Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

[] Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____ . Finding of Fact and Conclusions of Law are attached in Appendix D.

JUDGMENT AND SENTENCE (FELONY) - 3
CONFINEMENT OVER ONE YEAR

2.5 CATEGORY OF OFFENDER: The defendant is:

- (a) An offender who shall be sentenced to confinement over one year.
- (b) An offender who shall be sentenced to confinement one year or less.
- (c) A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12), .120(5)).
- (d) A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and community will benefit from its use (RCW 9.94A.120(7)(a)).
- (e) A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the crime(s) of:
BURGLARY IN THE SECOND DEGREE

IV. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below.

4.1 Defendant shall pay to the Clerk of this Court:

- (a) \$70.00 court costs;
- (b) \$50.00 victim fund assessment;
- (c) \$ to be determined restitution (with credit for amounts paid by co-defendants);
 Schedule of Restitution is attached as Appendix E.
- (d) \$ 225.00 recoupment for attorney's fees;

- (e) \$ _____ fine;
- (f) \$ _____ drug enforcement fund;
- (g) \$ _____ other costs for:

- (h) \$ _____ TOTAL MONETARY OBLIGATIONS.
- (i) Payments shall be made in the following manner:

- (j) This Court shall retain jurisdiction over the defendant for a period of TEN (10) years to assure payment of the above monetary obligations.

4.2 The Court DISMISSES Count(s) _____

4.3 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows commencing immediately _____:

- _____ 13 months for Count No. I _____.
- _____ months for Count No. _____.
- _____ months for Count No. _____.
- _____ months for Count No. _____.

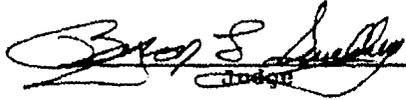
- The terms in Counts No. _____ are concurrent for a total term of _____ months.
- The terms in Counts No. _____ are consecutive for a total term of _____ months.
- The sentence herein shall run (concurrently) (consecutively) with the sentence in _____ (Count(s) or Cause No.(s)).
- Credit is given for (time) (_____ days) served.

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- Appendix A, Additional Current Offenses
- Appendix B, Additional Criminal History
- Appendix C, Current Offense(s) Sentencing Information
- Appendix D, Findings of Fact and Conclusions of Law for an Exceptional Sentence
- Appendix E, Schedule of Restitution

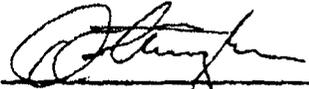
That this judgment and sentence is signed in the presence of the defendant.

Date: October 2, 1985


Judge

Presented by:

Approved as to form:


DAVID C. COTTINGHAM
(Deputy) Prosecuting Attorney


JON E. OSTLUND
Attorney for Defendant

APPENDIX D



Get Email Updates | FAQs & eService Center

Forms Court Directory Opinions Rules Courts Programs & Organizations Resources

Courts Home > Chronological Sentencing Reform Act

9.94A.300 << TOC >> 9.94A.320

Chapter 9.94A RCW
Sentencing Reform Act of 1981
 Applicable to Crimes Committed From July 28, 1985 to April 3, 1986

RCW 9.94A.310
Table 1 -- Sentencing grid.

TABLE 1
Sentencing Grid

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

VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

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

Additional time shall be added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon as defined in this chapter: Rape 1, Robbery 1, Kidnapping 1 - 18 months - Burglary 1 - 12 months - Assault 2, Escape 1, Kidnapping 2, Burglary 2 of a building other than a dwelling, Delivery or Possession of a controlled substance with intent to deliver.

[1984 c 209 § 16; 1983 c 115 § 2. Recodified in 2001 as RCW 9.94A.510.]

NOTES:

Effective dates -- 1984 c 209: See note following RCW [9.94A.030](#).

[9.94A.300](#) << [TOC](#) >> [9.94A.320](#)

Access Records

- [JIS LINK](#)
- [Find Your Court Date](#)
- [Search Case Records](#)
- [Records Request](#)
- [Judicial Info System \(JIS\)](#)
- [Odyssey Portal](#)
- [Caseload Reports](#)

Find Resources

- [State Law Library](#)
- [Civic Learning](#)
- [Resources, Publications, & Reports](#)
- [Court Program Accessibility \(ADA\)](#)
- [Jury Service Information](#)
- [Whistleblower](#)
- [Employment](#)
- [Procurement](#)

From the Courts

- [Court Forms](#)
- [Domestic Violence Forms](#)
- [Court Opinions](#)
- [Court Rules](#)
- [Pattern Jury Instructions](#)
- [Emergency Procedures](#)
- [Notice of Court Closures](#)

Get Organizational Information

- [Administrative Office of the Courts](#)
- [Supreme Court](#)
- [Appellate & Trial Courts](#)
- [Programs & Organizations](#)
- [Washington Court News](#)
- [Court Directory](#)

Connect with us    

Need Help?  [FAQs & eService Center](#)

[Privacy & Disclaimer Notices](#) | [Sitemap](#)



Copyright AOC © 2016



For Washington State laws, visit the [Washington State Legislature](#)



Chapter 9.94A RCW
Sentencing Reform Act of 1981
Applicable to Crimes Committed From July 28, 1985 to April 3, 1986

RCW 9.94A.320

Table 2 -- Crimes included within each seriousness level.

**TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL**

XIV	Aggravated Murder 1 (RCW 10.95.020)
XIII	Murder 1 (RCW 9A.32.030)
XII	Murder 2 (RCW 9A.32.050)
XI	Assault 1 (RCW 9A.36.010)
X	Rape 1 (RCW 9A.44.040)
	Kidnapping 1 (RCW 9A.40.020)
	Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))
	Over 18 and deliver heroin or a narcotic from Schedule I or II, to someone under 18 and 3 years junior (RCW 69.50.406)
IX	Explosive devices prohibited (RCW 70.74.180)
	Endangering life and property by explosives with threat to human being (RCW 70.74.270(2))
	Manslaughter 1 (RCW 9A.32.060)
	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)
	Robbery 1 (RCW 9A.56.200)
	Employing, using or permitting minor to engage in sexually explicit conduct for commercial use (RCW 9.68A.020)
	Statutory Rape 1 (RCW 9A.44.070)

- VIII Arson 1 (RCW 9A.48.020)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Rape 2 (RCW 9A.44.050)
- Selling heroin for profit (RCW 69.50.410)
- VII Burglary 1 (RCW 9A.52.020)
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1) (a))
- Introducing Contraband 1 (RCW 9A.76.140)
- Sending, bringing into state , possessing, publishing, printing, etc., obscene matter involving minor engaged in sexually explicit conduct (RCW 9.68A.030)
- Statutory Rape 2 (RCW 9A.44.080)
- Vehicular Homicide (RCW 46.61.520)
- VI Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- 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
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
- Manslaughter 2 (RCW 9A.32.070)
- Manufacture, deliver, or possess with intent to deliver heroin or narcotics from Schedule I or II (RCW 69.50.401(a)(1)(I))
- Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)
- V Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)

- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.020)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run -- Injury Accident (RCW 46.52.020(4)(b))
- Malicious Harassment (RCW 9A.36.080)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana) (RCW 69.50.401(a)(1) (ii) through (iv))
- Robbery 2 (RCW 9A.56.210)
- Vehicular Assault (RCW 46.61.522)
- Willful Failure to Return from Furlough (*RCW 72.66.060)

- III Assault 3 (RCW 9A.36.030)
- Statutory Rape 3 (RCW 9A.44.090)
- Communicating with a Minor for Immoral Purposes (RCW 9A.44.110)
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Perjury 2 (RCW 9A.72.030)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Tampering with a Witness (RCW 9A.72.120)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm or pistol by felon (RCW 9.41.040)

- II Welfare Fraud (RCW 74.08.331)
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Burglary 2 (RCW 9A.52.030)

Malicious Mischief 1 (RCW 9A.48.070)

Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))

Possession of Stolen Property 1 (RCW 9A.56.150)

Theft 1 (RCW 9A.56.030)

Theft of Livestock (RCW 9A.56.080)

I Eluding a Police Vehicle (RCW 46.61.024)

False Verification for Welfare (RCW 74.08.055)

Forged prescription (RCW 69.41.020)

Forgery (RCW 9A.60.020)

Malicious Mischief 2 (RCW 9A.48.080)

Possess controlled substance that is a narcotic from Schedule III, IV, or V or non-narcotic from Schedule I-V (RCW 69.50.401(d))

Possession of Stolen Property 2 (RCW 9A.56.160)

Reckless Burning 1 (RCW 9A.48.040)

Auto Theft (Taking and Riding) (RCW 9A.56.070)

Theft 2 (RCW 9A.56.040)

Unlawful Issuance of Bank Checks (RCW 9A.56.060)

Vehicle Prowl 1 (RCW 9A.52.095)

[1984 c 209 § 17; 1983 c 115 § 3. Recodified in 2001 as RCW 9.94A.515.]

NOTES:

Effective dates -- 1984 c 209: See note following RCW [9.94A.030](#).

[9.94A.310](#) << TOC >> [9.94A.330](#)

Access Records

- JIS LINK
- Find Your Court Date
- Search Case Records
- Records Request
- Judicial Info System (JIS)
- Odyssey Portal
- Caseload Reports

Find Resources

- State Law Library
- Civic Learning
- Resources, Publications, & Reports
- Court Program Accessibility (ADA)
- Jury Service Information
- Whistleblower
- Employment

From the Courts

- Court Forms
- Domestic Violence Forms
- Court Opinions
- Court Rules
- Pattern Jury Instructions
- Emergency Procedures
- Notice of Court Closures

Get Organizational Information

- Administrative Office of the Courts
- Supreme Court
- Appellate & Trial Courts
- Programs & Organizations
- Washington Court News
- Court Directory

Procurement

Connect with us    

Need Help?  [FAQs & eService Center](#)

[Privacy & Disclaimer Notices](#) | [Sitemap](#)



Copyright AOC © 2016

 **Access Washington**™ For Washington State laws, visit the [Washington State Legislature](#) 



Get Email Updates | FAQs & eService Center

Forms Court Directory Opinions Rules Courts Programs & Organizations Resources

COURTS Home > Chronological Sentencing Reform Act

[9.94A.320](#) << [TOC](#) >> [9.94A.340](#)

Chapter 9.94A RCW
Sentencing Reform Act of 1981
Applicable to Crimes Committed From July 28, 1985 to April 3, 1986

RCW 9.94A.330
Table 3 -- Offender score matrix

TABLE 3
 OFFENDER SCORE MATRIX

Prior Adult Convictions

Current Offenses	Serious Violent	Burglary 1	Other Violent	Vehicular Homicide	Escape
Serious Violent	3	2	2	2	1
Burglary 1	2	2	2	2	1
Other Violent	2	2	2	2	1
Vehicular Homicide	0	0	0	2	0
Escape	0	0	0	0	1
Burglary 2	1	2	1	1	1
Other Non-Violent	1	1	1	1	1
Drug	1	1	1	1	1

Current Offenses	Burglary 2	Felony Traffic	Serious Traffic	Other Non-Violent	Drug
Serious Violent	1	1	0	1	1
Burglary 1	2	1	0	1	1
Other Violent	1	1	0	1	1
Vehicular Homicide	0	1	1	0	0
Escape	0	0	0	0	0
Burglary 2	2	1	0	1	1
Other Non-Violent	1	1	0	1	1
Drug	1	1	0	1	2

Prior Juvenile Convictions

Current Offenses	Serious Violent	Burglary 1	Other Violent	Vehicular Homicide	Escape
Serious Violent	3	2	2	2	½
Burglary 1	2	2	2	2	½
Other Violent	2	2	2	2	½
Vehicular Homicide	0	0	0	2	0
Escape	0	0	0	0	½
Burglary 2	½	2	½	½	½
Other Non-Violent	½	½	½	½	½
Drug	½	½	½	½	½

Current Offenses	Burglary 2	Felony Traffic	Serious Traffic	Other Non-Violent	Drug
Serious Violent	½	½	0	½	½
Burglary 1	1	½	0	½	½
Other Violent	½	½	0	½	½
Vehicular Homicide	0	½	½	0	0
Escape	0	0	0	0	0
Burglary 2	1	½	0	½	½
Other Non-Violent	½	½	0	½	½
Drug	½	½	0	½	1

Definitions: Serious Violent: Murder 1, Murder 2, Assault 1, Kidnapping 1, Rape 1

Escape: Escape 1, Escape 2, Willful Failure to Return from Work Release or Furlough

Serious Traffic: Driving While Intoxicated, Actual Physical Control, Reckless Driving, Hit and Run

Felony Traffic: Felony Hit and Run, Vehicular Assault, Attempting to Elude a Police Officer

Drug: All felony violations of chapter 69.50 except possession of a controlled substance

[1984 c 209 § 18; 1983 c 115 § 4]

[9.94A.320](#) << [TOC](#) >> [9.94A.340](#)

Access Records

- [JIS LINK](#)
- [Find Your Court Date](#)
- [Search Case Records](#)
- [Records Request](#)
- [Judicial Info System \(JIS\)](#)
- [Odyssey Portal](#)
- [Caseload Reports](#)

Find Resources

- [State Law Library](#)
- [Civic Learning](#)
- [Resources, Publications, & Reports](#)
- [Court Program Accessibility \(ADA\)](#)
- [Jury Service Information](#)
- [Whistleblower](#)
- [Employment](#)
- [Procurement](#)

From the Courts

- [Court Forms](#)
- [Domestic Violence Forms](#)
- [Court Opinions](#)
- [Court Rules](#)
- [Pattern Jury Instructions](#)
- [Emergency Procedures](#)
- [Notice of Court Closures](#)

Get Organizational Information

- [Administrative Office of the Courts](#)
- [Supreme Court](#)
- [Appellate & Trial Courts](#)
- [Programs & Organizations](#)
- [Washington Court News](#)
- [Court Directory](#)

Connect with us    

Need Help?  [FAQs & eService Center](#)

[Privacy & Disclaimer Notices](#) | [Sitemap](#)



Copyright AOC © 2016

 **Access Washington** For Washington State laws, visit the [Washington State Legislature](#)



Chapter 9.94A RCW Sentencing Reform Act of 1981 Applicable to Crimes Committed From July 28, 1985 to April 3, 1986

RCW 9.94A.360 **Offender score.**

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are summarized in Table 3, RCW 9.94A.330.

The offender score is computed in the following way:

- (1) Include juvenile felonies if the offender was 15 or older at the time the offense was committed and the offender was less than 23 at the time the offense for which he or she is being sentenced was committed.
- (2) If the present conviction is for Murder 1 or 2, Assault 1, Kidnapping 1, or Rape 1, count three points for prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.
- (3) If the present conviction is for Burglary 1, count priors as in subsection (5) of this section; however count two points for each prior adult Burglary 2 conviction, and one point for each prior juvenile Burglary 2 conviction.
- (4) If the present conviction is for Vehicular Homicide, only count the following crimes as part of the offender score: Vehicular Homicide, Vehicular Assault, Felony Hit and Run (RCW 46.52.020(4)), Hit and Run (RCW 46.52.020(5)), Driving While Intoxicated (RCW 46.61.502), Actual Physical Control (RCW 46.61.504), Reckless Driving (RCW 46.61.500), Attempting to Elude a Police Officer (RCW 46.61.500). Count two points for each adult or juvenile Vehicular Homicide conviction, one point for each other adult felony traffic or serious traffic conviction, and 1/2 point for each other juvenile felony traffic or serious traffic conviction.
- (5) If the present conviction is for a violent offense and not covered in subsections (2), (3), (4), or (8) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction and 1/2 point for each prior juvenile nonviolent felony conviction.
- (6) If the present conviction is for escape (Escape 1, RCW 9A.76.110, Escape 2, RCW 9A.76.120, Willful Failure to Return from Furlough, RCW 72.66.060, and Willful Failure to Return from Work Release, RCW 72.65.070), count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.
- (7) If the present conviction is for Burglary 2, count priors as in subsection (9) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 conviction, and one point for each juvenile prior Burglary 2 conviction.
- (8) If the present conviction is for a violation of chapter 69.50 RCW, except for possession of a controlled substance (RCW 69.50.410(d)), count two points for each adult prior felony drug conviction (chapter 69.50 RCW, except for possession of a controlled substance (RCW 69.50.410(d))), and one point for each juvenile drug conviction. All other adult and juvenile felonies are scored as in subsection (5) of this section if the current drug conviction is violent, or as in subsection (9) if the current drug conviction is nonviolent.
- (9) If the present conviction is for a nonviolent offense and not covered by subsections (6), (7), or (8) of this section, count one point for each prior adult felony conviction and one point for each prior juvenile violent felony conviction and 1/2 point for each prior juvenile nonviolent felony.
- (10) For all offender scores, the fractional totals shall be rounded down to the nearest whole number.
- (11) In the case of multiple prior convictions for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. The conviction for the offense that yields the highest offender score is used.
- (12) Class A prior felony convictions are always included in the offender score. Class B prior felony convictions are not included in the offender score if the offender has spent ten years in the community and has not been convicted of felonies since the last date of release from confinement pursuant to a felony conviction (including full-time residential treatment), if any, or entry of judgment and sentence. Class C prior felony convictions and serious traffic convictions as defined in RCW 9.94A.330 are not included in the offender score if the offender has spent five years in the community and has not been convicted of felonies since the last date of release from confinement pursuant to a felony conviction (including full-time residential treatment), if any, or entry of judgment and sentence. This subsection applies to both adult and juvenile prior convictions.

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

The offender score is the sum of points accrued under subsections (1) through (12) of this section.

[1984 c 209 § 19; 1983 c 115 § 7. Recodified in 2001 as RCW 9.94A.525.]

NOTES:

Effective dates -- 1984 c 209: See note following RCW [9.94A.030](#).

[9.94A.350](#) << [TOC](#) >> [9.94A.370](#)

Access Records

- [JIS LINK](#)
- [Find Your Court Date](#)
- [Search Case Records](#)
- [Records Request](#)
- [Judicial Info System \(JIS\)](#)
- [Odyssey Portal](#)
- [Caseload Reports](#)

Find Resources

- [State Law Library](#)
- [Civic Learning](#)
- [Resources, Publications, & Reports](#)
- [Court Program Accessibility \(ADA\)](#)
- [Jury Service Information](#)
- [Whistleblower](#)
- [Employment](#)
- [Procurement](#)

From the Courts

- [Court Forms](#)
- [Domestic Violence Forms](#)
- [Court Opinions](#)
- [Court Rules](#)
- [Pattern Jury Instructions](#)
- [Emergency Procedures](#)
- [Notice of Court Closures](#)

Get Organizational Information

- [Administrative Office of the Courts](#)
- [Supreme Court](#)
- [Appellate & Trial Courts](#)
- [Programs & Organizations](#)
- [Washington Court News](#)
- [Court Directory](#)

Connect with us    

Need Help?  [FAQs & eService Center](#)

[Privacy & Disclaimer Notices](#) | [Sitemap](#)



Copyright AOC © 2016

 **Access Washington** - For Washington State laws, visit the [Washington State Legislature](#)



Get Email Updates | FAQs & eService Center

Search WA Courts Site

Forms Court Directory Opinions Rules Courts Programs & Organizations Resources

Courts Home > Chronological Sentencing Reform Act

9.94A.390 << TOC >> 9.94A.410

Chapter 9.94A RCW
Sentencing Reform Act of 1981
Applicable to Crimes Committed From July 28, 1985 to April 3, 1986

RCW 9.94A.400
Consecutive or concurrent sentences.

- (1)(a) Except as provided in (b) of this subsection, whenever a person is convicted of two or more offenses, the sentence range for each offense shall be determined by using all other current and prior convictions as criminal history. All sentences so determined shall be served concurrently.
(b) Whenever a person is convicted of three or more serious violent offenses, as defined in RCW 9.94A.330 arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions as criminal history and the sentence range for other serious violent offenses shall be determined by using a criminal history score of zero.
(2) Whenever a person while under sentence of felony commits another felony and is sentenced to another term of imprisonment, the latter term shall not begin until expiration of all prior terms.
(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run consecutively with felony sentences previously imposed by any court in this or another state or by a federal court, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.
(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, this sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.
(5) However, in the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences.

[1984 c 209 § 25; 1983 c 115 § 11. Recodified in 2001 as RCW 9.94A.589.]

NOTES:

Effective dates -- 1984 c 209: See note following RCW 9.94A.030.

9.94A.390 << TOC >> 9.94A.410

Access Records

- JIS LINK
Find Your Court Date
Search Case Records
Records Request
Judicial Info System (JIS)
Odyssey Portal
Caseload Reports

Find Resources

- State Law Library
Civic Learning
Resources, Publications, & Reports
Court Program Accessibility (ADA)
Jury Service Information
Whistleblower
Employment
Procurement

From the Courts

- Court Forms
Domestic Violence Forms
Court Opinions
Court Rules
Pattern Jury Instructions
Emergency Procedures
Notice of Court Closures

Get Organizational Information

- Administrative Office of the Courts
Supreme Court
Appellate & Trial Courts
Programs & Organizations
Washington Court News
Court Directory

Connect with us [social media icons]

Need Help? [FAQs & eService Center icon]