
SECOND SUBSTITUTE HOUSE BILL 1163

State of Washington

65th Legislature

2017 Regular Session

By House Appropriations (originally sponsored by Representatives Goodman, Hayes, Orwall, Appleton, Klippert, Pellicciotti, Pettigrew, Chapman, Kilduff, Bergquist, Stanford, and Kloba)

1 AN ACT Relating to domestic violence; amending RCW 9A.36.041,
2 9.94A.525, 43.43.754, 43.43.830, 18.16.100, and 18.16.110; reenacting
3 and amending RCW 9.94A.411; adding a new section to chapter 7.36 RCW;
4 adding a new section to chapter 18.16 RCW; creating new sections;
5 prescribing penalties; providing an effective date; and providing
6 expiration dates.

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

8 **Sec. 1.** RCW 9A.36.041 and 1987 c 188 s 2 are each amended to
9 read as follows:

10 (1) A person is guilty of assault in the fourth degree if, under
11 circumstances not amounting to assault in the first, second, or third
12 degree, or custodial assault, he or she assaults another.

13 (2) Assault in the fourth degree is a gross misdemeanor, except
14 as provided in subsection (3) of this section.

15 (3) Assault in the fourth degree, where domestic violence was
16 pleaded and proven after the effective date of this section, is a
17 class C felony if the person has two or more prior adult convictions
18 within ten years for any of the following offenses where domestic
19 violence as defined in RCW 9.94A.030 was pleaded and proven after the
20 effective date of this section:

1 (a) Repetitive domestic violence offense as defined in RCW
2 9.94A.030;

3 (b) Crime of harassment as defined by RCW 9A.46.060;

4 (c) Assault in the third degree;

5 (d) Assault in the second degree;

6 (e) Assault in the first degree; or

7 (f) An out-of-state comparable offense.

8 (4) For purposes of subsection (3) of this section, family or
9 household members means spouses, domestic partners, former spouses,
10 former domestic partners, persons who have a child in common
11 regardless of whether they have been married or have lived together
12 at any time, persons sixteen years of age or older who are presently
13 residing together or who have resided together in the past and who
14 have or have had a dating relationship, and persons sixteen years of
15 age or older with whom a person sixteen years of age or older has or
16 has had a dating relationship.

17 **Sec. 2.** RCW 9.94A.411 and 2006 c 271 s 1 and 2006 c 73 s 13 are
18 each reenacted and amended to read as follows:

19 (1) Decision not to prosecute.

20 STANDARD: A prosecuting attorney may decline to prosecute, even
21 though technically sufficient evidence to prosecute exists, in
22 situations where prosecution would serve no public purpose, would
23 defeat the underlying purpose of the law in question or would result
24 in decreased respect for the law.

25 GUIDELINE/COMMENTARY:

26 Examples

27 The following are examples of reasons not to prosecute which
28 could satisfy the standard.

29 (a) Contrary to Legislative Intent - It may be proper to decline
30 to charge where the application of criminal sanctions would be
31 clearly contrary to the intent of the legislature in enacting the
32 particular statute.

33 (b) Antiquated Statute - It may be proper to decline to charge
34 where the statute in question is antiquated in that:

35 (i) It has not been enforced for many years; and

36 (ii) Most members of society act as if it were no longer in
37 existence; and

38 (iii) It serves no deterrent or protective purpose in today's
39 society; and

1 (iv) The statute has not been recently reconsidered by the
2 legislature.

3 This reason is not to be construed as the basis for declining
4 cases because the law in question is unpopular or because it is
5 difficult to enforce.

6 (c) De Minimis Violation - It may be proper to decline to charge
7 where the violation of law is only technical or insubstantial and
8 where no public interest or deterrent purpose would be served by
9 prosecution.

10 (d) Confinement on Other Charges - It may be proper to decline to
11 charge because the accused has been sentenced on another charge to a
12 lengthy period of confinement; and

13 (i) Conviction of the new offense would not merit any additional
14 direct or collateral punishment;

15 (ii) The new offense is either a misdemeanor or a felony which is
16 not particularly aggravated; and

17 (iii) Conviction of the new offense would not serve any
18 significant deterrent purpose.

19 (e) Pending Conviction on Another Charge - It may be proper to
20 decline to charge because the accused is facing a pending prosecution
21 in the same or another county; and

22 (i) Conviction of the new offense would not merit any additional
23 direct or collateral punishment;

24 (ii) Conviction in the pending prosecution is imminent;

25 (iii) The new offense is either a misdemeanor or a felony which
26 is not particularly aggravated; and

27 (iv) Conviction of the new offense would not serve any
28 significant deterrent purpose.

29 (f) High Disproportionate Cost of Prosecution - It may be proper
30 to decline to charge where the cost of locating or transporting, or
31 the burden on, prosecution witnesses is highly disproportionate to
32 the importance of prosecuting the offense in question. This reason
33 should be limited to minor cases and should not be relied upon in
34 serious cases.

35 (g) Improper Motives of Complainant - It may be proper to decline
36 charges because the motives of the complainant are improper and
37 prosecution would serve no public purpose, would defeat the
38 underlying purpose of the law in question or would result in
39 decreased respect for the law.

1 (h) Immunity - It may be proper to decline to charge where
2 immunity is to be given to an accused in order to prosecute another
3 where the accused's information or testimony will reasonably lead to
4 the conviction of others who are responsible for more serious
5 criminal conduct or who represent a greater danger to the public
6 interest.

7 (i) Victim Request - It may be proper to decline to charge
8 because the victim requests that no criminal charges be filed and the
9 case involves the following crimes or situations:

10 (i) Assault cases where the victim has suffered little or no
11 injury;

12 (ii) Crimes against property, not involving violence, where no
13 major loss was suffered;

14 (iii) Where doing so would not jeopardize the safety of society.

15 Care should be taken to insure that the victim's request is
16 freely made and is not the product of threats or pressure by the
17 accused.

18 The presence of these factors may also justify the decision to
19 dismiss a prosecution which has been commenced.

20 Notification

21 The prosecutor is encouraged to notify the victim, when
22 practical, and the law enforcement personnel, of the decision not to
23 prosecute.

24 (2) Decision to prosecute.

25 (a) STANDARD:

26 Crimes against persons will be filed if sufficient admissible
27 evidence exists, which, when considered with the most plausible,
28 reasonably foreseeable defense that could be raised under the
29 evidence, would justify conviction by a reasonable and objective fact
30 finder. With regard to offenses prohibited by RCW 9A.44.040,
31 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,
32 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling
33 agreements or diversions intended to place the accused in a program
34 of treatment or counseling, so that treatment, if determined to be
35 beneficial, can be provided pursuant to RCW 9.94A.670.

36 Crimes against property/other crimes will be filed if the
37 admissible evidence is of such convincing force as to make it
38 probable that a reasonable and objective fact finder would convict
39 after hearing all the admissible evidence and the most plausible
40 defense that could be raised.

1 See table below for the crimes within these categories.

2 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

3 CRIMES AGAINST PERSONS

4 Aggravated Murder

5 1st Degree Murder

6 2nd Degree Murder

7 1st Degree Manslaughter

8 2nd Degree Manslaughter

9 1st Degree Kidnapping

10 2nd Degree Kidnapping

11 1st Degree Assault

12 2nd Degree Assault

13 3rd Degree Assault

14 4th Degree Assault (if a violation of RCW 9A.36.041(3))

15 1st Degree Assault of a Child

16 2nd Degree Assault of a Child

17 3rd Degree Assault of a Child

18 1st Degree Rape

19 2nd Degree Rape

20 3rd Degree Rape

21 1st Degree Rape of a Child

22 2nd Degree Rape of a Child

23 3rd Degree Rape of a Child

24 1st Degree Robbery

25 2nd Degree Robbery

26 1st Degree Arson

27 1st Degree Burglary

28 1st Degree Identity Theft

29 2nd Degree Identity Theft

30 1st Degree Extortion

31 2nd Degree Extortion

32 Indecent Liberties

33 Incest

34 Vehicular Homicide

35 Vehicular Assault

36 1st Degree Child Molestation

37 2nd Degree Child Molestation

38 3rd Degree Child Molestation

39 1st Degree Promoting Prostitution

1 Intimidating a Juror
2 Communication with a Minor
3 Intimidating a Witness
4 Intimidating a Public Servant
5 Bomb Threat (if against person)
6 Unlawful Imprisonment
7 Promoting a Suicide Attempt
8 Riot (if against person)
9 Stalking
10 Custodial Assault
11 Domestic Violence Court Order Violation (RCW 10.99.040,
12 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or
13 74.34.145)
14 Counterfeiting (if a violation of RCW 9.16.035(4))
15 Felony Driving a Motor Vehicle While Under the Influence of
16 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
17 Felony Physical Control of a Motor Vehicle While Under the
18 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
19 CRIMES AGAINST PROPERTY/OTHER CRIMES
20 2nd Degree Arson
21 1st Degree Escape
22 2nd Degree Escape
23 2nd Degree Burglary
24 1st Degree Theft
25 2nd Degree Theft
26 1st Degree Perjury
27 2nd Degree Perjury
28 1st Degree Introducing Contraband
29 2nd Degree Introducing Contraband
30 1st Degree Possession of Stolen Property
31 2nd Degree Possession of Stolen Property
32 Bribery
33 Bribing a Witness
34 Bribe received by a Witness
35 Bomb Threat (if against property)
36 1st Degree Malicious Mischief
37 2nd Degree Malicious Mischief
38 1st Degree Reckless Burning
39 Taking a Motor Vehicle without Authorization

1 Forgery
2 2nd Degree Promoting Prostitution
3 Tampering with a Witness
4 Trading in Public Office
5 Trading in Special Influence
6 Receiving/Granting Unlawful Compensation
7 Bigamy
8 Eluding a Pursuing Police Vehicle
9 Willful Failure to Return from Furlough
10 Escape from Community Custody
11 Riot (if against property)
12 1st Degree Theft of Livestock
13 2nd Degree Theft of Livestock

14 ALL OTHER UNCLASSIFIED FELONIES

15 Selection of Charges/Degree of Charge

16 (i) The prosecutor should file charges which adequately describe
17 the nature of defendant's conduct. Other offenses may be charged only
18 if they are necessary to ensure that the charges:

19 (A) Will significantly enhance the strength of the state's case
20 at trial; or

21 (B) Will result in restitution to all victims.

22 (ii) The prosecutor should not overcharge to obtain a guilty
23 plea. Overcharging includes:

24 (A) Charging a higher degree;

25 (B) Charging additional counts.

26 This standard is intended to direct prosecutors to charge those
27 crimes which demonstrate the nature and seriousness of a defendant's
28 criminal conduct, but to decline to charge crimes which are not
29 necessary to such an indication. Crimes which do not merge as a
30 matter of law, but which arise from the same course of conduct, do
31 not all have to be charged.

32 (b) GUIDELINES/COMMENTARY:

33 (i) Police Investigation

34 A prosecuting attorney is dependent upon law enforcement agencies
35 to conduct the necessary factual investigation which must precede the
36 decision to prosecute. The prosecuting attorney shall ensure that a
37 thorough factual investigation has been conducted before a decision
38 to prosecute is made. In ordinary circumstances the investigation
39 should include the following:

1 (A) The interviewing of all material witnesses, together with the
2 obtaining of written statements whenever possible;

3 (B) The completion of necessary laboratory tests; and

4 (C) The obtaining, in accordance with constitutional
5 requirements, of the suspect's version of the events.

6 If the initial investigation is incomplete, a prosecuting
7 attorney should insist upon further investigation before a decision
8 to prosecute is made, and specify what the investigation needs to
9 include.

10 (ii) Exceptions

11 In certain situations, a prosecuting attorney may authorize
12 filing of a criminal complaint before the investigation is complete
13 if:

14 (A) Probable cause exists to believe the suspect is guilty; and

15 (B) The suspect presents a danger to the community or is likely
16 to flee if not apprehended; or

17 (C) The arrest of the suspect is necessary to complete the
18 investigation of the crime.

19 In the event that the exception to the standard is applied, the
20 prosecuting attorney shall obtain a commitment from the law
21 enforcement agency involved to complete the investigation in a timely
22 manner. If the subsequent investigation does not produce sufficient
23 evidence to meet the normal charging standard, the complaint should
24 be dismissed.

25 (iii) Investigation Techniques

26 The prosecutor should be fully advised of the investigatory
27 techniques that were used in the case investigation including:

28 (A) Polygraph testing;

29 (B) Hypnosis;

30 (C) Electronic surveillance;

31 (D) Use of informants.

32 (iv) Pre-Filing Discussions with Defendant

33 Discussions with the defendant or his/her representative
34 regarding the selection or disposition of charges may occur prior to
35 the filing of charges, and potential agreements can be reached.

36 (v) Pre-Filing Discussions with Victim(s)

37 Discussions with the victim(s) or victims' representatives
38 regarding the selection or disposition of charges may occur before
39 the filing of charges. The discussions may be considered by the
40 prosecutor in charging and disposition decisions, and should be

1 considered before reaching any agreement with the defendant regarding
2 these decisions.

3 **Sec. 3.** RCW 9.94A.525 and 2013 2nd sp.s. c 35 s 8 are each
4 amended to read as follows:

5 The offender score is measured on the horizontal axis of the
6 sentencing grid. The offender score rules are as follows:

7 The offender score is the sum of points accrued under this
8 section rounded down to the nearest whole number.

9 (1) A prior conviction is a conviction which exists before the
10 date of sentencing for the offense for which the offender score is
11 being computed. Convictions entered or sentenced on the same date as
12 the conviction for which the offender score is being computed shall
13 be deemed "other current offenses" within the meaning of RCW
14 9.94A.589.

15 (2)(a) Class A and sex prior felony convictions shall always be
16 included in the offender score.

17 (b) Class B prior felony convictions other than sex offenses
18 shall not be included in the offender score, if since the last date
19 of release from confinement (including full-time residential
20 treatment) pursuant to a felony conviction, if any, or entry of
21 judgment and sentence, the offender had spent ten consecutive years
22 in the community without committing any crime that subsequently
23 results in a conviction.

24 (c) Except as provided in (e) of this subsection, class C prior
25 felony convictions other than sex offenses shall not be included in
26 the offender score if, since the last date of release from
27 confinement (including full-time residential treatment) pursuant to a
28 felony conviction, if any, or entry of judgment and sentence, the
29 offender had spent five consecutive years in the community without
30 committing any crime that subsequently results in a conviction.

31 (d) Except as provided in (e) of this subsection, serious traffic
32 convictions shall not be included in the offender score if, since the
33 last date of release from confinement (including full-time
34 residential treatment) pursuant to a conviction, if any, or entry of
35 judgment and sentence, the offender spent five years in the community
36 without committing any crime that subsequently results in a
37 conviction.

38 (e) If the present conviction is felony driving while under the
39 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or

1 felony physical control of a vehicle while under the influence of
2 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
3 crimes for the offense as defined by RCW 46.61.5055(14) shall be
4 included in the offender score, and prior convictions for felony
5 driving while under the influence of intoxicating liquor or any drug
6 (RCW 46.61.502(6)) or felony physical control of a vehicle while
7 under the influence of intoxicating liquor or any drug (RCW
8 46.61.504(6)) shall always be included in the offender score. All
9 other convictions of the defendant shall be scored according to this
10 section.

11 (f) Prior convictions for a repetitive domestic violence offense,
12 as defined in RCW 9.94A.030, shall not be included in the offender
13 score if, since the last date of release from confinement or entry of
14 judgment and sentence, the offender had spent ten consecutive years
15 in the community without committing any crime that subsequently
16 results in a conviction.

17 (g) This subsection applies to both adult and juvenile prior
18 convictions.

19 (3) Out-of-state convictions for offenses shall be classified
20 according to the comparable offense definitions and sentences
21 provided by Washington law. Federal convictions for offenses shall be
22 classified according to the comparable offense definitions and
23 sentences provided by Washington law. If there is no clearly
24 comparable offense under Washington law or the offense is one that is
25 usually considered subject to exclusive federal jurisdiction, the
26 offense shall be scored as a class C felony equivalent if it was a
27 felony under the relevant federal statute.

28 (4) Score prior convictions for felony anticipatory offenses
29 (attempts, criminal solicitations, and criminal conspiracies) the
30 same as if they were convictions for completed offenses.

31 (5)(a) In the case of multiple prior convictions, for the purpose
32 of computing the offender score, count all convictions separately,
33 except:

34 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a),
35 to encompass the same criminal conduct, shall be counted as one
36 offense, the offense that yields the highest offender score. The
37 current sentencing court shall determine with respect to other prior
38 adult offenses for which sentences were served concurrently or prior
39 juvenile offenses for which sentences were served consecutively,
40 whether those offenses shall be counted as one offense or as separate

1 offenses using the "same criminal conduct" analysis found in RCW
2 9.94A.589(1)(a), and if the court finds that they shall be counted as
3 one offense, then the offense that yields the highest offender score
4 shall be used. The current sentencing court may presume that such
5 other prior offenses were not the same criminal conduct from
6 sentences imposed on separate dates, or in separate counties or
7 jurisdictions, or in separate complaints, indictments, or
8 informations;

9 (ii) In the case of multiple prior convictions for offenses
10 committed before July 1, 1986, for the purpose of computing the
11 offender score, count all adult convictions served concurrently as
12 one offense, and count all juvenile convictions entered on the same
13 date as one offense. Use the conviction for the offense that yields
14 the highest offender score.

15 (b) As used in this subsection (5), "served concurrently" means
16 that: (i) The latter sentence was imposed with specific reference to
17 the former; (ii) the concurrent relationship of the sentences was
18 judicially imposed; and (iii) the concurrent timing of the sentences
19 was not the result of a probation or parole revocation on the former
20 offense.

21 (6) If the present conviction is one of the anticipatory offenses
22 of criminal attempt, solicitation, or conspiracy, count each prior
23 conviction as if the present conviction were for a completed offense.
24 When these convictions are used as criminal history, score them the
25 same as a completed crime.

26 (7) If the present conviction is for a nonviolent offense and not
27 covered by subsection (11), (12), or (13) of this section, count one
28 point for each adult prior felony conviction and one point for each
29 juvenile prior violent felony conviction and 1/2 point for each
30 juvenile prior nonviolent felony conviction.

31 (8) If the present conviction is for a violent offense and not
32 covered in subsection (9), (10), (11), (12), or (13) of this section,
33 count two points for each prior adult and juvenile violent felony
34 conviction, one point for each prior adult nonviolent felony
35 conviction, and 1/2 point for each prior juvenile nonviolent felony
36 conviction.

37 (9) If the present conviction is for a serious violent offense,
38 count three points for prior adult and juvenile convictions for
39 crimes in this category, two points for each prior adult and juvenile
40 violent conviction (not already counted), one point for each prior

1 adult nonviolent felony conviction, and 1/2 point for each prior
2 juvenile nonviolent felony conviction.

3 (10) If the present conviction is for Burglary 1, count prior
4 convictions as in subsection (8) of this section; however count two
5 points for each prior adult Burglary 2 or residential burglary
6 conviction, and one point for each prior juvenile Burglary 2 or
7 residential burglary conviction.

8 (11) If the present conviction is for a felony traffic offense
9 count two points for each adult or juvenile prior conviction for
10 Vehicular Homicide or Vehicular Assault; for each felony offense
11 count one point for each adult and 1/2 point for each juvenile prior
12 conviction; for each serious traffic offense, other than those used
13 for an enhancement pursuant to RCW 46.61.520(2), count one point for
14 each adult and 1/2 point for each juvenile prior conviction; count
15 one point for each adult and 1/2 point for each juvenile prior
16 conviction for operation of a vessel while under the influence of
17 intoxicating liquor or any drug.

18 (12) If the present conviction is for homicide by watercraft or
19 assault by watercraft count two points for each adult or juvenile
20 prior conviction for homicide by watercraft or assault by watercraft;
21 for each felony offense count one point for each adult and 1/2 point
22 for each juvenile prior conviction; count one point for each adult
23 and 1/2 point for each juvenile prior conviction for driving under
24 the influence of intoxicating liquor or any drug, actual physical
25 control of a motor vehicle while under the influence of intoxicating
26 liquor or any drug, or operation of a vessel while under the
27 influence of intoxicating liquor or any drug.

28 (13) If the present conviction is for manufacture of
29 methamphetamine count three points for each adult prior manufacture
30 of methamphetamine conviction and two points for each juvenile
31 manufacture of methamphetamine offense. If the present conviction is
32 for a drug offense and the offender has a criminal history that
33 includes a sex offense or serious violent offense, count three points
34 for each adult prior felony drug offense conviction and two points
35 for each juvenile drug offense. All other adult and juvenile felonies
36 are scored as in subsection (8) of this section if the current drug
37 offense is violent, or as in subsection (7) of this section if the
38 current drug offense is nonviolent.

39 (14) If the present conviction is for Escape from Community
40 Custody, RCW 72.09.310, count only prior escape convictions in the

1 offender score. Count adult prior escape convictions as one point and
2 juvenile prior escape convictions as 1/2 point.

3 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
4 Escape 2, RCW 9A.76.120, count adult prior convictions as one point
5 and juvenile prior convictions as 1/2 point.

6 (16) If the present conviction is for Burglary 2 or residential
7 burglary, count priors as in subsection (7) of this section; however,
8 count two points for each adult and juvenile prior Burglary 1
9 conviction, two points for each adult prior Burglary 2 or residential
10 burglary conviction, and one point for each juvenile prior Burglary 2
11 or residential burglary conviction.

12 (17) If the present conviction is for a sex offense, count priors
13 as in subsections (7) through (11) and (13) through (16) of this
14 section; however count three points for each adult and juvenile prior
15 sex offense conviction.

16 (18) If the present conviction is for failure to register as a
17 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in
18 subsections (7) through (11) and (13) through (16) of this section;
19 however count three points for each adult and juvenile prior sex
20 offense conviction, excluding prior convictions for failure to
21 register as a sex offender under RCW 9A.44.130 or 9A.44.132, which
22 shall count as one point.

23 (19) If the present conviction is for an offense committed while
24 the offender was under community custody, add one point. For purposes
25 of this subsection, community custody includes community placement or
26 postrelease supervision, as defined in chapter 9.94B RCW.

27 (20) If the present conviction is for Theft of a Motor Vehicle,
28 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
29 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
30 priors as in subsections (7) through (18) of this section; however
31 count one point for prior convictions of Vehicle Prowling 2, and
32 three points for each adult and juvenile prior Theft 1 (of a motor
33 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property
34 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor
35 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,
36 Taking a Motor Vehicle Without Permission 1, or Taking a Motor
37 Vehicle Without Permission 2 conviction.

38 (21) If the present conviction is for a felony domestic violence
39 offense where domestic violence as defined in RCW 9.94A.030 was
40 (~~plead~~—~~[pleaded]~~) pleaded and proven, count priors as in

1 subsections (7) through (20) of this section; however, count points
2 as follows:

3 (a) Count two points for each adult prior conviction where
4 domestic violence as defined in RCW 9.94A.030 was (~~plead [pleaded]~~)
5 pleaded and proven after August 1, 2011, for any of the following
6 offenses: A felony violation of a no-contact or protection order
7 (~~that is a felony offense, a violation of a protection order that is~~
8 ~~a felony offense~~) RCW 26.50.110, ((a)) felony (~~domestic violence~~)
9 Harassment (~~offense~~) (RCW 9A.46.020(2)(b)), ((a)) felony (~~domestic~~
10 ~~violence~~) Stalking (~~offense, a domestic violence~~) (RCW
11 9A.46.110(5)(b)), Burglary 1 (~~offense~~) (RCW 9A.52.020), ((a
12 ~~domestic violence~~) Kidnapping 1 (~~offense~~) (RCW 9A.40.020), ((a
13 ~~domestic violence~~) Kidnapping 2 (~~offense~~) (RCW 9A.40.030), ((a
14 ~~domestic violence~~) Unlawful imprisonment (~~offense~~) (RCW
15 9A.40.040), ((a ~~domestic violence~~) Robbery 1 (~~offense~~) (RCW
16 9A.56.200), ((a ~~domestic violence~~) Robbery 2 (~~offense~~) (RCW
17 9A.56.210), ((a ~~domestic violence~~) Assault 1 (~~offense~~) (RCW
18 9A.36.011), ((a ~~domestic violence~~) Assault 2 (~~offense~~) (RCW
19 9A.36.021), ((a ~~domestic violence~~) Assault 3 (~~offense~~) (RCW
20 9A.36.031), ((a ~~domestic violence~~) Arson 1 (~~offense~~) (RCW
21 9A.48.020), or ((a ~~domestic violence~~) Arson 2 (~~offense~~) (RCW
22 9A.48.030);

23 (b) Count two points for each adult prior conviction where
24 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
25 after the effective date of this section, for any of the following
26 offenses: Assault of a child in the first degree, RCW 9A.36.120;
27 Assault of a child in the second degree, RCW 9A.36.130; Assault of a
28 child in the third degree, RCW 9A.36.140; Criminal Mistreatment in
29 the first degree, RCW 9A.42.020; or Criminal Mistreatment in the
30 second degree, RCW 9A.42.030;

31 (c) Count one point for each second and subsequent juvenile
32 conviction where domestic violence as defined in RCW 9.94A.030 was
33 (~~plead [pleaded]~~) pleaded and proven after August 1, 2011, for the
34 offenses listed in (a) of this subsection; and

35 ((+e)) (d) Count one point for each adult prior conviction for a
36 repetitive domestic violence offense as defined in RCW 9.94A.030,
37 where domestic violence as defined in RCW 9.94A.030, was (~~plead~~
38 ~~[pleaded]~~) pleaded and proven after August 1, 2011.

39 (22) The fact that a prior conviction was not included in an
40 offender's offender score or criminal history at a previous

1 sentencing shall have no bearing on whether it is included in the
2 criminal history or offender score for the current offense. Prior
3 convictions that were not counted in the offender score or included
4 in criminal history under repealed or previous versions of the
5 sentencing reform act shall be included in criminal history and shall
6 count in the offender score if the current version of the sentencing
7 reform act requires including or counting those convictions. Prior
8 convictions that were not included in criminal history or in the
9 offender score shall be included upon any resentencing to ensure
10 imposition of an accurate sentence.

11 **Sec. 4.** RCW 43.43.754 and 2015 c 261 s 10 are each amended to
12 read as follows:

13 (1) A biological sample must be collected for purposes of DNA
14 identification analysis from:

15 (a) Every adult or juvenile individual convicted of a felony, or
16 any of the following crimes (or equivalent juvenile offenses):

17 (i) Assault in the fourth degree where domestic violence as
18 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
19 9.94A.030);

20 (ii) Assault in the fourth degree with sexual motivation (RCW
21 9A.36.041, 9.94A.835);

22 (iii) Communication with a minor for immoral purposes (RCW
23 9.68A.090);

24 (iv) Custodial sexual misconduct in the second degree (RCW
25 9A.44.170);

26 (v) Failure to register (RCW 9A.44.130 for persons convicted on
27 or before June 10, 2010, and RCW 9A.44.132 for persons convicted
28 after June 10, 2010);

29 (vi) Harassment (RCW 9A.46.020);

30 (vii) Patronizing a prostitute (RCW 9A.88.110);

31 (viii) Sexual misconduct with a minor in the second degree (RCW
32 9A.44.096);

33 (ix) Stalking (RCW 9A.46.110);

34 (x) Violation of a sexual assault protection order granted under
35 chapter 7.90 RCW; and

36 (b) Every adult or juvenile individual who is required to
37 register under RCW 9A.44.130.

1 (2) If the Washington state patrol crime laboratory already has a
2 DNA sample from an individual for a qualifying offense, a subsequent
3 submission is not required to be submitted.

4 (3) Biological samples shall be collected in the following
5 manner:

6 (a) For persons convicted of any offense listed in subsection
7 (1)(a) of this section or adjudicated guilty of an equivalent
8 juvenile offense who do not serve a term of confinement in a
9 department of corrections facility, and do serve a term of
10 confinement in a city or county jail facility, the city or county
11 shall be responsible for obtaining the biological samples.

12 (b) The local police department or sheriff's office shall be
13 responsible for obtaining the biological samples for:

14 (i) Persons convicted of any offense listed in subsection (1)(a)
15 of this section or adjudicated guilty of an equivalent juvenile
16 offense who do not serve a term of confinement in a department of
17 corrections facility, and do not serve a term of confinement in a
18 city or county jail facility; and

19 (ii) Persons who are required to register under RCW 9A.44.130.

20 (c) For persons convicted of any offense listed in subsection
21 (1)(a) of this section or adjudicated guilty of an equivalent
22 juvenile offense, who are serving or who are to serve a term of
23 confinement in a department of corrections facility or a department
24 of social and health services facility, the facility holding the
25 person shall be responsible for obtaining the biological samples. For
26 those persons incarcerated before June 12, 2008, who have not yet had
27 a biological sample collected, priority shall be given to those
28 persons who will be released the soonest.

29 (4) Any biological sample taken pursuant to RCW 43.43.752 through
30 43.43.758 may be retained by the forensic laboratory services bureau,
31 and shall be used solely for the purpose of providing DNA or other
32 tests for identification analysis and prosecution of a criminal
33 offense or for the identification of human remains or missing
34 persons. Nothing in this section prohibits the submission of results
35 derived from the biological samples to the federal bureau of
36 investigation combined DNA index system.

37 (5) The forensic laboratory services bureau of the Washington
38 state patrol is responsible for testing performed on all biological
39 samples that are collected under subsection (1) of this section, to
40 the extent allowed by funding available for this purpose. The

1 director shall give priority to testing on samples collected from
2 those adults or juveniles convicted of a felony or adjudicated guilty
3 of an equivalent juvenile offense that is defined as a sex offense or
4 a violent offense in RCW 9.94A.030. Known duplicate samples may be
5 excluded from testing unless testing is deemed necessary or advisable
6 by the director.

7 (6) This section applies to:

8 (a) All adults and juveniles to whom this section applied prior
9 to June 12, 2008;

10 (b) All adults and juveniles to whom this section did not apply
11 prior to June 12, 2008, who:

12 (i) Are convicted on or after June 12, 2008, of an offense listed
13 in subsection (1)(a) of this section; or

14 (ii) Were convicted prior to June 12, 2008, of an offense listed
15 in subsection (1)(a) of this section and are still incarcerated on or
16 after June 12, 2008; and

17 (c) All adults and juveniles who are required to register under
18 RCW 9A.44.130 on or after June 12, 2008, whether convicted before,
19 on, or after June 12, 2008.

20 (7) This section creates no rights in a third person. No cause of
21 action may be brought based upon the noncollection or nonanalysis or
22 the delayed collection or analysis of a biological sample authorized
23 to be taken under RCW 43.43.752 through 43.43.758.

24 (8) The detention, arrest, or conviction of a person based upon a
25 database match or database information is not invalidated if it is
26 determined that the sample was obtained or placed in the database by
27 mistake, or if the conviction or juvenile adjudication that resulted
28 in the collection of the biological sample was subsequently vacated
29 or otherwise altered in any future proceeding including but not
30 limited to posttrial or postfact-finding motions, appeals, or
31 collateral attacks.

32 (9) A person commits the crime of refusal to provide DNA if the
33 person has a duty to register under RCW 9A.44.130 and the person
34 willfully refuses to comply with a legal request for a DNA sample as
35 required under this section. The refusal to provide DNA is a gross
36 misdemeanor.

37 **Sec. 5.** RCW 43.43.830 and 2012 c 44 s 1 are each amended to read
38 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout RCW 43.43.830 through 43.43.845.

3 (1) "Agency" means any person, firm, partnership, association,
4 corporation, or facility which receives, provides services to, houses
5 or otherwise cares for vulnerable adults, juveniles, or children, or
6 which provides child day care, early learning, or early childhood
7 education services.

8 (2) "Applicant" means:

9 (a) Any prospective employee who will or may have unsupervised
10 access to children under sixteen years of age or developmentally
11 disabled persons or vulnerable adults during the course of his or her
12 employment or involvement with the business or organization;

13 (b) Any prospective volunteer who will have regularly scheduled
14 unsupervised access to children under sixteen years of age,
15 developmentally disabled persons, or vulnerable adults during the
16 course of his or her employment or involvement with the business or
17 organization under circumstances where such access will or may
18 involve groups of (i) five or fewer children under twelve years of
19 age, (ii) three or fewer children between twelve and sixteen years of
20 age, (iii) developmentally disabled persons, or (iv) vulnerable
21 adults;

22 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
23 or

24 (d) Any prospective custodian in a nonparental custody proceeding
25 under chapter 26.10 RCW.

26 (3) "Business or organization" means a person, business, or
27 organization licensed in this state, any agency of the state, or
28 other governmental entity, that educates, trains, treats, supervises,
29 houses, or provides recreation to developmentally disabled persons,
30 vulnerable adults, or children under sixteen years of age, or that
31 provides child day care, early learning, or early learning childhood
32 education services, including but not limited to public housing
33 authorities, school districts, and educational service districts.

34 (4) "Civil adjudication proceeding" is a judicial or
35 administrative adjudicative proceeding that results in a finding of,
36 or upholds an agency finding of, domestic violence, abuse, sexual
37 abuse, neglect, abandonment, violation of a professional licensing
38 standard regarding a child or vulnerable adult, or exploitation or
39 financial exploitation of a child or vulnerable adult under any
40 provision of law, including but not limited to chapter 13.34, 26.44,

1 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.
2 "Civil adjudication proceeding" also includes judicial or
3 administrative findings that become final due to the failure of the
4 alleged perpetrator to timely exercise a legal right to
5 administratively challenge such findings.

6 (5) "Client" or "resident" means a child, person with
7 developmental disabilities, or vulnerable adult applying for housing
8 assistance from a business or organization.

9 (6) "Conviction record" means "conviction record" information as
10 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed
11 by either an adult or a juvenile. It does not include a conviction
12 for an offense that has been the subject of an expungement, pardon,
13 annulment, certificate of rehabilitation, or other equivalent
14 procedure based on a finding of the rehabilitation of the person
15 convicted, or a conviction that has been the subject of a pardon,
16 annulment, or other equivalent procedure based on a finding of
17 innocence. It does include convictions for offenses for which the
18 defendant received a deferred or suspended sentence, unless the
19 record has been expunged according to law.

20 (7) "Crime against children or other persons" means a conviction
21 of any of the following offenses: Aggravated murder; first or second
22 degree murder; first or second degree kidnapping; first, second, or
23 third degree assault; fourth degree assault (if a violation of RCW
24 9A.36.041(3)); first, second, or third degree assault of a child;
25 first, second, or third degree rape; first, second, or third degree
26 rape of a child; first or second degree robbery; first degree arson;
27 first degree burglary; first or second degree manslaughter; first or
28 second degree extortion; indecent liberties; incest; vehicular
29 homicide; first degree promoting prostitution; communication with a
30 minor; unlawful imprisonment; simple assault; sexual exploitation of
31 minors; first or second degree criminal mistreatment; endangerment
32 with a controlled substance; child abuse or neglect as defined in RCW
33 26.44.020; first or second degree custodial interference; first or
34 second degree custodial sexual misconduct; malicious harassment;
35 first, second, or third degree child molestation; first or second
36 degree sexual misconduct with a minor; commercial sexual abuse of a
37 minor; child abandonment; promoting pornography; selling or
38 distributing erotic material to a minor; custodial assault; violation
39 of child abuse restraining order; child buying or selling;

1 prostitution; felony indecent exposure; criminal abandonment; or any
2 of these crimes as they may be renamed in the future.

3 (8) "Crimes relating to drugs" means a conviction of a crime to
4 manufacture, delivery, or possession with intent to manufacture or
5 deliver a controlled substance.

6 (9) "Crimes relating to financial exploitation" means a
7 conviction for first, second, or third degree extortion; first,
8 second, or third degree theft; first or second degree robbery;
9 forgery; or any of these crimes as they may be renamed in the future.

10 (10) "Financial exploitation" means "financial exploitation" as
11 defined in RCW 74.34.020.

12 (11) "Health care facility" means a nursing home licensed under
13 chapter 18.51 RCW, a (~~boarding home~~) assisted living facility
14 licensed under chapter 18.20 RCW, or an adult family home licensed
15 under chapter 70.128 RCW.

16 (12) "Peer counselor" means a nonprofessional person who has
17 equal standing with another person, providing advice on a topic about
18 which the nonprofessional person is more experienced or
19 knowledgeable, and who is a counselor for a peer counseling program
20 that contracts with or is otherwise approved by the department,
21 another state or local agency, or the court.

22 (13) "Unsupervised" means not in the presence of:

23 (a) Another employee or volunteer from the same business or
24 organization as the applicant; or

25 (b) Any relative or guardian of any of the children or
26 developmentally disabled persons or vulnerable adults to which the
27 applicant has access during the course of his or her employment or
28 involvement with the business or organization.

29 With regard to peer counselors, "unsupervised" does not include
30 incidental contact with children under age sixteen at the location at
31 which the peer counseling is taking place. "Incidental contact" means
32 minor or casual contact with a child in an area accessible to and
33 within visual or auditory range of others. It could include passing a
34 child while walking down a hallway but would not include being alone
35 with a child for any period of time in a closed room or office.

36 (14) "Vulnerable adult" means "vulnerable adult" as defined in
37 chapter 74.34 RCW, except that for the purposes of requesting and
38 receiving background checks pursuant to RCW 43.43.832, it shall also
39 include adults of any age who lack the functional, mental, or
40 physical ability to care for themselves.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 7.36 RCW
2 to read as follows:

3 Notwithstanding RCW 36.18.040, the sheriff may waive fees
4 associated with service of a writ of habeas corpus that was issued
5 for the return of a child when the person who was granted the writ
6 is, by reason of poverty, unable to pay the cost of service.

7 NEW SECTION. **Sec. 7.** (1) The administrative office of the
8 courts shall, through the Washington state gender and justice
9 commission of the supreme court, convene a work group to address the
10 issue of domestic violence perpetrator treatment and the role of
11 certified perpetrator treatment programs in holding domestic violence
12 perpetrators accountable.

13 (2) The work group must include a representative for each of the
14 following organizations or interests: Superior court judges, district
15 court judges, municipal court judges, court probation officers,
16 prosecuting attorneys, defense attorneys, civil legal aid attorneys,
17 domestic violence victim advocates, domestic violence perpetrator
18 treatment providers, the department of social and health services,
19 the department of corrections, the Washington state institute for
20 public policy, and the University of Washington evidence based
21 practice institute. At least two domestic violence perpetrator
22 treatment providers must be represented as members of the work group.

23 (3) The work group shall: (a) Review laws, regulations, and court
24 and agency practices pertaining to domestic violence perpetrator
25 treatment used in civil and criminal contexts, including criminal
26 domestic violence felony and misdemeanor offenses, family law, child
27 welfare, and protection orders; (b) consider the development of a
28 universal diagnostic evaluation tool to be used by treatment
29 providers and the department of corrections to assess the treatment
30 needs of domestic violence perpetrators; and (c) develop
31 recommendations on changes to existing laws, regulations, and court
32 and agency practices to improve victim safety, decrease recidivism,
33 advance treatment outcomes, and increase the courts' confidence in
34 domestic violence perpetrator treatment.

35 (4) The work group shall report its recommendations to the
36 affected entities and the appropriate committees of the legislature
37 no later than June 30, 2018.

38 (5) The work group must operate within existing funds.

39 (6) This section expires June 30, 2019.

1 NEW SECTION. **Sec. 8.** (1) The legislature finds that Washington
2 state has a serious problem with domestic violence offender
3 recidivism and lethality. The Washington state institute for public
4 policy studied domestic violence offenders finding not just high
5 rates of domestic violence recidivism but among the highest rates of
6 general criminal and violent recidivism. The Washington state
7 coalition against domestic violence has issued fatality reviews of
8 domestic violence homicides in Washington under chapter 43.235 RCW
9 for over fifteen years. These fatality reviews demonstrate the
10 significant impact of domestic violence on our communities as well as
11 the barriers and high rates of lethality faced by victims. The
12 legislature further notes there have been several high profile
13 domestic violence homicides with multiple prior domestic violence
14 incidents not accounted for in the legal response. Many jurisdictions
15 nationally have encountered the same challenges as Washington and now
16 utilize risk assessment as a best practice to assist in the response
17 to domestic violence.

18 The Washington domestic violence risk assessment work group is
19 established to study how and when risk assessment can best be used to
20 improve the response to domestic violence offenders and victims and
21 find effective strategies to reduce domestic violence homicides,
22 serious injuries, and recidivism that are a result of domestic
23 violence incidents in Washington state.

24 (2)(a) The Washington state gender and justice commission, in
25 collaboration with the Washington state coalition against domestic
26 violence and the Washington State University criminal justice
27 program, shall coordinate the work group and provide staff support.

28 (b) The work group must include a representative from each of the
29 following organizations:

- 30 (i) The Washington state gender and justice commission;
- 31 (ii) The department of corrections;
- 32 (iii) The department of social and health services;
- 33 (iv) The Washington association of sheriffs and police chiefs;
- 34 (v) The superior court judges' association;
- 35 (vi) The district and municipal court judges' association;
- 36 (vii) The Washington state association of counties;
- 37 (viii) The Washington association of prosecuting attorneys;
- 38 (ix) The Washington defender association;
- 39 (x) The Washington association of criminal defense lawyers;
- 40 (xi) The Washington state association of cities;

1 (xii) The Washington state coalition against domestic violence;
2 (xiii) The Washington state office of civil legal aid; and
3 (xiv) The family law section of the Washington state bar
4 association.

5 (c) The work group must additionally include representation from:

6 (i) Treatment providers;

7 (ii) City law enforcement;

8 (iii) County law enforcement;

9 (iv) Court administrators; and

10 (v) Domestic violence victims or family members of a victim.

11 (3) At a minimum, the work group shall research, review, and make
12 recommendations on the following:

13 (a) How to best develop and use risk assessment in domestic
14 violence response utilizing available research and Washington state
15 data;

16 (b) Providing effective strategies for incorporating risk
17 assessment in domestic violence response to reduce deaths, serious
18 injuries, and recidivism due to domestic violence;

19 (c) Promoting access to domestic violence risk assessment for
20 advocates, police, prosecutors, corrections, and courts to improve
21 domestic violence response;

22 (d) Whether or how risk assessment could be used as an
23 alternative to mandatory arrest in domestic violence;

24 (e) Whether or how risk assessment could be used in bail
25 determinations in domestic violence cases, and in civil protection
26 order hearings;

27 (f) Whether or how offender risk, needs, and responsivity could
28 be used in determining eligibility for diversion, sentencing
29 alternatives, and treatment options;

30 (g) Whether or how victim risk, needs, and responsivity could be
31 used in improving domestic violence response;

32 (h) Whether or how risk assessment can improve prosecution and
33 encourage prosecutors to aggressively enforce domestic violence laws;
34 and

35 (i) Encouraging private sector collaboration.

36 (4) The work group shall compile its findings and recommendations
37 into a final report and provide its report to the appropriate
38 committees of the legislature and governor by June 30, 2018.

39 (5) The work group must operate within existing funds.

40 (6) This section expires June 30, 2019.

1 **Sec. 9.** RCW 18.16.100 and 2008 c 20 s 5 are each amended to read
2 as follows:

3 (1) Upon completion of an application approved by the department
4 and payment of the proper fee, the director shall issue the
5 appropriate license to any person who:

6 (a) Is at least seventeen years of age or older;

7 (b)(i) Has completed and graduated from a school licensed under
8 this chapter in a curriculum approved by the director consisting of
9 the hours of training required under this chapter for a school
10 curriculum, or has met the requirements in RCW 18.16.020 or
11 18.16.130; or

12 (ii) Has successfully completed a state-approved apprenticeship
13 program consisting of the hours of training required under this
14 chapter for the apprentice training curriculum; (~~and~~)

15 (c) Has received a passing grade on the appropriate licensing
16 examination approved or administered by the director; and

17 (d) Has completed a one-hour domestic violence and sexual assault
18 awareness training course approved by the department.

19 (2) A person currently licensed under this chapter may qualify
20 for examination and licensure, after the required examination is
21 passed, in another category if he or she has completed the crossover
22 training course.

23 (3) Upon completion of an application approved by the department,
24 certification of insurance, and payment of the proper fee, the
25 director shall issue a location license to the applicant.

26 (4) The director may consult with the state board of health and
27 the department of labor and industries in establishing training,
28 apprenticeship, and examination requirements.

29 NEW SECTION. **Sec. 10.** A new section is added to chapter 18.16
30 RCW to read as follows:

31 (1) In order to receive an individual license under this chapter,
32 an applicant must have completed one hour of training in domestic
33 violence and sexual assault awareness through a training course
34 approved by the department. The department may prescribe rules
35 regarding the requirements for domestic violence and sexual assault
36 awareness courses and instructors.

37 (2) A person licensed under this chapter who has completed the
38 domestic violence and sexual assault awareness education described in
39 subsection (1) of this section as part of his or her licensure, or

1 his or her employer, shall not be civilly or criminally liable for
2 acting in good faith or failing to act on information obtained during
3 the course of employment concerning potential domestic violence or
4 sexual assault.

5 **Sec. 11.** RCW 18.16.110 and 2004 c 51 s 3 are each amended to
6 read as follows:

7 (1) The director shall issue the appropriate license to any
8 applicant who meets the requirements as outlined in this chapter.

9 (2) Except as provided in RCW 18.16.260:

10 (a) Failure to renew a license by its expiration date subjects
11 the holder to a penalty fee and payment of each year's renewal fee,
12 at the current rate; and

13 (b) A person whose license has not been renewed within one year
14 after its expiration date shall have the license canceled and shall
15 be required to submit an application, pay the license fee, meet
16 current licensing requirements, and pass any applicable examination
17 or examinations, in addition to the other requirements of this
18 chapter, before the license may be reinstated.

19 (3) In lieu of the requirements of subsection (2)(a) of this
20 section, a license placed on inactive status under RCW 18.16.290 may
21 be reinstated to good standing upon receipt by the department of: (a)
22 Payment of a renewal fee, without penalty, for a two-year license
23 commencing on the date the license is reinstated; and (b) if the
24 license was on inactive status during any time that the board finds
25 that a health or other requirement applicable to the license has
26 changed, evidence showing that the holder of the license has
27 successfully completed, from a school licensed under RCW 18.16.140,
28 at least the number of curriculum clock hours of instruction that the
29 board deems necessary for a licensee to be brought current with
30 respect to such changes, but in no case may the number of hours
31 required under this subsection exceed four hours per year that the
32 license was on inactive status.

33 (4) Nothing in this section authorizes a person whose license has
34 expired or is on inactive status to engage in a practice prohibited
35 under RCW 18.16.060 until the license is renewed or reinstated.

36 (5) Upon request and payment of an additional fee to be
37 established by rule by the director, the director shall issue a
38 duplicate license to an applicant.

1 (6) All individual licensees must complete a one hour domestic
2 violence and sexual assault awareness training course approved by the
3 department upon renewal or reinstatement of licensure.

4 NEW SECTION. **Sec. 12.** Sections 9 through 11 of this act take
5 effect January 1, 2018.

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