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July 30, 2012  
Court of Appeals  
Division III  
State of Washington

NO. 30121-4

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID AARON SOTO,

Appellant.

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BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes numerous assignments of error. These can be summarized as follows;

- 1) The trial court erred when it imposed a firearm enhancement.
- 2) The record does not support a finding that Mr. Soto has the current of future ability to pay his legal financial obligations (LFO's) and pay the costs of incarceration and medical care.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

- 1) There was no error in imposing the firearm enhancement.
- 2) The record does not support a finding that appellant has the ability present or future to pay his legal . However two of the allegations are moot. This allegation, in part, should be remanded for review by the trial court.

II. STATEMENT OF THE CASE

The substantive and procedural facts have been adequately set forth in appellants brief therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional facts section. The State shall refer to the record as needed.

III. ARGUMENT.

FIRST ALLEGATION.

The firearms enhancement provisions at issue were originally enacted as part of Initiative 159, "Hard Time for Armed Crime," an

initiative the legislature enacted in 1995. LAWS OF 1995, ch. 129, § 2 (RCW 9.94A.310(3)(e), (f), recodified as RCW 9.94A.533(3)).

RCW 9.94A.533(3) states in part;

“The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1994, 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.”

RCW 9.94A.533(3)(c) then sets forth the additional period of time the court is mandated to impose for a class C felony: **“Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;”** (emphasis mine).

In construing a statute, this Court’s primary objective is to ascertain and give effect to the intent of the Legislature. Cherry v. Municipality of Metro. Seattle, 116 Wn.2d 794, 799, 808 P.2d 746 (1991). If a statute is unambiguous the Court is required to apply the statute as written and “assume[] that the legislature means exactly what it says.” In re Custody of Smith, 137 Wn.2d 1, 9, 969 P.2d 21 (1998).

Here RCW 9.94A.533(3)(e) unambiguously states that firearm enhancements are mandatory: “Notwithstanding any other provision[s] of law, all firearm enhancements under this section are **mandatory**...”

Where the legislature intended exceptions they were expressly stated. This is clearly demonstrated in RCW 9.94A.533(3)(f):

The firearm enhancements in this section shall apply to all felony crimes **except** the following: Possession of a machine gun, possession of a stolen firearm, drive-by-shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.” (Emphasis mine).

“The fact that the exceptions in the statute are expressly listed shows intent that crimes that involve weapons other than those listed are not to be excepted.” State v. Kelley, 168 Wn.2d 72, 226 P.3d 773 (2010). The legislature’s intent is clear. The plain language requires a sentencing court to apply a firearm sentencing enhancement to all felony crimes that are not listed in subsection (3)(f).

This court can also take note that in RCW 9.94A.533(6), the legislature made a point to include only ranked offenses in the 24-month enhancement for drug crimes. That subsection reads, in pertinent part, as follows: “An additional twenty-four months shall be added to the standard sentence range for any **ranked** offense involving a violation of chapter

69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.605. RCW 9.94A.533(6)<sup>1</sup> (emphasis added). Limiting the drug enhancement to only ranked offenses is significant because nowhere in RCW 9.94A.533(3)(f) is there a provision that only ranked felonies are subject to a firearm enhancement.

We know that “statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” Davis v. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)). The inclusion of the word “ranked” would be meaningless and superfluous if the entirety of RCW 9.94A.535 only applied to ranked offenses.

A maxim of statutory interpretation is that we “cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language,” State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). Had the legislature wanted to limit the application of firearm enhancements to only ranked felonies or those set forth only in RCW 9.94A.510, 517, they could and would have done so. This type of

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<sup>1</sup> This subsection contains an enhancement for drug crimes that occur in such areas as school zones, RCW 69.50.435, and an enhancement for drug offenses where there is a minor on the premises, RCW 9.94A.605.

legislative action is evidenced by RCW 9.94A.533(6) pertaining to the drug enhancement.

This Court cannot now add the word “ranked” to RCW 9.94A.533(3) when the legislature has chosen not to include that language. The rule of *expressio unius est exclusio alterius* applies here (the express mention of one thing excludes all others”): “[W]here a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions.” In re Pers. Restraint of Hopkins, 137 Wn.2d 897, 901, 976 P.2d 616 (1999) (quoting Queets Band of Indians v. State, 102 Wn.2d 1, 5, 682 P.2d 909 (1984)). See also, State v. Brown, 139 Wash.2d 20, 33, 983 P.2d 608 (1999); State v. Sommerville, 111 Wash.2d 524, 535, 760 P.2d 932 (1988).

Looking to these other similar statutes the inference required by the rule must be that that the legislature intended this omission.

Appellant’s allegation is that the enhancements only apply where there is a standard sentence range and more specifically one found within the grid system set forth in RCW 9.94A.510 or 9.94A.517. Here, there is a standard sentence range of 0 to 12 months for the crime of animal cruelty under RCW 16.52.205(1). “Offenses without an assigned seriousness level (**unranked** offenses) are not found on the grid and carry a standard range of 0 to 12 months.” In re Pers. Restraint

of Acron, 122 Wn. App. 886 (2004) (citing RCW 9.94A.505(2)(b)).<sup>2</sup>

The new range with the enhancement will be 18 months to 30 months. Subsection 1 of the statute does not change this analysis. While subsection 1 indicates that RCW 9.94A.533 applies to sentences determined by RCW 9.94A.510 (sentencing grid) or 9.94A.517 (drug offense sentencing grid), it does not state that it applies only to sentences determined by the grid. Once again RCW 9.94A.533(1) states “The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.” Contrary to what appellant asserts there is no indication of exclusivity. This section does not state “only” or “limited to” is says “the provisions apply to...”

The Sentencing Guidelines also recognized that a firearm enhancement could be applicable to an unranked offense. The General Scoring Form for unranked offenses with a sexual motivation finding includes the language, “If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.” Adult Sentencing Guidelines Manuel 2008, III-21. Page III-8 has a worksheet on it entitled, the “General Deadly Weapon Enhancement-Form A.” It includes a table which shows the

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<sup>2</sup> RCW 9.94A.505(2)(b) provides: “If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement...”

amount of time to add for each firearm enhancement depending on the class of the crime. Form A does not limit the enhancement to only ranked offenses. It lists the excluded firearm-related crimes that are also listed by statute, none of which are animal cruelty in the first degree.

Although the intent behind an enactment's language becomes relevant only if there is some ambiguity in that language, Western Petroleum v. Friedt, 127 Wn.2d 420, 423 (1995), interpreting the firearm enhancement as applying to both ranked and unranked felonies is consistent with Initiative 159's purpose to "increase sentences for armed crime." See In re Charles, 135 Wn.2d 239, 246, 955 P.2d 798 (1998). Initiative 159, referred to as the "Hard Time for Armed Crime" initiative, was passed by the Legislature in 1995. Its official ballot title was "Shall penalties and sentencing standards be increased for crimes involving a firearm, and sentences and plea agreements be public records?" State v. Broadaway, 133 Wn.2d 118, 123, 942 P.2d 363 (1997). Its legislative title was, "An Act Relating to increasing penalties for armed crimes. . . ." Id.

Initiative 159 both increased penalties and expanded the range of crimes eligible for weapons enhancements. Prior to the enactment of Initiative 159, there was only one enhancement provision. The initiative's drafters copied the preexisting language from former RCW 9.94A.310 (1994) (concerning the deadly weapon enhancement) and substituted

longer enhancement times where the firearm enhancement is concerned.

LAWS OF 1995, ch. 129, § 2. The stated purposes of Initiative 159 are:

1) to stigmatize the carrying and use of any deadly weapons for all felonies; to reduce the number of armed offenders by making the carrying and use of a deadly weapon not worth the sentence; and to distinguish between gun predators and others carrying deadly weapons by the greater enhancements added for firearms. LAWS OF 1995, ch. 129, § 1.

Accordingly, the law was created to hold individuals like Mr. Soto accountable for his actions, not to create barriers to holding such persons accountable.

State v. Johnson, 119 Wn.2d 167, 172, 829 P.2d 1082 (Wash. 1992);

In construing a statute, the court's paramount duty is to give effect to the intent of the Legislature. Yakima v. International Ass'n of Fire Fighters, AFL-CIO, Local 469, 117 Wash.2d 655, 669, 818 P.2d 1076 (1991). When a statute is not ambiguous, the Legislature's intent must be determined by the language alone. Multicare Med. Ctr. v. Department of Social & Health Servs., 114 Wash.2d 572, 582, 790 P.2d 124 (1990). A statute is not ambiguous unless it is susceptible to more than one meaning. Yakima, 117 Wash.2d at 669, 818 P.2d 1076. Penal statutes are strictly construed so that only conduct which is clearly within the statutory terms is subject to punitive sanctions. State v. Cann, 92 Wash.2d 193, 197, 595 P.2d 912 (1979). However, the rule "does not require a forced, narrow, or overstrict construction

which defeats the intent of the legislature." Cann, 92 Wash.2d at 197-98, 595 P.2d 912.

The courts have stated similarly with regard to an initiative such as Initiative 159, which was subsequently adopted in totality. Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 205-6, 11 P.3d 762 (Wash. 2000):

In determining intent from the language of the statute, the court focuses on the language as the average informed voter voting on the initiative would read it. State v. Brown, 139 Wash.2d 20, 28, 983 P.2d 608 (1999); Senate Republican Campaign Comm., 133 Wash.2d at 243, 943 P.2d 1358. Where the language of an initiative enactment is plain, unambiguous, and well understood according to its natural and ordinary sense and meaning, the enactment is not subject to judicial interpretation. State v. Thorne, 129 Wash.2d 736, 762-63, 921 P.2d 514 (1996). However, if there is ambiguity in the enactment, the court may examine the statements in the voters pamphlet in order to determine the voters' intent. Thorne, 129 Wash.2d at 763, 921 P.2d 514; see Lynch v. Dep't of Labor & Indus., 19 Wash.2d 802, 812-13, 145 P.2d 265 (1944); see Biggs, 119 Wash.2d at 134, 830 P.2d 350 (if there is ambiguity, extrinsic aids, such as legislative history, may be used to determine legislative intent).

[I]t is not the prerogative nor the function of the judiciary to substitute what they may deem to be their better judgment for that of the electorate in enacting initiatives ... unless the errors in judgment clearly contravene state or federal constitutional provisions. Fritz v. Gorton, 83 Wash.2d 275, 287, 517 P.2d 911 (1974). Nor is it the province of the courts to declare laws passed in violation of the constitution valid based upon considerations of

public policy. State ex rel. Wash. Toll Bridge Auth. v. Yelle, 32 Wash.2d 13, 24-25, 200 P.2d 467 (1948).

The courts in this State have on several occasions reiterated that the reason behind this initiative was the imposition of additional time for each felony;

This court stated in State v. DeSantiago, 108 Wn.App. 855, 878, 33 P.3d 394 (Wash.App. Div. 3 2001) affirmed conviction, reversed as to enhancement, 149 Wn.2d 402, 68 P.3d 1065 (Wash. 2003)::

In 1995, the Legislature enacted Initiative 159, entitled "Hard Time for Armed Crime Act." Laws of 1995, ch. 129; Charles, 135 Wash.2d at 246, 955 P.2d 798. "Initiative 159 '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.'" State v. Brown, 139 Wash.2d 20, 25, 983 P.2d 608 (1999) (quoting STATE OF WASHINGTON SENTENCING GUIDELINES COMM'N, ADULT SENTENCING GUIDELINES MANUAL cmt. at II-67 (1997)). (Emphasis mine.)

State v. DeSantiago, 149 Wn.2d 402, 418, 68 P.3d 1065 (Wash. 2003);

Furthermore, the *Spandel* court correctly reasoned that imposition of multiple enhancements would combat the increased risk of injury that results from multiple weapons, complying with the other stated purposes of Initiative 159 to "**stigmatize the carrying and use of any deadly weapons for all**"

**"felonies"** and "[r]educe the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction." *Laws of 1995, ch. 129, § 1(2)(a), (b)*.

Finally, imposition of an enhancement for each firearm and each deadly weapon carried during an offense would not absurdly extend sentences as amicus and the defendants contend. Subsection (g) of each enhancement statute provides a presumption that the total sentence, including enhancements, cannot exceed that statutory maximum. RCW 9.94A.510(3)(g), (4)(g). Thus, the suggested absurdity is dissolved by a plain reading of the statute.

Therefore, the plain language of RCW 9.94A.510 requires a sentencing judge to impose an enhancement for each firearm or other deadly weapon that a jury finds was carried during **an offense**. (Emphasis mine.)

State v. Thomas, 150 Wn.2d 666, 670-1, 80 P.3d 168 (Wash. 2003)

the court cites the statute, is does not state "except" unranked class C felonies this court states:

Thomas's argument ignores the plain, unambiguous language of the statute. The sentencing grid in former RCW 9.94A.310(1) defines the standard sentence range for an offense based on the individual's offender score and the seriousness level of the offense. Subsection .310(3) provides that, where an offender or accomplice is armed with a firearm, the standard sentence range for the offense will be enhanced five years for class A felonies, three years for class B, and 18 months for class C. Former RCW 9.94A.310(3)(a)-(c). (Emphasis mine.)

The Revised Code clearly addresses those crimes which the legislature intended to not have an “enhancement” added. There is nothing in the sections set forth by appellant which would indicate the legislature did not intend this unranked class C felony which carries a standard range of 0-12 months to also potentially carry the added enhanced period for the use of a firearm.

In State v. Graham, 153 Wn.2d 400, 405-6, 103 P.3d 1238 (Wash. 2005) the court discussed the meaning of the words “a” and “any” this was in reference to multiple criminal acts. It is illustrative to this case because the Court makes it very clear that the language of the statute is to be followed, as the State has indicated throughout this brief with regard to the fact that this initiative states unequivocally “all” felonies.

Graham at 405-6;

The analysis in Westling was straightforward:

[T]he statute refers, in relevant part, to the causing of " a fire" that damages "any automobile." "Any" means "every" and "all." State v. Smith, 117 Wash.2d 263, 271, 814 P.2d 652 (1991). Thus, under the plain language of the statute, one conviction is appropriate where one fire damages multiple automobiles, i.e., by use of the word "any" the statute speaks in terms of "every" and "all" automobiles damaged by the one fire.

145 Wash.2d at 611-12, 40 P.3d 669. The Court of Appeals in the present case observed that, in contrast to the arson statute, the reckless

endangerment statute proscribes conduct that places at risk not simply any person but "another person." RCW 9A.36.050(1) (emphasis added). In State v. DeSantiago, 149 Wash.2d 402, 68 P.3d 1065 (2003), we applied the Westling analysis to the use of "a," rather than "any," in weapon enhancement statutes to support our holding that the plain language of the statutes required a sentence enhancement for each weapon carried during offense. Id. at 419, 68 P.3d 1065.

There can be no doubt that the Legislature intended to increase punishment for ALL felonies just as the Initiative had envisioned. There were specific exclusions to this law, none of the exclusions include the words "unranked" there are however very specific instances where the law states "all" and "class C felonies" which would clearly allow the use of this enhancement on the crime charged.

This initiative, Initiative 159, was an Initiative to the Legislature, not an Initiative to the People. It was not up for public vote and therefore not included in the Voters Pamphlet so that look at the history of this initiative is not available. However the two original bills, both the House and the Senate versions are included in appendix 'A'. In those two documents it can be seen that the sections that were added and or amended continuously use the verbiage "any felony defined under law as a class C felony" and/or "for felony crimes" and/or "all felony crimes except..." as seen in;

**Sec. 2.** RCW 9.94A.310 and 1994 1st sp.s. c 7 s 512 are each 22 amended to read as follows:

(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. (Senate Bill 5187 pg 5, House Bill 1020, pg 5)

As stated above the Legislature specifically set forth those crimes which were excluded, therefore all other felonies were and are eligible to for the enhanced sentence.

The State obtained these bills from the Washington Legislative web site which maintains copies of the original bills that were filed. The legislative history

In a frequently cited passage, this court summarized the rule of lenity in In re Post Sentencing Review of Charles, 135 Wash.2d 239, 250 n. 4, 955 P.2d 798 (1998), (superseded on other grounds by statute as recognized in State v. Thomas, 150 Wash.2d 666, 672, 80 P.3d 168 (2003)):

The rule of lenity has been adhered to by this Court consistently and recently, and we have never indicated it is abrogated. However, the rule of lenity does not require forced, narrow or overstrict construction if it defeats the intent of the Legislature. State v. Carter, 89 Wash.2d 236, 242, 570 P.2d 1218 (1977). We have explained that the rule only applies when a penal statute is ambiguous and legislative intent is insufficient to clarify the ambiguity. In re [Pers. Restraint of] Sietz, 124 Wash.2d 645, 652, 880 P.2d 34 (1994); see also Moskal v. United States, 498 U.S.

103, 107-08, 111 S.Ct. 461, 112 L.Ed.2d 449 (1990). A statute is not ambiguous for purposes of the rule of lenity simply because there is a division of judicial authority over its proper construction. Reno v. Koray, 515 U.S. 50, 64-65, 115 S.Ct. 2021, 132 L.Ed.2d 46 (1995).

The intent of the legislature is clear, all felonies and in the context of this case all class C felonies are eligible for the enhanced penalty.

#### SECOND ALLEGATION.

Appellant has correctly set forth the section of the Judgment and Sentence which must be addressed by the trial court on remand. The trial court did not address on the record whether Appellant had at the time sentence was imposed or will while incarcerated or after release, have the ability to pay the court ordered legal financial obligations. Appellant sets forth three areas of the Judgment and Sentence which he indicates should be stricken. Two of those sections have no costs associated with them. Appellant was not ordered to pay costs related to medical cost or for the cost of incarceration and there is no indication in the record that there were costs either incurred or that any party requested that those costs be covered by appellant. These two areas do not need to be “stricken” by this court.

Because there were no actual costs assessed as can be seen in the amended judgment and sentence (CP 52-58) this issue is moot, In re Marriage of T, 68 Wn. App. 329, 336, 842 P.2d 1010 (1993);

The question remains, however, whether the underlying issue is moot. An issue is moot if a court can no longer provide effective relief and if the issue presented is purely academic. Yacobellis v. Bellingham, 55 Wn. App. 706, 709, 780 P.2d 272 (1989), review denied, 114 Wn.2d 1002 (1990). While appellate courts normally will not decide a moot issue, the court may consider the issue if it is one of substantial public importance and is capable of evading review. DeFunis v. Odegaard, 84 Wn.2d 617, 627-28, 529 P.2d 438 (1974).

See also, In re Myers, 105 Wn.2d 257, 261, 714 P.2d 303 (1986)

“As a general rule, this court will dismiss an appeal if it presents moot issues. Sorenson v. Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972).”

The allegation regarding the ability of Soto to pay now or in the future should be remanded to the trial court to allow the determination to be made with regard to the ability to pay. If it is determined that Soto does not have the ability to pay these obligations now or in the future they should be stricken. If in fact the court is able to determine that Soto has now or will have in the future the ability to pay then there needs to be a record made of that ability and thereafter these costs and assessments may be left in the Judgment and Sentence.

Division II of this court in State v. Bertrand, 165 Wn.App. 393, 405-6, 267 P.3d 511 (Wash.App. Div. 2 2011) determined regarding this issue the following;

Although Baldwin does not require formal findings of fact about a defendant's present or future ability to pay LFOs, the record must be sufficient for us to review whether "the trial court judge took into account the financial resources of the defendant and the nature of the burden" imposed by LFOs under the clearly erroneous standard. Baldwin, 63 Wash.App. at 312, 818 P.2d 1116, 837 P.2d 646. The record here does not show that the trial court took into account Bertrand's financial resources and the nature of the burden of imposing LFOs on her. In fact, the record before us on appeal contains no evidence to support the trial court's finding number 2.5 that Bertrand has the present or future ability to pay LFOs. Therefore, we hold that the trial court's judgment and sentence finding number 2.5 was clearly erroneous.

We next address whether Bertrand's challenge to the imposition of LFOs is ripe for our review. Baldwin holds that "the meaningful time to examine the defendant's ability to pay is when the government seeks to collect the obligation." Baldwin, 63 Wash.App. at 310, 818 P.2d 1116, 837 P.2d 646 (citing State v. Curry, 62 Wash.App. 676, 680, 814 P.2d 1252 (1991)) (emphasis added). The Baldwin court further noted:

The defendant may petition the court at any time for remission or modification of the payments on [the basis of manifest hardship]. Through this procedure the defendant is entitled to judicial scrutiny of his obligation and his present ability to pay at the relevant time. Baldwin, 63 Wash.App. at 310-11, 818 P.2d 1116, 837 P.2d 646 (emphasis added) (footnote omitted).

Although the trial court ordered Bertrand to begin paying her LFOs within 60 days of the judgment and sentence, our reversal of the trial court's judgment and sentence finding 2.5 forecloses the ability of the Department of Corrections to begin collecting LFOs from

Bertrand until after a future determination of her ability to pay. Thus, because Bertrand can apply for remission of her LFOs when the State initiates collections, we do not further address her LFO challenge.

**We affirm Bertrand's enhanced sentence and the trial court's imposition of LFOs. We reverse the trial court's finding that Bertrand has the present or future ability to pay LFOs and remand to the trial court to strike finding number 2.5 from the judgment and sentence. [16]**

[16] We further note that, after the trial court on remand strikes its finding that Bertrand has the present or future ability to pay her LFOs, before the State can collect LFOs from Bertrand, there must be a determination that she has the ability to pay these LFOs, taking into account her resources and the nature of the financial burden on her. See Baldwin, 63 Wash.App. at 312, 818 P.2d 1116, 837 P.2d 646; RCW 9.94A.753; former RCW 9.94A.760 (2008); former RCW 10.01.160 (2008); RCW 10.46.190. (Emphasis mine, some footnotes omitted.)

This court has on more than one occasion addressed similar issues.

On those occasions this court rather than merely striking the finding of future ability to pay and leaving it for another day, has remanded the matter to the trial court to allow the court to make the determination regarding ability to pay. It would appear that remand with an order to address this issue is a better policy and practice than to leave this matter pending. (See footnote 16, Bertrand, supra, where Division II left this for later determination.) Taking no action other than striking the unsupported findings would force the Department of Corrections, yet another entity of the State, to attempt to enforce the assessed costs at which time there will

be the need, the requirement, to hold some type of hearing to determine whether the defendant/appellant has the ability at that time and in the future to pay the costs. Bertrand clearly allows the costs and assessments to remain in the Judgment and Sentence the only thing which was removed was the actual finding of the present of future ability to pay those obligations because the trial court had not inquired on the record or made some statement indicating inquiry was made of the defendant or proof was supplied to the court which would indicate the ability to make these payments.

To leave this determination to some future hearing which will have to be initiated by the State or the defendant and allow in the interim this question to float, a question which could easily be answered with a short hearing in the trial court, would appear to be an enormous waste of scarce resources. If this court remands this appeal to resolve this issue this appeal will remain open and if there is further need to address the issue no one will have to reopen the appeal or file a new appeal of the actions of the trial court. If the policy and practice of Division II is adopted the fact is there is a probability that appellant can and will try to appeal the future act of the trial court when the determination is made regarding ability to pay.

State v. Raines, 83 Wn. App. 312, 922 P.2d 100 (1996)

(superseded by statute on other grounds, Laws of 1999, ch 196, § 5 as recognized in State v. Jones, 118 Wash.App. 199, 76 P.3d 258 (2003)), indicates this court can consider an allegation such this there the court ruled the appeal was not moot because the actions of the trial court could “affect future sentencing decisions should Raines reoffend. Id at 315. While this court does have the ability to address an allegation which is technically moot this would not appear to be necessary in this case.

#### IV. CONCLUSION

There is nothing which prohibits the Court from imposing a firearm enhancement on an unranked class C felony. The statute makes a distinction between ranked and unranked for purposes of the drug enhancement but does not make that same distinction for the firearms enhancement. The plain language of the statute dictates that the court may impose the firearm enhancement on the animal cruelty first degree charge in this case.

While it would appear from the lack of a record that the findings indicated by appellant must be stricken, the State urges this court to maintain jurisdiction, remand this allegation to the trial court and allow the parties to address this finding in a timely and cost effective manner.

DATED this 30<sup>th</sup> day of July, 2012 at Spokane, Washington.

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# APPENDIX A

**HISTORY OF BILL: HB 1020**  
**Thursday, July 26, 2012 10:37 AM**

Sponsors: Representatives [Padden](#), [Delvin](#), [Hickel](#), [Robertson](#), [Smith](#), [Carrell](#), [Sherstad](#), [Benton](#), [Dyer](#), [Skinner](#), [Kremen](#), [Hargrove](#), [Horn](#), [Schoesler](#), [Buck](#), [Johnson](#), [Thompson](#), [Beeksma](#), [Goldsmith](#), [Radcliff](#), [Backlund](#), [Crouse](#), [Cairnes](#), [Elliot](#), [Reams](#), [Pennington](#), [Mitchell](#), [K. Schmidt](#), [Conway](#), [Kessler](#), [Chappell](#), [G. Fisher](#), [Basich](#), [Grant](#), [Foreman](#), [Sehlin](#), [Van Luven](#), [Pelesky](#), [Blanton](#), [Hankins](#), [Koster](#), [Lambert](#), [D. Schmidt](#), [Mulliken](#), [Boldt](#), [McMorris](#), [Clements](#), [Campbell](#), [Sheldon](#), [L. Thomas](#), [Huff](#), [Mielke](#), [Talcott](#), [McMahan](#), [Stevens](#), [Ebersole](#), [Hymes](#), [Casada](#)

Companion Bill: [SB 5187](#)

**1995 REGULAR SESSION**

Dec 30 Prefiled for introduction.

Jan 9 First reading, referred to Corrections. ([View Original Bill](#))

**1995 1ST SPECIAL SESSION**

Apr 24 By resolution, reintroduced and retained in present status.

**1995 2ND SPECIAL SESSION**

May 24 By resolution, reintroduced and retained in present status.

**1996 REGULAR SESSION**

Jan 8 By resolution, reintroduced and retained in present status

**DIGEST OF BILL 1020**

Sponsor(s): Representatives Padden, Delvin, Hickel, Robertson, Smith, Carrell, Sherstad, Benton, Dyer, Skinner, Kremen, Hargrove, Horn, Schoesler, Buck, Johnson, Thompson, Beeksma, Goldsmith, Radcliff, Backlund, Crouse, Cairnes, Elliot, Reams, Pennington, Mitchell, K. Schmidt, Conway, Kessler, Chappell, G. Fisher, Basich, Grant, Foreman, Sehlin, Van Luven, Pelesky, Blanton, Hankins, Koster, Lambert, D. Schmidt, Mulliken, Boldt, McMorris, Clements, Campbell, Sheldon, L. Thomas, Huff, Mielke, Talcott, McMahan,

Stevens, Ebersole, Hymes and Casada

Brief Description: Increasing penalties for armed crimes.

**HB 1020 – DIGEST**

Increases the penalties for crimes committed by persons armed with a deadly weapon.

Provides for notification to offenders of the enhanced penalties.

## HISTORY OF BILL: SB 5187

Thursday, July 26, 2012 10:36 AM

Sponsors: Senators [Roach](#), [Smith](#), [Rasmussen](#), [Deccio](#), [Heavey](#),  
[Haugen](#), [Oke](#)

Companion Bill: [HB 1020](#)

### 1995 REGULAR SESSION

Jan 13 First reading, referred to Law & Justice. ([View Original Bill](#))

### 1995 1ST SPECIAL SESSION

Apr 24 By resolution, reintroduced and retained in present status.

### 1995 2ND SPECIAL SESSION

May 24 By resolution, reintroduced and retained in present status.

### 1996 REGULAR SESSION

Jan 8 By resolution, reintroduced and retained in present status.

## DIGEST OF BILL 5187

5187

Sponsor(s): Senators Roach, Smith, Rasmussen, Deccio, Heavey, Haugen and Oke

Brief Description: Increasing penalties for armed crimes.

### SB 5187 – DIGEST

Increases the penalties for crimes committed by persons armed with a deadly weapon.

Provides for notification to offenders of the enhanced penalties.

DECLARATION OF SERVICE

I, David B. Trefry state that on March 2012, emailed as copy, by agreement of the parties, of the Respondent's Brief , to Mrs. Susan Gasch, Gasch Law Office , [gachlaw@msn.com](mailto:gachlaw@msn.com) and to David Aaron Soto #843728 1313 N. 13th Ave. Walla Walla, WA 99362

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 30<sup>th</sup> day of July, 2012 at Spokane, Washington.

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**SENATE BILL 5187**

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**State of Washington**                      **54th Legislature**                      **1995 Regular Session**

**By** Senators Roach, Smith, Rasmussen, Deccio, Heavey, Haugen and Oke

Read first time 01/13/95. Referred to Committee on Law & Justice.

1            AN ACT Relating to increasing penalties for armed crimes; amending  
2 RCW 9.94A.310, 9.94A.150, 9A.36.045, 9A.52.020, 9A.56.300, 9A.56.030,  
3 9A.56.040, 9A.56.150, 9A.56.160, 9.41.040, and 10.95.020; reenacting  
4 and amending RCW 9.94A.320; adding new sections to chapter 9.94A RCW;  
5 adding a new section to chapter 9A.56 RCW; creating new sections; and  
6 prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            NEW SECTION.    **Sec. 1.**    FINDINGS AND INTENT.    (1) The legislature  
9 finds and declares that:

10            (a) Armed criminals pose an increasing and major threat to public  
11 safety and can turn any crime into serious injury or death.

12            (b) Criminals carry deadly weapons for several key reasons  
13 including: Forcing the victim to comply with their demands; injuring  
14 or killing anyone who tries to stop the criminal acts; and aiding the  
15 criminal in escaping.

16            (c) Current law does not sufficiently stigmatize the carrying and  
17 use of deadly weapons by criminals, and far too often there are no  
18 deadly weapon enhancements provided for many felonies, including

1 murder, arson, manslaughter, and child molestation and many other sex  
2 offenses including child luring.

3 (d) Current law also fails to distinguish between gun-carrying  
4 criminals and criminals carrying knives or clubs.

5 (2) By increasing the penalties for carrying and using deadly  
6 weapons by criminals and closing loopholes involving armed criminals,  
7 the legislature intends to:

8 (a) Stigmatize the carrying and use of any deadly weapons for all  
9 felonies with proper deadly weapon enhancements.

10 (b) Reduce the number of armed offenders by making the carrying and  
11 use of the deadly weapon not worth the sentence received upon  
12 conviction.

13 (c) Distinguish between the gun predators and criminals carrying  
14 other deadly weapons and provide greatly increased penalties for gun  
15 predators and for those offenders committing crimes to acquire  
16 firearms.

17 (d) Bring accountability and certainty into the sentencing system  
18 by tracking individual judges and holding them accountable for their  
19 sentencing practices in relation to the state's sentencing guidelines  
20 for serious crimes.

21 **Sec. 2.** RCW 9.94A.310 and 1994 1st sp.s. c 7 s 512 are each  
22 amended to read as follows:

23 FIREARM AND OTHER DEADLY WEAPON ENHANCEMENTS INCREASED.

24 (1) TABLE 1

25 Sentencing Grid

26 SERIOUSNESS

27 SCORE

OFFENDER SCORE

28 9 or  
29 0 1 2 3 4 5 6 7 8 more

30  
31 XV Life Sentence without Parole/Death Penalty

32  
33 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y  
34 240- 250- 261- 271- 281- 291- 312- 338- 370- 411-  
35 320 333 347 361 374 388 416 450 493 548

|    |      |      |       |       |       |       |       |       |       |        |       |
|----|------|------|-------|-------|-------|-------|-------|-------|-------|--------|-------|
| 1  | XIII | 12y  | 13y   | 14y   | 15y   | 16y   | 17y   | 19y   | 21y   | 25y    | 29y   |
| 2  |      | 123- | 134-  | 144-  | 154-  | 165-  | 175-  | 195-  | 216-  | 257-   | 298-  |
| 3  |      | 164  | 178   | 192   | 205   | 219   | 233   | 260   | 288   | 342    | 397   |
| 4  |      |      |       |       |       |       |       |       |       |        |       |
| 5  | XII  | 9y   | 9y11m | 10y9m | 11y8m | 12y6m | 13y5m | 15y9m | 17y3m | 20y3m  | 23y3m |
| 6  |      | 93-  | 102-  | 111-  | 120-  | 129-  | 138-  | 162-  | 178-  | 209-   | 240-  |
| 7  |      | 123  | 136   | 147   | 160   | 171   | 184   | 216   | 236   | 277    | 318   |
| 8  |      |      |       |       |       |       |       |       |       |        |       |
| 9  | XI   | 7y6m | 8y4m  | 9y2m  | 9y11m | 10y9m | 11y7m | 14y2m | 15y5m | 17y11m | 20y5m |
| 10 |      | 78-  | 86-   | 95-   | 102-  | 111-  | 120-  | 146-  | 159-  | 185-   | 210-  |
| 11 |      | 102  | 114   | 125   | 136   | 147   | 158   | 194   | 211   | 245    | 280   |
| 12 |      |      |       |       |       |       |       |       |       |        |       |
| 13 | X    | 5y   | 5y6m  | 6y    | 6y6m  | 7y    | 7y6m  | 9y6m  | 10y6m | 12y6m  | 14y6m |
| 14 |      | 51-  | 57-   | 62-   | 67-   | 72-   | 77-   | 98-   | 108-  | 129-   | 149-  |
| 15 |      | 68   | 75    | 82    | 89    | 96    | 102   | 130   | 144   | 171    | 198   |
| 16 |      |      |       |       |       |       |       |       |       |        |       |
| 17 | IX   | 3y   | 3y6m  | 4y    | 4y6m  | 5y    | 5y6m  | 7y6m  | 8y6m  | 10y6m  | 12y6m |
| 18 |      | 31-  | 36-   | 41-   | 46-   | 51-   | 57-   | 77-   | 87-   | 108-   | 129-  |
| 19 |      | 41   | 48    | 54    | 61    | 68    | 75    | 102   | 116   | 144    | 171   |
| 20 |      |      |       |       |       |       |       |       |       |        |       |
| 21 | VIII | 2y   | 2y6m  | 3y    | 3y6m  | 4y    | 4y6m  | 6y6m  | 7y6m  | 8y6m   | 10y6m |
| 22 |      | 21-  | 26-   | 31-   | 36-   | 41-   | 46-   | 67-   | 77-   | 87-    | 108-  |
| 23 |      | 27   | 34    | 41    | 48    | 54    | 61    | 89    | 102   | 116    | 144   |
| 24 |      |      |       |       |       |       |       |       |       |        |       |
| 25 | VII  | 18m  | 2y    | 2y6m  | 3y    | 3y6m  | 4y    | 5y6m  | 6y6m  | 7y6m   | 8y6m  |
| 26 |      | 15-  | 21-   | 26-   | 31-   | 36-   | 41-   | 57-   | 67-   | 77-    | 87-   |
| 27 |      | 20   | 27    | 34    | 41    | 48    | 54    | 75    | 89    | 102    | 116   |
| 28 |      |      |       |       |       |       |       |       |       |        |       |
| 29 | VI   | 13m  | 18m   | 2y    | 2y6m  | 3y    | 3y6m  | 4y6m  | 5y6m  | 6y6m   | 7y6m  |
| 30 |      | 12+- | 15-   | 21-   | 26-   | 31-   | 36-   | 46-   | 57-   | 67-    | 77-   |
| 31 |      | 14   | 20    | 27    | 34    | 41    | 48    | 61    | 75    | 89     | 102   |
| 32 |      |      |       |       |       |       |       |       |       |        |       |
| 33 | V    | 9m   | 13m   | 15m   | 18m   | 2y2m  | 3y2m  | 4y    | 5y    | 6y     | 7y    |
| 34 |      | 6-   | 12+-  | 13-   | 15-   | 22-   | 33-   | 41-   | 51-   | 62-    | 72-   |
| 35 |      | 12   | 14    | 17    | 20    | 29    | 43    | 54    | 68    | 82     | 96    |
| 36 |      |      |       |       |       |       |       |       |       |        |       |
| 37 | IV   | 6m   | 9m    | 13m   | 15m   | 18m   | 2y2m  | 3y2m  | 4y2m  | 5y2m   | 6y2m  |
| 38 |      | 3-   | 6-    | 12+-  | 13-   | 15-   | 22-   | 33-   | 43-   | 53-    | 63-   |
| 39 |      | 9    | 12    | 14    | 17    | 20    | 29    | 43    | 57    | 70     | 84    |

|    |       |      |      |    |     |      |     |      |      |      |      |
|----|-------|------|------|----|-----|------|-----|------|------|------|------|
| 1  | <hr/> |      |      |    |     |      |     |      |      |      |      |
| 2  | III   | 2m   | 5m   | 8m | 11m | 14m  | 20m | 2y2m | 3y2m | 4y2m | 5y   |
| 3  |       | 1-   | 3-   | 4- | 9-  | 12+- | 17- | 22-  | 33-  | 43-  | 51-  |
| 4  |       | 3    | 8    | 12 | 12  | 16   | 22  | 29   | 43   | 57   | 68   |
| 5  | <hr/> |      |      |    |     |      |     |      |      |      |      |
| 6  | II    |      | 4m   | 6m | 8m  | 13m  | 16m | 20m  | 2y2m | 3y2m | 4y2m |
| 7  |       | 0-90 | 2-   | 3- | 4-  | 12+- | 14- | 17-  | 22-  | 33-  | 43-  |
| 8  |       | Days | 6    | 9  | 12  | 14   | 18  | 22   | 29   | 43   | 57   |
| 9  | <hr/> |      |      |    |     |      |     |      |      |      |      |
| 10 | I     |      |      | 3m | 4m  | 5m   | 8m  | 13m  | 16m  | 20m  | 2y2m |
| 11 |       | 0-60 | 0-90 | 2- | 2-  | 3-   | 4-  | 12+- | 14-  | 17-  | 22-  |
| 12 |       | Days | Days | 5  | 6   | 8    | 12  | 14   | 18   | 22   | 29   |
| 13 | <hr/> |      |      |    |     |      |     |      |      |      |      |

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

18 (2) For persons convicted of the anticipatory offenses of criminal  
19 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
20 presumptive sentence is determined by locating the sentencing grid  
21 sentence range defined by the appropriate offender score and the  
22 seriousness level of the completed crime, and multiplying the range by  
23 75 percent.

24 (3) The following additional times shall be added to the  
25 presumptive sentence for felony crimes committed after the effective  
26 date of this section if the offender or an accomplice was armed with a  
27 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
28 for one of the crimes listed in this subsection as eligible for any  
29 firearm enhancements based on the classification of the completed  
30 felony crime. If the offender or an accomplice was armed with a  
31 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
32 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
33 the crimes listed in this subsection as eligible for any firearm  
34 enhancements, the following additional times shall be added to the  
35 presumptive sentence determined under subsection (2) of this section  
36 based on the felony crime of conviction as classified under RCW  
37 9A.28.020:

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

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

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

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

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

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

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

30       (4) The following additional times shall be added to the  
31 presumptive sentence for felony crimes committed after the effective  
32 date of this section if the offender or an accomplice was armed with a  
33 deadly weapon as defined in this chapter other than a firearm as  
34 defined in RCW 9.41.010 and the offender is being sentenced for one of  
35 the crimes listed in this subsection as eligible for any deadly weapon  
36 enhancements based on the classification of the completed felony crime.  
37 If the offender or an accomplice was armed with a deadly weapon other  
38 than a firearm as defined in RCW 9.41.010 and the offender is being  
39 sentenced for an anticipatory offense under chapter 9A.28 RCW to commit

1 one of the crimes listed in this subsection as eligible for any deadly  
2 weapon enhancements, the following additional times shall be added to  
3 the presumptive ((range)) sentence determined under subsection (2) of  
4 this section based on the felony crime of conviction as classified  
5 under RCW 9A.28.020:

6 (a) (~~((24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW~~  
7 ~~9A.56.200), or Kidnapping 1 (RCW 9A.40.020);~~) Two years for any felony  
8 defined under any law as a class A felony or with a maximum sentence of  
9 at least twenty years, or both, and not covered under (f) of this  
10 subsection.

11 (b) (~~((18 months for Burglary 1 (RCW 9A.52.020);~~) One year for any  
12 felony defined under any law as a class B felony or with a maximum  
13 sentence of ten years, or both, and not covered under (f) of this  
14 subsection.

15 (c) (~~((12 months for any violent offense except as provided in (a)~~  
16 ~~and (b) of this subsection, Escape 1 (RCW 9A.76.110), Burglary 2 of a~~  
17 ~~building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or~~  
18 ~~2 (RCW 9A.56.080), or any drug offense)) Six months for any felony  
19 defined under any law as a class C felony or with a maximum sentence of  
20 five years, or both, and not covered under (f) of this subsection.~~

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

28 (e) Notwithstanding any other provision of law, any and all deadly  
29 weapon enhancements under this section are mandatory, shall be served  
30 in total confinement, and shall not run concurrently with any other  
31 sentencing provisions.

32 (f) The deadly weapon enhancements in this section shall apply to  
33 all felony crimes except the following: Possession of a machine gun,  
34 possessing a stolen firearm, reckless endangerment in the first degree,  
35 theft of a firearm, unlawful possession of a firearm in the first and  
36 second degree, and use of a machine gun in a felony.

37 (g) If the presumptive sentence under this section exceeds the  
38 statutory maximum for the offense, the statutory maximum sentence shall

1 be the presumptive sentence unless the offender is a persistent  
2 offender as defined in RCW 9.94A.030.

3 ~~((4))~~ (5) The following additional times shall be added to the  
4 presumptive sentence if the offender or an accomplice committed the  
5 offense while in a county jail or state correctional facility as that  
6 term is defined in this chapter and the offender is being sentenced for  
7 one of the crimes listed in this subsection. If the offender or an  
8 accomplice committed one of the crimes listed in this subsection while  
9 in a county jail or state correctional facility as that term is defined  
10 in this chapter, and the offender is being sentenced for an  
11 anticipatory offense under chapter 9A.28 RCW to commit one of the  
12 crimes listed in this subsection, the following additional times shall  
13 be added to the presumptive sentence (~~(range)~~) determined under  
14 subsection (2) of this section:

15 (a) Eighteen months for offenses committed under RCW  
16 69.50.401(a)(1)(i) or 69.50.410;

17 (b) Fifteen months for offenses committed under RCW  
18 69.50.401(a)(1)(ii), (iii), and (iv);

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

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

23 ~~((5))~~ (6) An additional twenty-four months shall be added to the  
24 presumptive sentence for any ranked offense involving a violation of  
25 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

26 **Sec. 3.** RCW 9.94A.320 and 1994 1st sp.s. c 7 s 510, 1994 c 275 s  
27 20, & 1994 c 53 s 2 are each reenacted and amended to read as follows:

28 PENALTIES INCREASED FOR OTHER CRIMES INVOLVING FIREARMS.

29 TABLE 2

30 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

31 XV Aggravated Murder 1 (RCW 10.95.020)

32 XIV Murder 1 (RCW 9A.32.030)

33 Homicide by abuse (RCW 9A.32.055)

34 XIII Murder 2 (RCW 9A.32.050)

1 XII Assault 1 (RCW 9A.36.011)  
2 Assault of a Child 1 (RCW 9A.36.120)  
3 XI Rape 1 (RCW 9A.44.040)  
4 Rape of a Child 1 (RCW 9A.44.073)  
5 X Kidnapping 1 (RCW 9A.40.020)  
6 Rape 2 (RCW 9A.44.050)  
7 Rape of a Child 2 (RCW 9A.44.076)  
8 Child Molestation 1 (RCW 9A.44.083)  
9 Damaging building, etc., by explosion with  
10 threat to human being (RCW  
11 70.74.280(1))  
12 Over 18 and deliver heroin or narcotic from  
13 Schedule I or II to someone under 18  
14 (RCW 69.50.406)  
15 Leading Organized Crime (RCW  
16 9A.82.060(1)(a))  
17 IX Assault of a Child 2 (RCW 9A.36.130)  
18 Robbery 1 (RCW 9A.56.200)  
19 Manslaughter 1 (RCW 9A.32.060)  
20 Explosive devices prohibited (RCW 70.74.180)  
21 Indecent Liberties (with forcible  
22 compulsion) (RCW 9A.44.100(1)(a))  
23 Endangering life and property by explosives  
24 with threat to human being (RCW  
25 70.74.270)  
26 Over 18 and deliver narcotic from Schedule  
27 III, IV, or V or a nonnarcotic from  
28 Schedule I-V to someone under 18 and 3  
29 years junior (RCW 69.50.406)  
30 Controlled Substance Homicide (RCW  
31 69.50.415)  
32 Sexual Exploitation (RCW 9.68A.040)  
33 Inciting Criminal Profiteering (RCW  
34 9A.82.060(1)(b))  
35 Vehicular Homicide, by being under the  
36 influence of intoxicating liquor or any  
37 drug (RCW 46.61.520)

1 VIII Arson 1 (RCW 9A.48.020)  
2 Promoting Prostitution 1 (RCW 9A.88.070)  
3 Selling for profit (controlled or  
4 counterfeit) any controlled substance  
5 (RCW 69.50.410)  
6 Manufacture, deliver, or possess with intent  
7 to deliver heroin or cocaine (RCW  
8 69.50.401(a)(1)(i))  
9 Manufacture, deliver, or possess with intent  
10 to deliver methamphetamine (RCW  
11 69.50.401(a)(1)(ii))  
12 Vehicular Homicide, by the operation of any  
13 vehicle in a reckless manner (RCW  
14 46.61.520)

15 VII Burglary 1 (RCW 9A.52.020)  
16 Vehicular Homicide, by disregard for the  
17 safety of others (RCW 46.61.520)  
18 Introducing Contraband 1 (RCW 9A.76.140)  
19 Indecent Liberties (without forcible  
20 compulsion) (RCW 9A.44.100(1) (b) and  
21 (c))  
22 Child Molestation 2 (RCW 9A.44.086)  
23 Dealing in depictions of minor engaged in  
24 sexually explicit conduct (RCW  
25 9.68A.050)  
26 Sending, bringing into state depictions of  
27 minor engaged in sexually explicit  
28 conduct (RCW 9.68A.060)  
29 Involving a minor in drug dealing (RCW  
30 69.50.401(f))  
31 Reckless Endangerment 1 (RCW 9A.36.045)  
32 Unlawful Possession of a Firearm in the  
33 first degree (RCW 9.41.040(1)(a))

34 VI Bribery (RCW 9A.68.010)  
35 Manslaughter 2 (RCW 9A.32.070)  
36 Rape of a Child 3 (RCW 9A.44.079)  
37 Intimidating a Juror/Witness (RCW 9A.72.110,  
38 9A.72.130)

1 Damaging building, etc., by explosion with  
2 no threat to human being (RCW  
3 70.74.280(2))  
4 Endangering life and property by explosives  
5 with no threat to human being (RCW  
6 70.74.270)  
7 Incest 1 (RCW 9A.64.020(1))  
8 Manufacture, deliver, or possess with intent  
9 to deliver narcotics from Schedule I or  
10 II (except heroin or cocaine) (RCW  
11 69.50.401(a)(1)(i))  
12 Intimidating a Judge (RCW 9A.72.160)  
13 Bail Jumping with Murder 1 (RCW  
14 9A.76.170(2)(a))  
15 Theft of a Firearm (RCW 9A.56.300)  
16 V Criminal Mistreatment 1 (RCW 9A.42.020)  
17 (~~Theft of a Firearm (RCW 9A.56.300)~~  
18 ~~Reckless Endangerment 1 (RCW 9A.36.045)~~)  
19 Rape 3 (RCW 9A.44.060)  
20 Sexual Misconduct with a Minor 1 (RCW  
21 9A.44.093)  
22 Child Molestation 3 (RCW 9A.44.089)  
23 Kidnapping 2 (RCW 9A.40.030)  
24 Extortion 1 (RCW 9A.56.120)  
25 Incest 2 (RCW 9A.64.020(2))  
26 Perjury 1 (RCW 9A.72.020)  
27 Extortionate Extension of Credit (RCW  
28 9A.82.020)  
29 Advancing money or property for extortionate  
30 extension of credit (RCW 9A.82.030)  
31 Extortionate Means to Collect Extensions of  
32 Credit (RCW 9A.82.040)  
33 Rendering Criminal Assistance 1 (RCW  
34 9A.76.070)  
35 Bail Jumping with class A Felony (RCW  
36 9A.76.170(2)(b))  
37 Sexually Violating Human Remains (RCW  
38 9A.44.105)

1 Delivery of imitation controlled substance  
2 by person eighteen or over to person  
3 under eighteen (RCW 69.52.030(2))  
4 Possession of a Stolen Firearm (RCW  
5 9A.56.--- (section 13 of this act))

6 IV Residential Burglary (RCW 9A.52.025)  
7 Theft of Livestock 1 (RCW 9A.56.080)  
8 Robbery 2 (RCW 9A.56.210)  
9 Assault 2 (RCW 9A.36.021)  
10 Escape 1 (RCW 9A.76.110)  
11 Arson 2 (RCW 9A.48.030)  
12 Bribing a Witness/Bribe Received by Witness  
13 (RCW 9A.72.090, 9A.72.100)  
14 Malicious Harassment (RCW 9A.36.080)  
15 Threats to Bomb (RCW 9.61.160)  
16 Willful Failure to Return from Furlough (RCW  
17 72.66.060)  
18 Hit and Run « Injury Accident (RCW  
19 46.52.020(4))  
20 Vehicular Assault (RCW 46.61.522)  
21 Manufacture, deliver, or possess with intent  
22 to deliver narcotics from Schedule III,  
23 IV, or V or nonnarcotics from Schedule  
24 I-V (except marijuana or  
25 methamphetamines) (RCW  
26 69.50.401(a)(1)(ii) through (iv))  
27 Influencing Outcome of Sporting Event (RCW  
28 9A.82.070)  
29 Use of Proceeds of Criminal Profiteering  
30 (RCW 9A.82.080 (1) and (2))  
31 Knowingly Trafficking in Stolen Property  
32 (RCW 9A.82.050(2))

33 III Criminal Mistreatment 2 (RCW 9A.42.030)  
34 Extortion 2 (RCW 9A.56.130)  
35 Unlawful Imprisonment (RCW 9A.40.040)  
36 Assault 3 (RCW 9A.36.031)  
37 Assault of a Child 3 (RCW 9A.36.140)  
38 Custodial Assault (RCW 9A.36.100)

1 Unlawful possession of firearm ((~~or pistol by felon~~)) in  
2 the second degree (RCW 9.41.040(1)(b))  
3 Harassment (RCW 9A.46.020)  
4 Promoting Prostitution 2 (RCW 9A.88.080)  
5 Willful Failure to Return from Work Release  
6 (RCW 72.65.070)  
7 Burglary 2 (RCW 9A.52.030)  
8 Introducing Contraband 2 (RCW 9A.76.150)  
9 Communication with a Minor for Immoral  
10 Purposes (RCW 9.68A.090)  
11 Patronizing a Juvenile Prostitute (RCW  
12 9.68A.100)  
13 Escape 2 (RCW 9A.76.120)  
14 Perjury 2 (RCW 9A.72.030)  
15 Bail Jumping with class B or C Felony (RCW  
16 9A.76.170(2)(c))  
17 Intimidating a Public Servant (RCW  
18 9A.76.180)  
19 Tampering with a Witness (RCW 9A.72.120)  
20 Manufacture, deliver, or possess with intent  
21 to deliver marijuana (RCW  
22 69.50.401(a)(1)(ii))  
23 Delivery of a material in lieu of a  
24 controlled substance (RCW 69.50.401(c))  
25 Manufacture, distribute, or possess with  
26 intent to distribute an imitation  
27 controlled substance (RCW 69.52.030(1))  
28 Recklessly Trafficking in Stolen Property  
29 (RCW 9A.82.050(1))  
30 Theft of livestock 2 (RCW 9A.56.080)  
31 Securities Act violation (RCW 21.20.400)  
32 II Malicious Mischief 1 (RCW 9A.48.070)  
33 Possession of Stolen Property 1 (RCW  
34 9A.56.150)  
35 Theft 1 (RCW 9A.56.030)  
36 Possession of controlled substance that is  
37 either heroin or narcotics from  
38 Schedule I or II (RCW 69.50.401(d))

1 Possession of phencyclidine (PCP) (RCW  
2 69.50.401(d))  
3 Create, deliver, or possess a counterfeit  
4 controlled substance (RCW 69.50.401(b))  
5 Computer Trespass 1 (RCW 9A.52.110)  
6 Escape from Community Custody (RCW  
7 72.09.310)

8 I Theft 2 (RCW 9A.56.040)  
9 Possession of Stolen Property 2 (RCW  
10 9A.56.160)  
11 Forgery (RCW 9A.60.020)  
12 Taking Motor Vehicle Without Permission (RCW  
13 9A.56.070)  
14 Vehicle Prowl 1 (RCW 9A.52.095)  
15 Attempting to Elude a Pursuing Police  
16 Vehicle (RCW 46.61.024)  
17 Malicious Mischief 2 (RCW 9A.48.080)  
18 Reckless Burning 1 (RCW 9A.48.040)  
19 Unlawful Issuance of Checks or Drafts (RCW  
20 9A.56.060)  
21 Unlawful Use of Food Stamps (RCW 9.91.140  
22 (2) and (3))  
23 False Verification for Welfare (RCW  
24 74.08.055)  
25 Forged Prescription (RCW 69.41.020)  
26 Forged Prescription for a Controlled  
27 Substance (RCW 69.50.403)  
28 Possess Controlled Substance that is a  
29 Narcotic from Schedule III, IV, or V or  
30 Non-narcotic from Schedule I-V (except  
31 phencyclidine) (RCW 69.50.401(d))

32 NEW SECTION. **Sec. 4.** PROSECUTING STANDARDS TIGHTENED FOR ARMED  
33 OFFENDERS. Notwithstanding the current placement or listing of crimes  
34 in categories or classifications of prosecuting standards for deciding  
35 to prosecute under RCW 9.94A.440(2), any and all felony crimes  
36 involving any deadly weapon special verdict under RCW 9.94A.125, any  
37 deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, and

1 any and all felony crimes as defined in RCW 9.94A.310 (3)(f) or (4)(f),  
2 or both, which are excluded from the deadly weapon enhancements shall  
3 all be treated as crimes against a person and subject to the  
4 prosecuting standards for deciding to prosecute under RCW 9.94A.440(2)  
5 as crimes against persons.

6 NEW SECTION. **Sec. 5.** ALL PLEA AGREEMENTS AND SENTENCES FOR  
7 VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS MADE A PUBLIC RECORD. Any  
8 and all recommended sentencing agreements or plea agreements and the  
9 sentences for any and all felony crimes shall be made and retained as  
10 public records if the felony crime involves:

- 11 (1) Any violent offense as defined in this chapter;
- 12 (2) Any most serious offense as defined in this chapter;
- 13 (3) Any felony with a deadly weapon special verdict under RCW  
14 9.94A.125;
- 15 (4) Any felony with any deadly weapon enhancements under RCW  
16 9.94A.310 (3) or (4), or both; and/or
- 17 (5) The felony crimes of possession of a machine gun, possessing  
18 a stolen firearm, reckless endangerment in the first degree, theft of  
19 a firearm, unlawful possession of a firearm in the first or second  
20 degree, and/or use of a machine gun in a felony.

21 NEW SECTION. **Sec. 6.** JUDICIAL RECORDS KEPT FOR SENTENCES OF  
22 VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS. (1) A current, newly  
23 created or reworked judgment and sentence document for each felony  
24 sentencing shall record any and all recommended sentencing agreements  
25 or plea agreements and the sentences for any and all felony crimes kept  
26 as public records under section 5 of this act shall contain the clearly  
27 printed name and legal signature of the sentencing judge. The judgment  
28 and sentence document as defined in this section shall also provide  
29 additional space for the sentencing judge's reasons for going either  
30 above or below the presumptive sentence range for any and all felony  
31 crimes covered as public records under section 5 of this act. Both the  
32 sentencing judge and the prosecuting attorney's office shall each  
33 retain or receive a completed copy of each sentencing document as  
34 defined in this section for their own records.

35 (2) The sentencing guidelines commission shall be sent a completed  
36 copy of the judgment and sentence document upon conviction for each  
37 felony sentencing under subsection (1) of this section and shall

1 compile a yearly and cumulative judicial record of each sentencing  
2 judge in regards to his or her sentencing practices for any and all  
3 felony crimes involving:

4 (a) Any violent offense as defined in this chapter;

5 (b) Any most serious offense as defined in this chapter;

6 (c) Any felony with any deadly weapon special verdict under RCW  
7 9.94A.125;

8 (d) Any felony with any deadly weapon enhancements under RCW  
9 9.94A.310 (3) or (4), or both; and/or

10 (e) The felony crimes of possession of a machine gun, possessing  
11 a stolen firearm, reckless endangerment in the first degree, theft of  
12 a firearm, unlawful possession of a firearm in the first or second  
13 degree, and/or use of a machine gun in a felony.

14 (3) The sentencing guidelines commission shall compare each  
15 individual judge's sentencing practices to the standard or presumptive  
16 sentence range for any and all felony crimes listed in subsection (2)  
17 of this section for the appropriate offense level as defined in RCW  
18 9.94A.320, offender score as defined in RCW 9.94A.360, and any  
19 applicable deadly weapon enhancements as defined in RCW 9.94A.310 (3)  
20 or (4), or both. These comparative records shall be retained and made  
21 available to the public for review in a current, newly created or  
22 reworked official published document by the sentencing guidelines  
23 commission.

24 (4) Any and all felony sentences which are either above or below  
25 the standard or presumptive sentence range in subsection (3) of this  
26 section shall also mark whether the prosecuting attorney in the case  
27 also recommended a similar sentence, if any, which was either above or  
28 below the presumptive sentence range and shall also indicate if the  
29 sentence was in conjunction with an approved alternative sentencing  
30 option including a first-time offender waiver, sex offender sentencing  
31 alternative, or other prescribed sentencing option.

32 (5) If any completed judgment and sentence document as defined in  
33 subsection (1) of this section is not sent to the sentencing guidelines  
34 commission as required in subsection (2) of this section, the  
35 sentencing guidelines commission shall have the authority and shall  
36 undertake reasonable and necessary steps to assure that all past,  
37 current, and future sentencing documents as defined in subsection (1)  
38 of this section are received by the sentencing guidelines commission.

1           **Sec. 7.** RCW 9.94A.150 and 1992 c 145 s 8 are each amended to read  
2 as follows:

3           GOOD TIME REMOVED FOR DEADLY WEAPON ENHANCEMENTS. No person  
4 serving a sentence imposed pursuant to this chapter and committed to  
5 the custody of the department shall leave the confines of the  
6 correctional facility or be released prior to the expiration of the  
7 sentence except as follows:

8           (1) Except as otherwise provided for in subsection (2) of this  
9 section, the term of the sentence of an offender committed to a  
10 correctional facility operated by the department, may be reduced by  
11 earned early release time in accordance with procedures that shall be  
12 developed and promulgated by the correctional agency having  
13 jurisdiction in which the offender is confined. The earned early  
14 release time shall be for good behavior and good performance, as  
15 determined by the correctional agency having jurisdiction. The  
16 correctional agency shall not credit the offender with earned early  
17 release credits in advance of the offender actually earning the  
18 credits. Any program established pursuant to this section shall allow  
19 an offender to earn early release credits for presentence  
20 incarceration. If an offender is transferred from a county jail to the  
21 department of corrections, the county jail facility shall certify to  
22 the department the amount of time spent in custody at the facility and  
23 the amount of earned early release time. In the case of an offender  
24 who has been convicted of a felony committed after the effective date  
25 of this section that involves any applicable deadly weapon enhancements  
26 under RCW 9.94A.310 (3) or (4), or both, shall not receive any good  
27 time credits or earned early release time for that portion of his or  
28 her sentence that results from any deadly weapon enhancements. In the  
29 case of an offender convicted of a serious violent offense or a sex  
30 offense that is a class A felony committed on or after July 1, 1990,  
31 the aggregate earned early release time may not exceed fifteen percent  
32 of the sentence. In no other case shall the aggregate earned early  
33 release time exceed one-third of the total sentence;

34           (2) A person convicted of a sex offense or an offense categorized  
35 as a serious violent offense, assault in the second degree, assault of  
36 a child in the second degree, any crime against a person where it is  
37 determined in accordance with RCW 9.94A.125 that the defendant or an  
38 accomplice was armed with a deadly weapon at the time of commission, or  
39 any felony offense under chapter 69.50 or 69.52 RCW may become

1 eligible, in accordance with a program developed by the department, for  
2 transfer to community custody status in lieu of earned early release  
3 time pursuant to subsection (1) of this section;

4 (3) An offender may leave a correctional facility pursuant to an  
5 authorized furlough or leave of absence. In addition, offenders may  
6 leave a correctional facility when in the custody of a corrections  
7 officer or officers;

8 (4) The governor, upon recommendation from the clemency and  
9 pardons board, may grant an extraordinary release for reasons of  
10 serious health problems, senility, advanced age, extraordinary  
11 meritorious acts, or other extraordinary circumstances;

12 (5) No more than the final six months of the sentence may be  
13 served in partial confinement designed to aid the offender in finding  
14 work and reestablishing ((him)) himself or herself in the community;

15 (6) The governor may pardon any offender;

16 (7) The department of corrections may release an offender from  
17 confinement any time within ten days before a release date calculated  
18 under this section; and

19 (8) An offender may leave a correctional facility prior to  
20 completion of his sentence if the sentence has been reduced as provided  
21 in RCW 9.94A.160.

22 Notwithstanding any other provisions of this section, an offender  
23 sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to  
24 a mandatory minimum sentence of total confinement shall not be released  
25 from total confinement before the completion of the listed mandatory  
26 minimum sentence for that felony crime of conviction unless allowed  
27 under RCW 9.94A.120(4).

28 **Sec. 8.** RCW 9A.36.045 and 1994 1st sp.s. c 7 s 511 are each  
29 amended to read as follows:

30 RECKLESS ENDANGERMENT IN THE FIRST DEGREE. (1) A person is guilty  
31 of reckless endangerment in the first degree when he or she recklessly  
32 discharges a firearm as defined in RCW 9.41.010 in a manner which  
33 creates a substantial risk of death or serious physical injury to  
34 another person and the discharge is either from a motor vehicle or from  
35 the immediate area of a motor vehicle that was used to transport the  
36 shooter or the firearm, or both, to the scene of the discharge.

37 (2) A person who unlawfully discharges a firearm from a moving  
38 motor vehicle may be inferred to have engaged in reckless conduct,

1 unless the discharge is shown by evidence satisfactory to the trier of  
2 fact to have been made without such recklessness.

3 (3) Reckless endangerment in the first degree is a class B felony.

4 **Sec. 9.** RCW 9A.52.020 and 1975 1st ex.s. c 260 s 9A.52.020 are  
5 each amended to read as follows:

6 BURGLARY IN THE FIRST DEGREE. (1) A person is guilty of burglary  
7 in the first degree if, with intent to commit a crime against a person  
8 or property therein, he or she enters or remains unlawfully in a  
9 ~~((dwelling))~~ building and if, in entering or while in the ~~((dwelling))~~  
10 building or in immediate flight therefrom, the actor or another  
11 participant in the crime (a) is armed with a deadly weapon, or (b)  
12 assaults any person therein.

13 (2) Burglary in the first degree is a class A felony.

14 **Sec. 10.** RCW 9A.56.300 and 1994 1st sp.s. c 7 s 432 are each  
15 amended to read as follows:

16 THEFT OF A FIREARM. (1) A person is guilty of theft of a firearm  
17 if ~~((the person:~~

18 ~~(a))~~ he or she commits a theft of ~~((a))~~ any firearm~~((; or~~  
19 ~~(b) Possesses, sells, or delivers a stolen firearm))~~.

20 (2) This section applies regardless of the ~~((stolen firearm's))~~  
21 value of the firearm taken in the theft.

22 (3) ~~(("Possession, sale, or delivery of a stolen firearm" as used~~  
23 ~~in this section has the same meaning as "possessing stolen property" in~~  
24 ~~RCW 9A.56.140))~~ Each firearm taken in the theft under this section is  
25 a separate offense.

26 (4) The definition of "theft" and the defense allowed against the  
27 prosecution for theft under RCW 9A.56.020 shall apply to the crime of  
28 theft of a firearm.

29 (5) As used in this section, "firearm" means any firearm as  
30 defined in RCW 9.41.010.

31 (6) Theft of a firearm is a class ~~((C))~~ B felony.

32 **Sec. 11.** RCW 9A.56.030 and 1975 1st ex.s. c 260 s 9A.56.030 are  
33 each amended to read as follows:

34 THEFT IN THE FIRST DEGREE OTHER THAN A FIREARM. (1) A person is  
35 guilty of theft in the first degree if he or she commits theft of:

- 1 (a) Property or services which exceed(s) one thousand five hundred  
2 dollars in value other than a firearm as defined in RCW 9.41.010; or  
3 (b) Property of any value other than a firearm as defined in RCW  
4 9.41.010 taken from the person of another.  
5 (2) Theft in the first degree is a class B felony.

6 **Sec. 12.** RCW 9A.56.040 and 1994 1st sp.s. c 7 s 433 are each  
7 amended to read as follows:

8 THEFT IN THE SECOND DEGREE OTHER THAN A FIREARM. (1) A person is  
9 guilty of theft in the second degree if he or she commits theft of:

- 10 (a) Property or services which exceed(s) two hundred and fifty  
11 dollars in value other than a firearm as defined in RCW 9.41.010, but  
12 does not exceed one thousand five hundred dollars in value; or  
13 (b) A public record, writing, or instrument kept, filed, or  
14 deposited according to law with or in the keeping of any public office  
15 or public servant; or  
16 (c) An access device; or  
17 (d) A motor vehicle, of a value less than one thousand five  
18 hundred dollars.  
19 (2) Theft in the second degree is a class C felony.

20 NEW SECTION. **Sec. 13.** A new section is added to chapter 9A.56  
21 RCW to read as follows:

22 POSSESSING A STOLEN FIREARM. (1) A person is guilty of possessing  
23 a stolen firearm if he or she possesses, carries, delivers, sells, or  
24 is in control of a stolen firearm.

25 (2) This section applies regardless of the stolen firearm's value.

26 (3) Each stolen firearm possessed under this section is a separate  
27 offense.

28 (4) The definition of "possessing stolen property" and the defense  
29 allowed against the prosecution for possessing stolen property under  
30 RCW 9A.56.140 shall apply to the crime of possessing a stolen firearm.

31 (5) As used in this section, "firearm" means any firearm as  
32 defined in RCW 9.41.010.

33 (6) Possessing a stolen firearm is a class B felony.

34 **Sec. 14.** RCW 9A.56.150 and 1975 1st ex.s. c 260 s 9A.56.150 are  
35 each amended to read as follows:

1 POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE OTHER THAN A  
2 FIREARM. (1) A person is guilty of possessing stolen property in the  
3 first degree if he or she possesses stolen property other than a  
4 firearm as defined in RCW 9.41.010 which exceeds one thousand five  
5 hundred dollars in value.

6 (2) Possessing stolen property in the first degree is a class B  
7 felony.

8 **Sec. 15.** RCW 9A.56.160 and 1994 1st sp.s. c 7 s 434 are each  
9 amended to read as follows:

10 POSSESSING STOLEN PROPERTY IN THE SECOND DEGREE OTHER THAN A  
11 FIREARM. (1) A person is guilty of possessing stolen property in the  
12 second degree if:

13 (a) He or she possesses stolen property other than a firearm as  
14 defined in RCW 9.41.010 which exceeds two hundred fifty dollars in  
15 value but does not exceed one thousand five hundred dollars in value;  
16 or

17 (b) He or she possesses a stolen public record, writing or  
18 instrument kept, filed, or deposited according to law; or

19 (c) He or she possesses a stolen access device; or

20 (d) He or she possesses a stolen motor vehicle of a value less  
21 than one thousand five hundred dollars.

22 (2) Possessing stolen property in the second degree is a class C  
23 felony.

24 **Sec. 16.** RCW 9.41.040 and 1994 1st sp.s. c 7 s 402 are each  
25 amended to read as follows:

26 UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST AND SECOND DEGREE--  
27 OWNERSHIP, POSSESSION OF FIREARMS PROHIBITED FROM CERTAIN PERSONS.

28 (1)(a) A person, whether an adult or juvenile, is guilty of the crime  
29 of unlawful possession of a firearm in the first degree, if the person  
30 owns, has in his or her possession, or has in his or her control any  
31 firearm((+

32 {a})) after having previously been convicted in this state or  
33 elsewhere of ((a)) any serious offense((, a domestic violence offense  
34 enumerated in RCW 10.99.020(2), a harassment offense enumerated in RCW  
35 9A.46.060, or of a felony in which a firearm was used or displayed)) as  
36 defined in this chapter, residential burglary, reckless endangerment in  
37 the first degree, any felony violation of the uniform controlled

1 substances act, chapter 69.50 RCW, classified as a class A or class B  
2 felony, or with a maximum sentence of at least ten years, or both, or  
3 equivalent statutes of another jurisdiction, except as otherwise  
4 provided in subsection (3) or (4) of this section;

5 (b) A person, whether an adult or juvenile, is guilty of the crime  
6 of unlawful possession of a firearm in the second degree, if the person  
7 does not qualify under (a) of this subsection for the crime of unlawful  
8 possession of a firearm in the first degree and the person owns, has in  
9 his or her possession, or has in his or her control any firearm:

10 (i) After having previously been convicted of any remaining felony  
11 violation of the uniform controlled substances act, chapter 69.50 RCW,  
12 or equivalent statutes of another jurisdiction not specifically listed  
13 as prohibiting firearm possession under (a) of this subsection, any  
14 remaining felony in which a firearm was used or displayed and the  
15 felony is not specifically listed as prohibiting firearm possession  
16 under (a) of this subsection, any domestic violence offense enumerated  
17 in RCW 10.99.020(2), or any harassment offense enumerated in RCW  
18 9A.46.060, except as otherwise provided in subsection (3) or (4) of  
19 this section;

20 ((+e)) (ii) After having previously been convicted on three  
21 occasions within five years of driving a motor vehicle or operating a  
22 vessel while under the influence of intoxicating liquor or any drug,  
23 unless his or her right to possess a firearm has been restored as  
24 provided in RCW 9.41.047;

25 ((+e)) (iii) After having previously been involuntarily committed  
26 for mental health treatment under RCW 71.05.320, 71.34.090, chapter  
27 10.77 RCW, or equivalent statutes of another jurisdiction, unless his  
28 or her right to possess a firearm has been restored as provided in RCW  
29 9.41.047; and/or

30 (iv) If the person is under eighteen years of age, except as  
31 provided in RCW 9.41.042.

32 (2)(a) Unlawful possession of a firearm in the first degree is a  
33 class ((C)) B felony, punishable under chapter 9A.20 RCW.

34 (b) Unlawful possession of a firearm in the second degree is a  
35 class C felony, punishable under chapter 9A.20 RCW.

36 (3) As used in this section, a person has been "convicted" at such  
37 time as a plea of guilty has been accepted or a verdict of guilty has  
38 been filed, notwithstanding the pendency of any future proceedings  
39 including but not limited to sentencing or disposition, post-trial or

1 post-factfinding motions, and appeals. A person shall not be precluded  
2 from possession of a firearm if the conviction has been the subject of  
3 a pardon, annulment, certificate of rehabilitation, or other equivalent  
4 procedure based on a finding of the rehabilitation of the person  
5 convicted or the conviction or disposition has been the subject of a  
6 pardon, annulment, or other equivalent procedure based on a finding of  
7 innocence.

8 (4) Notwithstanding subsection (1) of this section, a person  
9 convicted of an offense prohibiting the possession of a firearm under  
10 this section other than murder, manslaughter, robbery, rape, indecent  
11 liberties, arson, assault, kidnapping, extortion, burglary, or  
12 violations with respect to controlled substances under RCW 69.50.401(a)  
13 and 69.50.410, who received a probationary sentence under RCW 9.95.200,  
14 and who received a dismissal of the charge under RCW 9.95.240, shall  
15 not be precluded from possession of a firearm as a result of the  
16 conviction. Notwithstanding any other provisions of this section, if  
17 a person is prohibited from possession of a firearm under subsection  
18 (1) of this section and has not previously been convicted of a sex  
19 offense prohibiting firearm ownership under subsection (1) of this  
20 section and/or any felony defined under any law as a class A felony or  
21 with a maximum sentence of at least twenty years, or both, the  
22 individual may petition a court of record to have his or her right to  
23 possess a firearm restored:

24 (a) Under RCW 9.41.047; and/or

25 (b) After five or more consecutive years in the community without  
26 being convicted or currently charged with any felony, gross  
27 misdemeanor, or misdemeanor crimes, if the individual has no prior  
28 felony convictions that prohibit the possession of a firearm counted as  
29 part of the offender score under RCW 9.94A.360.

30 ~~((6)(a) A person who has been committed by court order for~~  
31 ~~treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW,~~  
32 ~~or equivalent statutes of another jurisdiction, may not possess, in any~~  
33 ~~manner, a firearm as defined in RCW 9.41.010.~~

34 ~~(b) At the time of commitment, the court shall specifically state~~  
35 ~~to the person under (a) of this subsection and give the person notice~~  
36 ~~in writing that the person is barred from possession of firearms.~~

37 ~~(c) The secretary of social and health services shall develop~~  
38 ~~appropriate rules to create an approval process under this subsection.~~  
39 ~~The rules must provide for the immediate restoration of the right to~~

1 possess a firearm upon a showing in a court of competent jurisdiction  
2 that a person no longer is required to participate in an inpatient or  
3 outpatient treatment program, and is no longer required to take  
4 medication to treat any condition related to the commitment. Unlawful  
5 possession of a firearm under this subsection shall be punished as a  
6 class C felony under chapter 9A.20 RCW.))

7 (5) In addition to any other penalty provided for by law, if a  
8 person under the age of eighteen years is found by a court to have  
9 possessed a firearm in a vehicle in violation of subsection (1) of this  
10 section or to have committed an offense while armed with a firearm  
11 during which offense a motor vehicle served an integral function, the  
12 court shall notify the department of licensing within twenty-four hours  
13 and the person's privilege to drive shall be revoked under RCW  
14 46.20.265.

15 (6) Nothing in chapter . . . , Laws of 1995 (this act) shall ever  
16 be construed or interpreted as preventing an offender from being  
17 charged and subsequently convicted for the separate felony crimes of  
18 theft of a firearm or possession of a stolen firearm, or both, in  
19 addition to being charged and subsequently convicted under this section  
20 for unlawful possession of a firearm in the first or second degree.  
21 Notwithstanding any other law, if the offender is convicted under this  
22 section for unlawful possession of a firearm in the first or second  
23 degree and for the felony crimes of theft of a firearm or possession of  
24 a stolen firearm, or both, then the offender shall serve consecutive  
25 sentences for each of the felony crimes of conviction listed in this  
26 subsection.

27 (7) Each firearm unlawfully possessed under this section shall be  
28 a separate offense.

29 **Sec. 17.** RCW 10.95.020 and 1994 c 121 s 3 are each amended to  
30 read as follows:

31 DEATH PENALTY AUTHORIZED FOR DRIVE-BY SHOOTERS, MURDERS FOR GROUP  
32 MEMBERSHIP, AND RESIDENTIAL BURGLARS WHO KILL. A person is guilty of  
33 aggravated first degree murder if he or she commits first degree murder  
34 as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one  
35 or more of the following aggravating circumstances exist:

36 (1) The victim was a law enforcement officer, corrections officer,  
37 or fire fighter who was performing his or her official duties at the  
38 time of the act resulting in death and the victim was known or

1 reasonably should have been known by the person to be such at the time  
2 of the killing;

3 (2) At the time of the act resulting in the death, the person was  
4 serving a term of imprisonment, had escaped, or was on authorized or  
5 unauthorized leave in or from a state facility or program for the  
6 incarceration or treatment of persons adjudicated guilty of crimes;

7 (3) At the time of the act resulting in death, the person was in  
8 custody in a county or county-city jail as a consequence of having been  
9 adjudicated guilty of a felony;

10 (4) The person committed the murder pursuant to an agreement that  
11 he or she would receive money or any other thing of value for  
12 committing the murder;

13 (5) The person solicited another person to commit the murder and  
14 had paid or had agreed to pay money or any other thing of value for  
15 committing the murder;

16 (6) The person committed the murder to obtain or maintain his or  
17 her membership or to advance his or her position in the hierarchy of an  
18 organization, association, or identifiable group;

19 (7) The murder was committed during the course of or as a result  
20 of a shooting where the discharge of the firearm, as defined in RCW  
21 9.41.010, is either from a motor vehicle or from the immediate area of  
22 a motor vehicle that was used to transport the shooter or the firearm,  
23 or both, to the scene of the discharge;

24 (8) The victim was:

25 (a) A judge; juror or former juror; prospective, current, or  
26 former witness in an adjudicative proceeding; prosecuting attorney;  
27 deputy prosecuting attorney; defense attorney; a member of the  
28 indeterminate sentence review board; or a probation or parole officer;  
29 and

30 (b) The murder was related to the exercise of official duties  
31 performed or to be performed by the victim;

32 ((+7)) (9) The person committed the murder to conceal the  
33 commission of a crime or to protect or conceal the identity of any  
34 person committing a crime, including, but specifically not limited to,  
35 any attempt to avoid prosecution as a persistent offender as defined in  
36 RCW 9.94A.030;

37 ((+8)) (10) There was more than one victim and the murders were  
38 part of a common scheme or plan or the result of a single act of the  
39 person;

1           (~~(+9)~~) (11) The murder was committed in the course of, in  
2 furtherance of, or in immediate flight from one of the following  
3 crimes:

4           (a) Robbery in the first or second degree;

5           (b) Rape in the first or second degree;

6           (c) Burglary in the first or second degree or residential  
7 burglary;

8           (d) Kidnapping in the first degree; or

9           (e) Arson in the first degree;

10          (~~(+10)~~) (12) The victim was regularly employed or self-employed  
11 as a newsreporter and the murder was committed to obstruct or hinder  
12 the investigative, research, or reporting activities of the victim.

13          NEW SECTION.   **Sec. 18.**   OFFENDER NOTIFICATION AND WARNING.   Any  
14 and all law enforcement agencies and personnel, criminal justice  
15 attorneys, sentencing judges, and state and local correctional  
16 facilities and personnel may, but are not required to, give any and all  
17 offenders either written or oral notice, or both, of the sanctions  
18 imposed and criminal justice changes regarding armed offenders,  
19 including but not limited to the subjects of:

20           (1) Felony crimes involving any deadly weapon special verdict  
21 under RCW 9.94A.125;

22           (2) Any and all deadly weapon enhancements under RCW 9.94A.310 (3)  
23 or (4), or both, as well as any federal firearm, ammunition, or other  
24 deadly weapon enhancements;

25           (3) Any and all felony crimes requiring the possession, display,  
26 or use of any deadly weapon as well as the many increased penalties for  
27 these crimes including the creation of theft of a firearm and  
28 possessing a stolen firearm;

29           (4) New prosecuting standards established for filing charges for  
30 all crimes involving any deadly weapons;

31           (5) Removal of good time for any and all deadly weapon  
32 enhancements; and

33           (6) Providing the death penalty for those who commit first degree  
34 murder:   (a) To join, maintain, or advance membership in an  
35 identifiable group; (b) as part of a drive-by shooting; or (c) to avoid  
36 prosecution as a persistent offender as defined in RCW 9.94A.030.

1           NEW SECTION.   **Sec. 19.** CODIFICATION. Sections 4 through 6 of this  
2 act are each added to chapter 9.94A RCW.

3           NEW SECTION.   **Sec. 20.** SHORT TITLE. This act shall be known and  
4 cited as the hard time for armed crime act.

5           NEW SECTION.   **Sec. 21.** SEVERABILITY. If any provision of this  
6 act or its application to any person or circumstance is held invalid,  
7 the remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9           NEW SECTION.   **Sec. 22.** CAPTIONS. Captions as used in this act do  
10 not constitute any part of the law.

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**HOUSE BILL 1020**

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**State of Washington****54th Legislature****1995 Regular Session**

**By** Representatives Padden, Delvin, Hickel, Robertson, Smith, Carrell, Sherstad, Benton, Dyer, Skinner, Kremen, Hargrove, Horn, Schoesler, Buck, Johnson, Thompson, Beeksma, Goldsmith, Radcliff, Backlund, Crouse, Cairnes, Elliot, Reams, Pennington, Mitchell, K. Schmidt, Conway, Kessler, Chappell, G. Fisher, Basich, Grant, Foreman, Sehlin, Van Luven, Pelesky, Blanton, Hankins, Koster, Lambert, D. Schmidt, Mulliken, Boldt, McMorris, Clements, Campbell, Sheldon, L. Thomas, Huff, Mielke, Talcott, McMahan, Stevens, Ebersole, Hymes and Casada

Prefiled 12/30/94. Read first time 01/09/95. Referred to Committee on Corrections.

1 AN ACT Relating to increasing penalties for armed crimes; amending  
2 RCW 9.94A.310, 9.94A.150, 9A.36.045, 9A.52.020, 9A.56.300, 9A.56.030,  
3 9A.56.040, 9A.56.150, 9A.56.160, 9.41.040, and 10.95.020; reenacting  
4 and amending RCW 9.94A.320; adding new sections to chapter 9.94A RCW;  
5 adding a new section to chapter 9A.56 RCW; creating new sections; and  
6 prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature  
9 finds and declares that:

10 (a) Armed criminals pose an increasing and major threat to public  
11 safety and can turn any crime into serious injury or death.

12 (b) Criminals carry deadly weapons for several key reasons  
13 including: Forcing the victim to comply with their demands; injuring  
14 or killing anyone who tries to stop the criminal acts; and aiding the  
15 criminal in escaping.

16 (c) Current law does not sufficiently stigmatize the carrying and  
17 use of deadly weapons by criminals, and far too often there are no  
18 deadly weapon enhancements provided for many felonies, including

1 murder, arson, manslaughter, and child molestation and many other sex  
2 offenses including child luring.

3 (d) Current law also fails to distinguish between gun-carrying  
4 criminals and criminals carrying knives or clubs.

5 (2) By increasing the penalties for carrying and using deadly  
6 weapons by criminals and closing loopholes involving armed criminals,  
7 the legislature intends to:

8 (a) Stigmatize the carrying and use of any deadly weapons for all  
9 felonies with proper deadly weapon enhancements.

10 (b) Reduce the number of armed offenders by making the carrying and  
11 use of the deadly weapon not worth the sentence received upon  
12 conviction.

13 (c) Distinguish between the gun predators and criminals carrying  
14 other deadly weapons and provide greatly increased penalties for gun  
15 predators and for those offenders committing crimes to acquire  
16 firearms.

17 (d) Bring accountability and certainty into the sentencing system  
18 by tracking individual judges and holding them accountable for their  
19 sentencing practices in relation to the state's sentencing guidelines  
20 for serious crimes.

21 **Sec. 2.** RCW 9.94A.310 and 1994 sp.s. c 7 s 512 are each amended to  
22 read as follows:

23 FIREARM AND OTHER DEADLY WEAPON ENHANCEMENTS INCREASED.

24 (1) TABLE 1

25 Sentencing Grid

26 SERIOUSNESS

27 SCORE

OFFENDER SCORE

28 9 or  
29 0 1 2 3 4 5 6 7 8 more

30  
31 XV Life Sentence without Parole/Death Penalty

32  
33 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y  
34 240- 250- 261- 271- 281- 291- 312- 338- 370- 411-  
35 320 333 347 361 374 388 416 450 493 548

|    |      |      |       |       |       |       |       |       |       |        |       |
|----|------|------|-------|-------|-------|-------|-------|-------|-------|--------|-------|
| 1  | XIII | 12y  | 13y   | 14y   | 15y   | 16y   | 17y   | 19y   | 21y   | 25y    | 29y   |
| 2  |      | 123- | 134-  | 144-  | 154-  | 165-  | 175-  | 195-  | 216-  | 257-   | 298-  |
| 3  |      | 164  | 178   | 192   | 205   | 219   | 233   | 260   | 288   | 342    | 397   |
| 4  |      |      |       |       |       |       |       |       |       |        |       |
| 5  | XII  | 9y   | 9y11m | 10y9m | 11y8m | 12y6m | 13y5m | 15y9m | 17y3m | 20y3m  | 23y3m |
| 6  |      | 93-  | 102-  | 111-  | 120-  | 129-  | 138-  | 162-  | 178-  | 209-   | 240-  |
| 7  |      | 123  | 136   | 147   | 160   | 171   | 184   | 216   | 236   | 277    | 318   |
| 8  |      |      |       |       |       |       |       |       |       |        |       |
| 9  | XI   | 7y6m | 8y4m  | 9y2m  | 9y11m | 10y9m | 11y7m | 14y2m | 15y5m | 17y11m | 20y5m |
| 10 |      | 78-  | 86-   | 95-   | 102-  | 111-  | 120-  | 146-  | 159-  | 185-   | 210-  |
| 11 |      | 102  | 114   | 125   | 136   | 147   | 158   | 194   | 211   | 245    | 280   |
| 12 |      |      |       |       |       |       |       |       |       |        |       |
| 13 | X    | 5y   | 5y6m  | 6y    | 6y6m  | 7y    | 7y6m  | 9y6m  | 10y6m | 12y6m  | 14y6m |
| 14 |      | 51-  | 57-   | 62-   | 67-   | 72-   | 77-   | 98-   | 108-  | 129-   | 149-  |
| 15 |      | 68   | 75    | 82    | 89    | 96    | 102   | 130   | 144   | 171    | 198   |
| 16 |      |      |       |       |       |       |       |       |       |        |       |
| 17 | IX   | 3y   | 3y6m  | 4y    | 4y6m  | 5y    | 5y6m  | 7y6m  | 8y6m  | 10y6m  | 12y6m |
| 18 |      | 31-  | 36-   | 41-   | 46-   | 51-   | 57-   | 77-   | 87-   | 108-   | 129-  |
| 19 |      | 41   | 48    | 54    | 61    | 68    | 75    | 102   | 116   | 144    | 171   |
| 20 |      |      |       |       |       |       |       |       |       |        |       |
| 21 | VIII | 2y   | 2y6m  | 3y    | 3y6m  | 4y    | 4y6m  | 6y6m  | 7y6m  | 8y6m   | 10y6m |
| 22 |      | 21-  | 26-   | 31-   | 36-   | 41-   | 46-   | 67-   | 77-   | 87-    | 108-  |
| 23 |      | 27   | 34    | 41    | 48    | 54    | 61    | 89    | 102   | 116    | 144   |
| 24 |      |      |       |       |       |       |       |       |       |        |       |
| 25 | VII  | 18m  | 2y    | 2y6m  | 3y    | 3y6m  | 4y    | 5y6m  | 6y6m  | 7y6m   | 8y6m  |
| 26 |      | 15-  | 21-   | 26-   | 31-   | 36-   | 41-   | 57-   | 67-   | 77-    | 87-   |
| 27 |      | 20   | 27    | 34    | 41    | 48    | 54    | 75    | 89    | 102    | 116   |
| 28 |      |      |       |       |       |       |       |       |       |        |       |
| 29 | VI   | 13m  | 18m   | 2y    | 2y6m  | 3y    | 3y6m  | 4y6m  | 5y6m  | 6y6m   | 7y6m  |
| 30 |      | 12+- | 15-   | 21-   | 26-   | 31-   | 36-   | 46-   | 57-   | 67-    | 77-   |
| 31 |      | 14   | 20    | 27    | 34    | 41    | 48    | 61    | 75    | 89     | 102   |
| 32 |      |      |       |       |       |       |       |       |       |        |       |
| 33 | V    | 9m   | 13m   | 15m   | 18m   | 2y2m  | 3y2m  | 4y    | 5y    | 6y     | 7y    |
| 34 |      | 6-   | 12+-  | 13-   | 15-   | 22-   | 33-   | 41-   | 51-   | 62-    | 72-   |
| 35 |      | 12   | 14    | 17    | 20    | 29    | 43    | 54    | 68    | 82     | 96    |
| 36 |      |      |       |       |       |       |       |       |       |        |       |
| 37 | IV   | 6m   | 9m    | 13m   | 15m   | 18m   | 2y2m  | 3y2m  | 4y2m  | 5y2m   | 6y2m  |
| 38 |      | 3-   | 6-    | 12+-  | 13-   | 15-   | 22-   | 33-   | 43-   | 53-    | 63-   |
| 39 |      | 9    | 12    | 14    | 17    | 20    | 29    | 43    | 57    | 70     | 84    |

|    |       |      |      |    |     |      |     |      |      |      |      |
|----|-------|------|------|----|-----|------|-----|------|------|------|------|
| 1  | <hr/> |      |      |    |     |      |     |      |      |      |      |
| 2  | III   | 2m   | 5m   | 8m | 11m | 14m  | 20m | 2y2m | 3y2m | 4y2m | 5y   |
| 3  |       | 1-   | 3-   | 4- | 9-  | 12+- | 17- | 22-  | 33-  | 43-  | 51-  |
| 4  |       | 3    | 8    | 12 | 12  | 16   | 22  | 29   | 43   | 57   | 68   |
| 5  | <hr/> |      |      |    |     |      |     |      |      |      |      |
| 6  | II    |      | 4m   | 6m | 8m  | 13m  | 16m | 20m  | 2y2m | 3y2m | 4y2m |
| 7  |       | 0-90 | 2-   | 3- | 4-  | 12+- | 14- | 17-  | 22-  | 33-  | 43-  |
| 8  |       | Days | 6    | 9  | 12  | 14   | 18  | 22   | 29   | 43   | 57   |
| 9  | <hr/> |      |      |    |     |      |     |      |      |      |      |
| 10 | I     |      |      | 3m | 4m  | 5m   | 8m  | 13m  | 16m  | 20m  | 2y2m |
| 11 |       | 0-60 | 0-90 | 2- | 2-  | 3-   | 4-  | 12+- | 14-  | 17-  | 22-  |
| 12 |       | Days | Days | 5  | 6   | 8    | 12  | 14   | 18   | 22   | 29   |
| 13 | <hr/> |      |      |    |     |      |     |      |      |      |      |

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

18 (2) For persons convicted of the anticipatory offenses of criminal  
19 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
20 presumptive sentence is determined by locating the sentencing grid  
21 sentence range defined by the appropriate offender score and the  
22 seriousness level of the completed crime, and multiplying the range by  
23 75 percent.

24 (3) The following additional times shall be added to the  
25 presumptive sentence for felony crimes committed after the effective  
26 date of this section if the offender or an accomplice was armed with a  
27 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
28 for one of the crimes listed in this subsection as eligible for any  
29 firearm enhancements based on the classification of the completed  
30 felony crime. If the offender or an accomplice was armed with a  
31 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
32 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
33 the crimes listed in this subsection as eligible for any firearm  
34 enhancements, the following additional times shall be added to the  
35 presumptive sentence determined under subsection (2) of this section  
36 based on the felony crime of conviction as classified under RCW  
37 9A.28.020:

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

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

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

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

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

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

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

30       (4) The following additional times shall be added to the  
31 presumptive sentence for felony crimes committed after the effective  
32 date of this section if the offender or an accomplice was armed with a  
33 deadly weapon as defined in this chapter other than a firearm as  
34 defined in RCW 9.41.010 and the offender is being sentenced for one of  
35 the crimes listed in this subsection as eligible for any deadly weapon  
36 enhancements based on the classification of the completed felony crime.  
37 If the offender or an accomplice was armed with a deadly weapon other  
38 than a firearm as defined in RCW 9.41.010 and the offender is being  
39 sentenced for an anticipatory offense under chapter 9A.28 RCW to commit

1 one of the crimes listed in this subsection as eligible for any deadly  
2 weapon enhancements, the following additional times shall be added to  
3 the presumptive ((range)) sentence determined under subsection (2) of  
4 this section based on the felony crime of conviction as classified  
5 under RCW 9A.28.020:

6 (a) (~~((24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW~~  
7 ~~9A.56.200), or Kidnapping 1 (RCW 9A.40.020);~~) Two years for any felony  
8 defined under any law as a class A felony or with a maximum sentence of  
9 at least twenty years, or both, and not covered under (f) of this  
10 subsection.

11 (b) (~~((18 months for Burglary 1 (RCW 9A.52.020);~~) One year for any  
12 felony defined under any law as a class B felony or with a maximum  
13 sentence of ten years, or both, and not covered under (f) of this  
14 subsection.

15 (c) (~~((12 months for any violent offense except as provided in (a)~~  
16 ~~and (b) of this subsection, Escape 1 (RCW 9A.76.110), Burglary 2 of a~~  
17 ~~building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or~~  
18 ~~2 (RCW 9A.56.080), or any drug offense)) Six months for any felony  
19 defined under any law as a class C felony or with a maximum sentence of  
20 five years, or both, and not covered under (f) of this subsection.~~

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

28 (e) Notwithstanding any other provision of law, any and all deadly  
29 weapon enhancements under this section are mandatory, shall be served  
30 in total confinement, and shall not run concurrently with any other  
31 sentencing provisions.

32 (f) The deadly weapon enhancements in this section shall apply to  
33 all felony crimes except the following: Possession of a machine gun,  
34 possessing a stolen firearm, reckless endangerment in the first degree,  
35 theft of a firearm, unlawful possession of a firearm in the first and  
36 second degree, and use of a machine gun in a felony.

37 (g) If the presumptive sentence under this section exceeds the  
38 statutory maximum for the offense, the statutory maximum sentence shall

1 be the presumptive sentence unless the offender is a persistent  
2 offender as defined in RCW 9.94A.030.

3 ((+4)) (5) The following additional times shall be added to the  
4 presumptive sentence if the offender or an accomplice committed the  
5 offense while in a county jail or state correctional facility as that  
6 term is defined in this chapter and the offender is being sentenced for  
7 one of the crimes listed in this subsection. If the offender or an  
8 accomplice committed one of the crimes listed in this subsection while  
9 in a county jail or state correctional facility as that term is defined  
10 in this chapter, and the offender is being sentenced for an  
11 anticipatory offense under chapter 9A.28 RCW to commit one of the  
12 crimes listed in this subsection, the following additional times shall  
13 be added to the presumptive sentence ((range)) determined under  
14 subsection (2) of this section:

15 (a) Eighteen months for offenses committed under RCW  
16 69.50.401(a)(1)(i) or 69.50.410;

17 (b) Fifteen months for offenses committed under RCW  
18 69.50.401(a)(1)(ii), (iii), and (iv);

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

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

23 ((+5)) (6) An additional twenty-four months shall be added to the  
24 presumptive sentence for any ranked offense involving a violation of  
25 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

26 **Sec. 3.** RCW 9.94A.320 and 1994 sp.s. c 7 s 510, 1994 c 275 s 20,  
27 & 1994 c 53 s 2 are each reenacted and amended to read as follows:

28 PENALTIES INCREASED FOR OTHER CRIMES INVOLVING FIREARMS.

29 TABLE 2

30 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

31 XV Aggravated Murder 1 (RCW 10.95.020)

32 XIV Murder 1 (RCW 9A.32.030)

33 Homicide by abuse (RCW 9A.32.055)

34 XIII Murder 2 (RCW 9A.32.050)

1 XII Assault 1 (RCW 9A.36.011)  
2 Assault of a Child 1 (RCW 9A.36.120)  
3 XI Rape 1 (RCW 9A.44.040)  
4 Rape of a Child 1 (RCW 9A.44.073)  
5 X Kidnapping 1 (RCW 9A.40.020)  
6 Rape 2 (RCW 9A.44.050)  
7 Rape of a Child 2 (RCW 9A.44.076)  
8 Child Molestation 1 (RCW 9A.44.083)  
9 Damaging building, etc., by explosion with  
10 threat to human being (RCW  
11 70.74.280(1))  
12 Over 18 and deliver heroin or narcotic from  
13 Schedule I or II to someone under 18  
14 (RCW 69.50.406)  
15 Leading Organized Crime (RCW  
16 9A.82.060(1)(a))  
17 IX Assault of a Child 2 (RCW 9A.36.130)  
18 Robbery 1 (RCW 9A.56.200)  
19 Manslaughter 1 (RCW 9A.32.060)  
20 Explosive devices prohibited (RCW 70.74.180)  
21 Indecent Liberties (with forcible  
22 compulsion) (RCW 9A.44.100(1)(a))  
23 Endangering life and property by explosives  
24 with threat to human being (RCW  
25 70.74.270)  
26 Over 18 and deliver narcotic from Schedule  
27 III, IV, or V or a nonnarcotic from  
28 Schedule I-V to someone under 18 and 3  
29 years junior (RCW 69.50.406)  
30 Controlled Substance Homicide (RCW  
31 69.50.415)  
32 Sexual Exploitation (RCW 9.68A.040)  
33 Inciting Criminal Profiteering (RCW  
34 9A.82.060(1)(b))  
35 Vehicular Homicide, by being under the  
36 influence of intoxicating liquor or any  
37 drug (RCW 46.61.520)

1 VIII Arson 1 (RCW 9A.48.020)  
2 Promoting Prostitution 1 (RCW 9A.88.070)  
3 Selling for profit (controlled or  
4 counterfeit) any controlled substance  
5 (RCW 69.50.410)  
6 Manufacture, deliver, or possess with intent  
7 to deliver heroin or cocaine (RCW  
8 69.50.401(a)(1)(i))  
9 Manufacture, deliver, or possess with intent  
10 to deliver methamphetamine (RCW  
11 69.50.401(a)(1)(ii))  
12 Vehicular Homicide, by the operation of any  
13 vehicle in a reckless manner (RCW  
14 46.61.520)

15 VII Burglary 1 (RCW 9A.52.020)  
16 Vehicular Homicide, by disregard for the  
17 safety of others (RCW 46.61.520)  
18 Introducing Contraband 1 (RCW 9A.76.140)  
19 Indecent Liberties (without forcible  
20 compulsion) (RCW 9A.44.100(1) (b) and  
21 (c))  
22 Child Molestation 2 (RCW 9A.44.086)  
23 Dealing in depictions of minor engaged in  
24 sexually explicit conduct (RCW  
25 9.68A.050)  
26 Sending, bringing into state depictions of  
27 minor engaged in sexually explicit  
28 conduct (RCW 9.68A.060)  
29 Involving a minor in drug dealing (RCW  
30 69.50.401(f))  
31 Reckless Endangerment 1 (RCW 9A.36.045)  
32 Unlawful Possession of a Firearm in the  
33 first degree (RCW 9.41.040(1)(a))

34 VI Bribery (RCW 9A.68.010)  
35 Manslaughter 2 (RCW 9A.32.070)  
36 Rape of a Child 3 (RCW 9A.44.079)  
37 Intimidating a Juror/Witness (RCW 9A.72.110,  
38 9A.72.130)

1 Damaging building, etc., by explosion with  
2 no threat to human being (RCW  
3 70.74.280(2))  
4 Endangering life and property by explosives  
5 with no threat to human being (RCW  
6 70.74.270)  
7 Incest 1 (RCW 9A.64.020(1))  
8 Manufacture, deliver, or possess with intent  
9 to deliver narcotics from Schedule I or  
10 II (except heroin or cocaine) (RCW  
11 69.50.401(a)(1)(i))  
12 Intimidating a Judge (RCW 9A.72.160)  
13 Bail Jumping with Murder 1 (RCW  
14 9A.76.170(2)(a))  
15 Theft of a Firearm (RCW 9A.56.300)  
16 V Criminal Mistreatment 1 (RCW 9A.42.020)  
17 (~~Theft of a Firearm (RCW 9A.56.300)~~  
18 ~~Reckless Endangerment 1 (RCW 9A.36.045)~~)  
19 Rape 3 (RCW 9A.44.060)  
20 Sexual Misconduct with a Minor 1 (RCW  
21 9A.44.093)  
22 Child Molestation 3 (RCW 9A.44.089)  
23 Kidnapping 2 (RCW 9A.40.030)  
24 Extortion 1 (RCW 9A.56.120)  
25 Incest 2 (RCW 9A.64.020(2))  
26 Perjury 1 (RCW 9A.72.020)  
27 Extortionate Extension of Credit (RCW  
28 9A.82.020)  
29 Advancing money or property for extortionate  
30 extension of credit (RCW 9A.82.030)  
31 Extortionate Means to Collect Extensions of  
32 Credit (RCW 9A.82.040)  
33 Rendering Criminal Assistance 1 (RCW  
34 9A.76.070)  
35 Bail Jumping with class A Felony (RCW  
36 9A.76.170(2)(b))  
37 Sexually Violating Human Remains (RCW  
38 9A.44.105)

1 Delivery of imitation controlled substance  
2 by person eighteen or over to person  
3 under eighteen (RCW 69.52.030(2))  
4 Possession of a Stolen Firearm (RCW  
5 9A.56.--- (section 13 of this act))

6 IV Residential Burglary (RCW 9A.52.025)  
7 Theft of Livestock 1 (RCW 9A.56.080)  
8 Robbery 2 (RCW 9A.56.210)  
9 Assault 2 (RCW 9A.36.021)  
10 Escape 1 (RCW 9A.76.110)  
11 Arson 2 (RCW 9A.48.030)  
12 Bribing a Witness/Bribe Received by Witness  
13 (RCW 9A.72.090, 9A.72.100)  
14 Malicious Harassment (RCW 9A.36.080)  
15 Threats to Bomb (RCW 9.61.160)  
16 Willful Failure to Return from Furlough (RCW  
17 72.66.060)  
18 Hit and Run « Injury Accident (RCW  
19 46.52.020(4))  
20 Vehicular Assault (RCW 46.61.522)  
21 Manufacture, deliver, or possess with intent  
22 to deliver narcotics from Schedule III,  
23 IV, or V or nonnarcotics from Schedule  
24 I-V (except marijuana or  
25 methamphetamines) (RCW  
26 69.50.401(a)(1)(ii) through (iv))  
27 Influencing Outcome of Sporting Event (RCW  
28 9A.82.070)  
29 Use of Proceeds of Criminal Profiteering  
30 (RCW 9A.82.080 (1) and (2))  
31 Knowingly Trafficking in Stolen Property  
32 (RCW 9A.82.050(2))

33 III Criminal Mistreatment 2 (RCW 9A.42.030)  
34 Extortion 2 (RCW 9A.56.130)  
35 Unlawful Imprisonment (RCW 9A.40.040)  
36 Assault 3 (RCW 9A.36.031)  
37 Assault of a Child 3 (RCW 9A.36.140)  
38 Custodial Assault (RCW 9A.36.100)

1 Unlawful possession of firearm ((~~or pistol by felon~~)) in  
2 the second degree (RCW 9.41.040(1)(b))  
3 Harassment (RCW 9A.46.020)  
4 Promoting Prostitution 2 (RCW 9A.88.080)  
5 Willful Failure to Return from Work Release  
6 (RCW 72.65.070)  
7 Burglary 2 (RCW 9A.52.030)  
8 Introducing Contraband 2 (RCW 9A.76.150)  
9 Communication with a Minor for Immoral  
10 Purposes (RCW 9.68A.090)  
11 Patronizing a Juvenile Prostitute (RCW  
12 9.68A.100)  
13 Escape 2 (RCW 9A.76.120)  
14 Perjury 2 (RCW 9A.72.030)  
15 Bail Jumping with class B or C Felony (RCW  
16 9A.76.170(2)(c))  
17 Intimidating a Public Servant (RCW  
18 9A.76.180)  
19 Tampering with a Witness (RCW 9A.72.120)  
20 Manufacture, deliver, or possess with intent  
21 to deliver marijuana (RCW  
22 69.50.401(a)(1)(ii))  
23 Delivery of a material in lieu of a  
24 controlled substance (RCW 69.50.401(c))  
25 Manufacture, distribute, or possess with  
26 intent to distribute an imitation  
27 controlled substance (RCW 69.52.030(1))  
28 Recklessly Trafficking in Stolen Property  
29 (RCW 9A.82.050(1))  
30 Theft of livestock 2 (RCW 9A.56.080)  
31 Securities Act violation (RCW 21.20.400)  
32 II Malicious Mischief 1 (RCW 9A.48.070)  
33 Possession of Stolen Property 1 (RCW  
34 9A.56.150)  
35 Theft 1 (RCW 9A.56.030)  
36 Possession of controlled substance that is  
37 either heroin or narcotics from  
38 Schedule I or II (RCW 69.50.401(d))

1 Possession of phencyclidine (PCP) (RCW  
2 69.50.401(d))  
3 Create, deliver, or possess a counterfeit  
4 controlled substance (RCW 69.50.401(b))  
5 Computer Trespass 1 (RCW 9A.52.110)  
6 Escape from Community Custody (RCW  
7 72.09.310)

8 I Theft 2 (RCW 9A.56.040)  
9 Possession of Stolen Property 2 (RCW  
10 9A.56.160)  
11 Forgery (RCW 9A.60.020)  
12 Taking Motor Vehicle Without Permission (RCW  
13 9A.56.070)  
14 Vehicle Prowl 1 (RCW 9A.52.095)  
15 Attempting to Elude a Pursuing Police  
16 Vehicle (RCW 46.61.024)  
17 Malicious Mischief 2 (RCW 9A.48.080)  
18 Reckless Burning 1 (RCW 9A.48.040)  
19 Unlawful Issuance of Checks or Drafts (RCW  
20 9A.56.060)  
21 Unlawful Use of Food Stamps (RCW 9.91.140  
22 (2) and (3))  
23 False Verification for Welfare (RCW  
24 74.08.055)  
25 Forged Prescription (RCW 69.41.020)  
26 Forged Prescription for a Controlled  
27 Substance (RCW 69.50.403)  
28 Possess Controlled Substance that is a  
29 Narcotic from Schedule III, IV, or V or  
30 Non-narcotic from Schedule I-V (except  
31 phencyclidine) (RCW 69.50.401(d))

32 NEW SECTION. **Sec. 4.** PROSECUTING STANDARDS TIGHTENED FOR ARMED  
33 OFFENDERS. Notwithstanding the current placement or listing of crimes  
34 in categories or classifications of prosecuting standards for deciding  
35 to prosecute under RCW 9.94A.440(2), any and all felony crimes  
36 involving any deadly weapon special verdict under RCW 9.94A.125, any  
37 deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, and

1 any and all felony crimes as defined in RCW 9.94A.310 (3)(f) or (4)(f),  
2 or both, which are excluded from the deadly weapon enhancements shall  
3 all be treated as crimes against a person and subject to the  
4 prosecuting standards for deciding to prosecute under RCW 9.94A.440(2)  
5 as crimes against persons.

6 NEW SECTION. **Sec. 5.** ALL PLEA AGREEMENTS AND SENTENCES FOR  
7 VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS MADE A PUBLIC RECORD. Any  
8 and all recommended sentencing agreements or plea agreements and the  
9 sentences for any and all felony crimes shall be made and retained as  
10 public records if the felony crime involves:

- 11 (1) Any violent offense as defined in this chapter;
- 12 (2) Any most serious offense as defined in this chapter;
- 13 (3) Any felony with a deadly weapon special verdict under RCW  
14 9.94A.125;
- 15 (4) Any felony with any deadly weapon enhancements under RCW  
16 9.94A.310 (3) or (4), or both; and/or
- 17 (5) The felony crimes of possession of a machine gun, possessing  
18 a stolen firearm, reckless endangerment in the first degree, theft of  
19 a firearm, unlawful possession of a firearm in the first or second  
20 degree, and/or use of a machine gun in a felony.

21 NEW SECTION. **Sec. 6.** JUDICIAL RECORDS KEPT FOR SENTENCES OF  
22 VIOLENT, MOST SERIOUS, AND ARMED OFFENDERS. (1) A current, newly  
23 created or reworked judgment and sentence document for each felony  
24 sentencing shall record any and all recommended sentencing agreements  
25 or plea agreements and the sentences for any and all felony crimes kept  
26 as public records under section 5 of this act shall contain the clearly  
27 printed name and legal signature of the sentencing judge. The judgment  
28 and sentence document as defined in this section shall also provide  
29 additional space for the sentencing judge's reasons for going either  
30 above or below the presumptive sentence range for any and all felony  
31 crimes covered as public records under section 5 of this act. Both the  
32 sentencing judge and the prosecuting attorney's office shall each  
33 retain or receive a completed copy of each sentencing document as  
34 defined in this section for their own records.

35 (2) The sentencing guidelines commission shall be sent a completed  
36 copy of the judgment and sentence document upon conviction for each  
37 felony sentencing under subsection (1) of this section and shall

1 compile a yearly and cumulative judicial record of each sentencing  
2 judge in regards to his or her sentencing practices for any and all  
3 felony crimes involving:

4 (a) Any violent offense as defined in this chapter;

5 (b) Any most serious offense as defined in this chapter;

6 (c) Any felony with any deadly weapon special verdict under RCW  
7 9.94A.125;

8 (d) Any felony with any deadly weapon enhancements under RCW  
9 9.94A.310 (3) or (4), or both; and/or

10 (e) The felony crimes of possession of a machine gun, possessing  
11 a stolen firearm, reckless endangerment in the first degree, theft of  
12 a firearm, unlawful possession of a firearm in the first or second  
13 degree, and/or use of a machine gun in a felony.

14 (3) The sentencing guidelines commission shall compare each  
15 individual judge's sentencing practices to the standard or presumptive  
16 sentence range for any and all felony crimes listed in subsection (2)  
17 of this section for the appropriate offense level as defined in RCW  
18 9.94A.320, offender score as defined in RCW 9.94A.360, and any  
19 applicable deadly weapon enhancements as defined in RCW 9.94A.310 (3)  
20 or (4), or both. These comparative records shall be retained and made  
21 available to the public for review in a current, newly created or  
22 reworked official published document by the sentencing guidelines  
23 commission.

24 (4) Any and all felony sentences which are either above or below  
25 the standard or presumptive sentence range in subsection (3) of this  
26 section shall also mark whether the prosecuting attorney in the case  
27 also recommended a similar sentence, if any, which was either above or  
28 below the presumptive sentence range and shall also indicate if the  
29 sentence was in conjunction with an approved alternative sentencing  
30 option including a first-time offender waiver, sex offender sentencing  
31 alternative, or other prescribed sentencing option.

32 (5) If any completed judgment and sentence document as defined in  
33 subsection (1) of this section is not sent to the sentencing guidelines  
34 commission as required in subsection (2) of this section, the  
35 sentencing guidelines commission shall have the authority and shall  
36 undertake reasonable and necessary steps to assure that all past,  
37 current, and future sentencing documents as defined in subsection (1)  
38 of this section are received by the sentencing guidelines commission.

1           **Sec. 7.** RCW 9.94A.150 and 1992 c 145 s 8 are each amended to read  
2 as follows:

3           GOOD TIME REMOVED FOR DEADLY WEAPON ENHANCEMENTS. No person  
4 serving a sentence imposed pursuant to this chapter and committed to  
5 the custody of the department shall leave the confines of the  
6 correctional facility or be released prior to the expiration of the  
7 sentence except as follows:

8           (1) Except as otherwise provided for in subsection (2) of this  
9 section, the term of the sentence of an offender committed to a  
10 correctional facility operated by the department, may be reduced by  
11 earned early release time in accordance with procedures that shall be  
12 developed and promulgated by the correctional agency having  
13 jurisdiction in which the offender is confined. The earned early  
14 release time shall be for good behavior and good performance, as  
15 determined by the correctional agency having jurisdiction. The  
16 correctional agency shall not credit the offender with earned early  
17 release credits in advance of the offender actually earning the  
18 credits. Any program established pursuant to this section shall allow  
19 an offender to earn early release credits for presentence  
20 incarceration. If an offender is transferred from a county jail to the  
21 department of corrections, the county jail facility shall certify to  
22 the department the amount of time spent in custody at the facility and  
23 the amount of earned early release time. In the case of an offender  
24 who has been convicted of a felony committed after the effective date  
25 of this section that involves any applicable deadly weapon enhancements  
26 under RCW 9.94A.310 (3) or (4), or both, shall not receive any good  
27 time credits or earned early release time for that portion of his or  
28 her sentence that results from any deadly weapon enhancements. In the  
29 case of an offender convicted of a serious violent offense or a sex  
30 offense that is a class A felony committed on or after July 1, 1990,  
31 the aggregate earned early release time may not exceed fifteen percent  
32 of the sentence. In no other case shall the aggregate earned early  
33 release time exceed one-third of the total sentence;

34           (2) A person convicted of a sex offense or an offense categorized  
35 as a serious violent offense, assault in the second degree, assault of  
36 a child in the second degree, any crime against a person where it is  
37 determined in accordance with RCW 9.94A.125 that the defendant or an  
38 accomplice was armed with a deadly weapon at the time of commission, or  
39 any felony offense under chapter 69.50 or 69.52 RCW may become

1 eligible, in accordance with a program developed by the department, for  
2 transfer to community custody status in lieu of earned early release  
3 time pursuant to subsection (1) of this section;

4 (3) An offender may leave a correctional facility pursuant to an  
5 authorized furlough or leave of absence. In addition, offenders may  
6 leave a correctional facility when in the custody of a corrections  
7 officer or officers;

8 (4) The governor, upon recommendation from the clemency and  
9 pardons board, may grant an extraordinary release for reasons of  
10 serious health problems, senility, advanced age, extraordinary  
11 meritorious acts, or other extraordinary circumstances;

12 (5) No more than the final six months of the sentence may be  
13 served in partial confinement designed to aid the offender in finding  
14 work and reestablishing ((him)) himself or herself in the community;

15 (6) The governor may pardon any offender;

16 (7) The department of corrections may release an offender from  
17 confinement any time within ten days before a release date calculated  
18 under this section; and

19 (8) An offender may leave a correctional facility prior to  
20 completion of his sentence if the sentence has been reduced as provided  
21 in RCW 9.94A.160.

22 Notwithstanding any other provisions of this section, an offender  
23 sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to  
24 a mandatory minimum sentence of total confinement shall not be released  
25 from total confinement before the completion of the listed mandatory  
26 minimum sentence for that felony crime of conviction unless allowed  
27 under RCW 9.94A.120(4).

28 **Sec. 8.** RCW 9A.36.045 and 1994 sp.s. c 7 s 511 are each amended  
29 to read as follows:

30 RECKLESS ENDANGERMENT IN THE FIRST DEGREE. (1) A person is guilty  
31 of reckless endangerment in the first degree when he or she recklessly  
32 discharges a firearm as defined in RCW 9.41.010 in a manner which  
33 creates a substantial risk of death or serious physical injury to  
34 another person and the discharge is either from a motor vehicle or from  
35 the immediate area of a motor vehicle that was used to transport the  
36 shooter or the firearm, or both, to the scene of the discharge.

37 (2) A person who unlawfully discharges a firearm from a moving  
38 motor vehicle may be inferred to have engaged in reckless conduct,

1 unless the discharge is shown by evidence satisfactory to the trier of  
2 fact to have been made without such recklessness.

3 (3) Reckless endangerment in the first degree is a class B felony.

4 **Sec. 9.** RCW 9A.52.020 and 1975 1st ex.s. c 260 s 9A.52.020 are  
5 each amended to read as follows:

6 BURGLARY IN THE FIRST DEGREE. (1) A person is guilty of burglary  
7 in the first degree if, with intent to commit a crime against a person  
8 or property therein, he or she enters or remains unlawfully in a  
9 ~~((dwelling))~~ building and if, in entering or while in the ~~((dwelling))~~  
10 building or in immediate flight therefrom, the actor or another  
11 participant in the crime (a) is armed with a deadly weapon, or (b)  
12 assaults any person therein.

13 (2) Burglary in the first degree is a class A felony.

14 **Sec. 10.** RCW 9A.56.300 and 1994 sp.s. c 7 s 432 are each amended  
15 to read as follows:

16 THEFT OF A FIREARM. (1) A person is guilty of theft of a firearm  
17 if ~~((the person:~~

18 ~~(a))~~ he or she commits a theft of ~~((a))~~ any firearm~~((; or~~  
19 ~~(b) Possesses, sells, or delivers a stolen firearm))~~.

20 (2) This section applies regardless of the ~~((stolen firearm's))~~  
21 value of the firearm taken in the theft.

22 (3) ~~(("Possession, sale, or delivery of a stolen firearm" as used~~  
23 ~~in this section has the same meaning as "possessing stolen property" in~~  
24 ~~RCW 9A.56.140))~~ Each firearm taken in the theft under this section is  
25 a separate offense.

26 (4) The definition of "theft" and the defense allowed against the  
27 prosecution for theft under RCW 9A.56.020 shall apply to the crime of  
28 theft of a firearm.

29 (5) As used in this section, "firearm" means any firearm as  
30 defined in RCW 9.41.010.

31 (6) Theft of a firearm is a class ~~((C))~~ B felony.

32 **Sec. 11.** RCW 9A.56.030 and 1975 1st ex.s. c 260 s 9A.56.030 are  
33 each amended to read as follows:

34 THEFT IN THE FIRST DEGREE OTHER THAN A FIREARM. (1) A person is  
35 guilty of theft in the first degree if he or she commits theft of:

1 (a) Property or services which exceed(s) one thousand five hundred  
2 dollars in value other than a firearm as defined in RCW 9.41.010; or  
3 (b) Property of any value other than a firearm as defined in RCW  
4 9.41.010 taken from the person of another.  
5 (2) Theft in the first degree is a class B felony.

6 **Sec. 12.** RCW 9A.56.040 and 1994 sp.s. c 7 s 433 are each amended  
7 to read as follows:

8 THEFT IN THE SECOND DEGREE OTHER THAN A FIREARM. (1) A person is  
9 guilty of theft in the second degree if he or she commits theft of:

10 (a) Property or services which exceed(s) two hundred and fifty  
11 dollars in value other than a firearm as defined in RCW 9.41.010, but  
12 does not exceed one thousand five hundred dollars in value; or

13 (b) A public record, writing, or instrument kept, filed, or  
14 deposited according to law with or in the keeping of any public office  
15 or public servant; or

16 (c) An access device; or

17 (d) A motor vehicle, of a value less than one thousand five  
18 hundred dollars.

19 (2) Theft in the second degree is a class C felony.

20 NEW SECTION. **Sec. 13.** A new section is added to chapter 9A.56  
21 RCW to read as follows:

22 POSSESSING A STOLEN FIREARM. (1) A person is guilty of possessing  
23 a stolen firearm if he or she possesses, carries, delivers, sells, or  
24 is in control of a stolen firearm.

25 (2) This section applies regardless of the stolen firearm's value.

26 (3) Each stolen firearm possessed under this section is a separate  
27 offense.

28 (4) The definition of "possessing stolen property" and the defense  
29 allowed against the prosecution for possessing stolen property under  
30 RCW 9A.56.140 shall apply to the crime of possessing a stolen firearm.

31 (5) As used in this section, "firearm" means any firearm as  
32 defined in RCW 9.41.010.

33 (6) Possessing a stolen firearm is a class B felony.

34 **Sec. 14.** RCW 9A.56.150 and 1975 1st ex.s. c 260 s 9A.56.150 are  
35 each amended to read as follows:

1 POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE OTHER THAN A  
2 FIREARM. (1) A person is guilty of possessing stolen property in the  
3 first degree if he or she possesses stolen property other than a  
4 firearm as defined in RCW 9.41.010 which exceeds one thousand five  
5 hundred dollars in value.

6 (2) Possessing stolen property in the first degree is a class B  
7 felony.

8 **Sec. 15.** RCW 9A.56.160 and 1994 sp.s. c 7 s 434 are each amended  
9 to read as follows:

10 POSSESSING STOLEN PROPERTY IN THE SECOND DEGREE OTHER THAN A  
11 FIREARM. (1) A person is guilty of possessing stolen property in the  
12 second degree if:

13 (a) He or she possesses stolen property other than a firearm as  
14 defined in RCW 9.41.010 which exceeds two hundred fifty dollars in  
15 value but does not exceed one thousand five hundred dollars in value;  
16 or

17 (b) He or she possesses a stolen public record, writing or  
18 instrument kept, filed, or deposited according to law; or

19 (c) He or she possesses a stolen access device; or

20 (d) He or she possesses a stolen motor vehicle of a value less  
21 than one thousand five hundred dollars.

22 (2) Possessing stolen property in the second degree is a class C  
23 felony.

24 **Sec. 16.** RCW 9.41.040 and 1994 sp.s. c 7 s 402 are each amended  
25 to read as follows:

26 UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST AND SECOND DEGREE--  
27 OWNERSHIP, POSSESSION OF FIREARMS PROHIBITED FROM CERTAIN PERSONS.

28 (1)(a) A person, whether an adult or juvenile, is guilty of the crime  
29 of unlawful possession of a firearm in the first degree, if the person  
30 owns, has in his or her possession, or has in his or her control any  
31 firearm((+

32 {a})) after having previously been convicted in this state or  
33 elsewhere of ((a)) any serious offense((, a domestic violence offense  
34 enumerated in RCW 10.99.020(2), a harassment offense enumerated in RCW  
35 9A.46.060, or of a felony in which a firearm was used or displayed)) as  
36 defined in this chapter, residential burglary, reckless endangerment in  
37 the first degree, any felony violation of the uniform controlled

1 substances act, chapter 69.50 RCW, classified as a class A or class B  
2 felony, or with a maximum sentence of at least ten years, or both, or  
3 equivalent statutes of another jurisdiction, except as otherwise  
4 provided in subsection (3) or (4) of this section;

5 (b) A person, whether an adult or juvenile, is guilty of the crime  
6 of unlawful possession of a firearm in the second degree, if the person  
7 does not qualify under (a) of this subsection for the crime of unlawful  
8 possession of a firearm in the first degree and the person owns, has in  
9 his or her possession, or has in his or her control any firearm:

10 (i) After having previously been convicted of any remaining felony  
11 violation of the uniform controlled substances act, chapter 69.50 RCW,  
12 or equivalent statutes of another jurisdiction not specifically listed  
13 as prohibiting firearm possession under (a) of this subsection, any  
14 remaining felony in which a firearm was used or displayed and the  
15 felony is not specifically listed as prohibiting firearm possession  
16 under (a) of this subsection, any domestic violence offense enumerated  
17 in RCW 10.99.020(2), or any harassment offense enumerated in RCW  
18 9A.46.060, except as otherwise provided in subsection (3) or (4) of  
19 this section;

20 ((+e)) (ii) After having previously been convicted on three  
21 occasions within five years of driving a motor vehicle or operating a  
22 vessel while under the influence of intoxicating liquor or any drug,  
23 unless his or her right to possess a firearm has been restored as  
24 provided in RCW 9.41.047;

25 ((+e)) (iii) After having previously been involuntarily committed  
26 for mental health treatment under RCW 71.05.320, 71.34.090, chapter  
27 10.77 RCW, or equivalent statutes of another jurisdiction, unless his  
28 or her right to possess a firearm has been restored as provided in RCW  
29 9.41.047; and/or

30 (iv) If the person is under eighteen years of age, except as  
31 provided in RCW 9.41.042.

32 (2)(a) Unlawful possession of a firearm in the first degree is a  
33 class ((C)) B felony, punishable under chapter 9A.20 RCW.

34 (b) Unlawful possession of a firearm in the second degree is a  
35 class C felony, punishable under chapter 9A.20 RCW.

36 (3) As used in this section, a person has been "convicted" at such  
37 time as a plea of guilty has been accepted or a verdict of guilty has  
38 been filed, notwithstanding the pendency of any future proceedings  
39 including but not limited to sentencing or disposition, post-trial or

1 post-factfinding motions, and appeals. A person shall not be precluded  
2 from possession of a firearm if the conviction has been the subject of  
3 a pardon, annulment, certificate of rehabilitation, or other equivalent  
4 procedure based on a finding of the rehabilitation of the person  
5 convicted or the conviction or disposition has been the subject of a  
6 pardon, annulment, or other equivalent procedure based on a finding of  
7 innocence.

8 (4) Notwithstanding subsection (1) of this section, a person  
9 convicted of an offense prohibiting the possession of a firearm under  
10 this section other than murder, manslaughter, robbery, rape, indecent  
11 liberties, arson, assault, kidnapping, extortion, burglary, or  
12 violations with respect to controlled substances under RCW 69.50.401(a)  
13 and 69.50.410, who received a probationary sentence under RCW 9.95.200,  
14 and who received a dismissal of the charge under RCW 9.95.240, shall  
15 not be precluded from possession of a firearm as a result of the  
16 conviction. Notwithstanding any other provisions of this section, if  
17 a person is prohibited from possession of a firearm under subsection  
18 (1) of this section and has not previously been convicted of a sex  
19 offense prohibiting firearm ownership under subsection (1) of this  
20 section and/or any felony defined under any law as a class A felony or  
21 with a maximum sentence of at least twenty years, or both, the  
22 individual may petition a court of record to have his or her right to  
23 possess a firearm restored:

24 (a) Under RCW 9.41.047; and/or

25 (b) After five or more consecutive years in the community without  
26 being convicted or currently charged with any felony, gross  
27 misdemeanor, or misdemeanor crimes, if the individual has no prior  
28 felony convictions that prohibit the possession of a firearm counted as  
29 part of the offender score under RCW 9.94A.360.

30 ~~((6)(a) A person who has been committed by court order for~~  
31 ~~treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW,~~  
32 ~~or equivalent statutes of another jurisdiction, may not possess, in any~~  
33 ~~manner, a firearm as defined in RCW 9.41.010.~~

34 ~~(b) At the time of commitment, the court shall specifically state~~  
35 ~~to the person under (a) of this subsection and give the person notice~~  
36 ~~in writing that the person is barred from possession of firearms.~~

37 ~~(c) The secretary of social and health services shall develop~~  
38 ~~appropriate rules to create an approval process under this subsection.~~  
39 ~~The rules must provide for the immediate restoration of the right to~~

1 possess a firearm upon a showing in a court of competent jurisdiction  
2 that a person no longer is required to participate in an inpatient or  
3 outpatient treatment program, and is no longer required to take  
4 medication to treat any condition related to the commitment. Unlawful  
5 possession of a firearm under this subsection shall be punished as a  
6 class C felony under chapter 9A.20 RCW.))

7 (5) In addition to any other penalty provided for by law, if a  
8 person under the age of eighteen years is found by a court to have  
9 possessed a firearm in a vehicle in violation of subsection (1) of this  
10 section or to have committed an offense while armed with a firearm  
11 during which offense a motor vehicle served an integral function, the  
12 court shall notify the department of licensing within twenty-four hours  
13 and the person's privilege to drive shall be revoked under RCW  
14 46.20.265.

15 (6) Nothing in chapter . . . , Laws of 1995 (this act) shall ever  
16 be construed or interpreted as preventing an offender from being  
17 charged and subsequently convicted for the separate felony crimes of  
18 theft of a firearm or possession of a stolen firearm, or both, in  
19 addition to being charged and subsequently convicted under this section  
20 for unlawful possession of a firearm in the first or second degree.  
21 Notwithstanding any other law, if the offender is convicted under this  
22 section for unlawful possession of a firearm in the first or second  
23 degree and for the felony crimes of theft of a firearm or possession of  
24 a stolen firearm, or both, then the offender shall serve consecutive  
25 sentences for each of the felony crimes of conviction listed in this  
26 subsection.

27 (7) Each firearm unlawfully possessed under this section shall be  
28 a separate offense.

29 **Sec. 17.** RCW 10.95.020 and 1994 c 121 s 3 are each amended to  
30 read as follows:

31 DEATH PENALTY AUTHORIZED FOR DRIVE-BY SHOOTERS, MURDERS FOR GROUP  
32 MEMBERSHIP, AND RESIDENTIAL BURGLARS WHO KILL. A person is guilty of  
33 aggravated first degree murder if he or she commits first degree murder  
34 as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one  
35 or more of the following aggravating circumstances exist:

36 (1) The victim was a law enforcement officer, corrections officer,  
37 or fire fighter who was performing his or her official duties at the  
38 time of the act resulting in death and the victim was known or

1 reasonably should have been known by the person to be such at the time  
2 of the killing;

3 (2) At the time of the act resulting in the death, the person was  
4 serving a term of imprisonment, had escaped, or was on authorized or  
5 unauthorized leave in or from a state facility or program for the  
6 incarceration or treatment of persons adjudicated guilty of crimes;

7 (3) At the time of the act resulting in death, the person was in  
8 custody in a county or county-city jail as a consequence of having been  
9 adjudicated guilty of a felony;

10 (4) The person committed the murder pursuant to an agreement that  
11 he or she would receive money or any other thing of value for  
12 committing the murder;

13 (5) The person solicited another person to commit the murder and  
14 had paid or had agreed to pay money or any other thing of value for  
15 committing the murder;

16 (6) The person committed the murder to obtain or maintain his or  
17 her membership or to advance his or her position in the hierarchy of an  
18 organization, association, or identifiable group;

19 (7) The murder was committed during the course of or as a result  
20 of a shooting where the discharge of the firearm, as defined in RCW  
21 9.41.010, is either from a motor vehicle or from the immediate area of  
22 a motor vehicle that was used to transport the shooter or the firearm,  
23 or both, to the scene of the discharge;

24 (8) The victim was:

25 (a) A judge; juror or former juror; prospective, current, or  
26 former witness in an adjudicative proceeding; prosecuting attorney;  
27 deputy prosecuting attorney; defense attorney; a member of the  
28 indeterminate sentence review board; or a probation or parole officer;  
29 and

30 (b) The murder was related to the exercise of official duties  
31 performed or to be performed by the victim;

32 ((+7)) (9) The person committed the murder to conceal the  
33 commission of a crime or to protect or conceal the identity of any  
34 person committing a crime, including, but specifically not limited to,  
35 any attempt to avoid prosecution as a persistent offender as defined in  
36 RCW 9.94A.030;

37 ((+8)) (10) There was more than one victim and the murders were  
38 part of a common scheme or plan or the result of a single act of the  
39 person;

1           (~~(+9)~~) (11) The murder was committed in the course of, in  
2 furtherance of, or in immediate flight from one of the following  
3 crimes:

4           (a) Robbery in the first or second degree;

5           (b) Rape in the first or second degree;

6           (c) Burglary in the first or second degree or residential  
7 burglary;

8           (d) Kidnapping in the first degree; or

9           (e) Arson in the first degree;

10          (~~(+10)~~) (12) The victim was regularly employed or self-employed  
11 as a newsreporter and the murder was committed to obstruct or hinder  
12 the investigative, research, or reporting activities of the victim.

13          NEW SECTION. Sec. 18. OFFENDER NOTIFICATION AND WARNING. Any  
14 and all law enforcement agencies and personnel, criminal justice  
15 attorneys, sentencing judges, and state and local correctional  
16 facilities and personnel may, but are not required to, give any and all  
17 offenders either written or oral notice, or both, of the sanctions  
18 imposed and criminal justice changes regarding armed offenders,  
19 including but not limited to the subjects of:

20           (1) Felony crimes involving any deadly weapon special verdict  
21 under RCW 9.94A.125;

22           (2) Any and all deadly weapon enhancements under RCW 9.94A.310 (3)  
23 or (4), or both, as well as any federal firearm, ammunition, or other  
24 deadly weapon enhancements;

25           (3) Any and all felony crimes requiring the possession, display,  
26 or use of any deadly weapon as well as the many increased penalties for  
27 these crimes including the creation of theft of a firearm and  
28 possessing a stolen firearm;

29           (4) New prosecuting standards established for filing charges for  
30 all crimes involving any deadly weapons;

31           (5) Removal of good time for any and all deadly weapon  
32 enhancements; and

33           (6) Providing the death penalty for those who commit first degree  
34 murder: (a) To join, maintain, or advance membership in an  
35 identifiable group; (b) as part of a drive-by shooting; or (c) to avoid  
36 prosecution as a persistent offender as defined in RCW 9.94A.030.

1           NEW SECTION.   **Sec. 19.** CODIFICATION. Sections 4 through 6 of this  
2 act are each added to chapter 9.94A RCW.

3           NEW SECTION.   **Sec. 20.** SHORT TITLE. This act shall be known and  
4 cited as the hard time for armed crime act.

5           NEW SECTION.   **Sec. 21.** SEVERABILITY. If any provision of this  
6 act or its application to any person or circumstance is held invalid,  
7 the remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9           NEW SECTION.   **Sec. 22.** CAPTIONS. Captions as used in this act do  
10 not constitute any part of the law.

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