

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5305

Chapter 290, Laws of 1998

(partial veto)

55th Legislature
1998 Regular Session

CONTROLLING DRUGS USED TO FACILITATE RAPE

EFFECTIVE DATE: 7/1/98

Passed by the Senate March 9, 1998
YEAS 47 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 3, 1998
YEAS 98 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved April 2, 1998, with the
exception of sections 6, 7 and 8, which
are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
ENGROSSED SUBSTITUTE SENATE BILL 5305
as passed by the Senate and the House
of Representatives on the dates hereon
set forth.

MIKE O'CONNELL

Secretary

FILED

April 2, 1998 - 2:30 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5305

AS AMENDED BY THE HOUSE

Passed Legislature - 1998 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Fairley, Wojahn, Goings, McAuliffe, Patterson and Kohl)

Read first time 02/27/97.

1 AN ACT Relating to controlling drugs used to facilitate rape;
2 amending RCW 69.50.401, 69.50.406, 9A.44.050, and 9A.44.100; reenacting
3 and amending RCW 9.94A.030, 9.94A.320, and 13.40.357; adding a new
4 section to chapter 9A.44 RCW; creating a new section; prescribing
5 penalties; and providing an effective date.

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

7 **Sec. 1.** RCW 69.50.401 and 1997 c 71 s 2 are each amended to read
8 as follows:

9 (a) Except as authorized by this chapter, it is unlawful for any
10 person to manufacture, deliver, or possess with intent to manufacture
11 or deliver, a controlled substance.

12 (1) Any person who violates this subsection with respect to:

13 (i) a controlled substance classified in Schedule I or II which is
14 a narcotic drug or flunitrazepam classified in Schedule IV, is guilty
15 of a crime and upon conviction may be imprisoned for not more than ten
16 years, or (A) fined not more than twenty-five thousand dollars if the
17 crime involved less than two kilograms of the drug, or both such
18 imprisonment and fine; or (B) if the crime involved two or more
19 kilograms of the drug, then fined not more than one hundred thousand
20 dollars for the first two kilograms and not more than fifty dollars for

1 each gram in excess of two kilograms, or both such imprisonment and
2 fine;

3 (ii) methamphetamine, is guilty of a crime and upon conviction may
4 be imprisoned for not more than ten years, or (A) fined not more than
5 twenty-five thousand dollars if the crime involved less than two
6 kilograms of the drug, or both such imprisonment and fine; or (B) if
7 the crime involved two or more kilograms of the drug, then fined not
8 more than one hundred thousand dollars for the first two kilograms and
9 not more than fifty dollars for each gram in excess of two kilograms,
10 or both such imprisonment and fine. Three thousand dollars of the fine
11 may not be suspended. As collected, the first three thousand dollars
12 of the fine must be deposited with the law enforcement agency having
13 responsibility for cleanup of laboratories, sites, or substances used
14 in the manufacture of the methamphetamine. The fine moneys deposited
15 with that law enforcement agency must be used for such clean-up cost;

16 (iii) any other controlled substance classified in Schedule I, II,
17 or III, is guilty of a crime and upon conviction may be imprisoned for
18 not more than five years, fined not more than ten thousand dollars, or
19 both;

20 (iv) a substance classified in Schedule IV, except flunitrazepam,
21 is guilty of a crime and upon conviction may be imprisoned for not more
22 than five years, fined not more than ten thousand dollars, or both;

23 (v) a substance classified in Schedule V, is guilty of a crime and
24 upon conviction may be imprisoned for not more than five years, fined
25 not more than ten thousand dollars, or both.

26 (b) Except as authorized by this chapter, it is unlawful for any
27 person to create, deliver, or possess a counterfeit substance.

28 (1) Any person who violates this subsection with respect to:

29 (i) a counterfeit substance classified in Schedule I or II which is
30 a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty
31 of a crime and upon conviction may be imprisoned for not more than ten
32 years, fined not more than twenty-five thousand dollars, or both;

33 (ii) a counterfeit substance which is methamphetamine, is guilty of
34 a crime and upon conviction may be imprisoned for not more than ten
35 years, fined not more than twenty-five thousand dollars, or both;

36 (iii) any other counterfeit substance classified in Schedule I, II,
37 or III, is guilty of a crime and upon conviction may be imprisoned for
38 not more than five years, fined not more than ten thousand dollars, or
39 both;

1 (iv) a counterfeit substance classified in Schedule IV, except
2 flunitrazepam, is guilty of a crime and upon conviction may be
3 imprisoned for not more than five years, fined not more than ten
4 thousand dollars, or both;

5 (v) a counterfeit substance classified in Schedule V, is guilty of
6 a crime and upon conviction may be imprisoned for not more than five
7 years, fined not more than ten thousand dollars, or both.

8 (c) It is unlawful, except as authorized in this chapter and
9 chapter 69.41 RCW, for any person to offer, arrange, or negotiate for
10 the sale, gift, delivery, dispensing, distribution, or administration
11 of a controlled substance to any person and then sell, give, deliver,
12 dispense, distribute, or administer to that person any other liquid,
13 substance, or material in lieu of such controlled substance. Any
14 person who violates this subsection is guilty of a crime and upon
15 conviction may be imprisoned for not more than five years, fined not
16 more than ten thousand dollars, or both.

17 (d) It is unlawful for any person to possess a controlled substance
18 unless the substance was obtained directly from, or pursuant to, a
19 valid prescription or order of a practitioner while acting in the
20 course of his or her professional practice, or except as otherwise
21 authorized by this chapter. Any person who violates this subsection is
22 guilty of a crime, and upon conviction may be imprisoned for not more
23 than five years, fined not more than ten thousand dollars, or both,
24 except as provided for in subsection (e) of this section.

25 (e) Except as provided for in subsection (a)(1)(iii) of this
26 section any person found guilty of possession of forty grams or less of
27 marihuana shall be guilty of a misdemeanor.

28 (f) It is unlawful to compensate, threaten, solicit, or in any
29 other manner involve a person under the age of eighteen years in a
30 transaction unlawfully to manufacture, sell, or deliver a controlled
31 substance. A violation of this subsection shall be punished as a class
32 C felony punishable in accordance with RCW 9A.20.021.

33 This section shall not apply to offenses defined and punishable
34 under the provisions of RCW 69.50.410.

35 **Sec. 2.** RCW 69.50.406 and 1996 c 205 s 7 are each amended to read
36 as follows:

37 (a) Any person eighteen years of age or over who violates RCW
38 69.50.401(a) by distributing a controlled substance listed in Schedules

1 I or II which is a narcotic drug or methamphetamine, or flunitrazepam
2 listed in Schedule IV, to a person under eighteen years of age is
3 punishable by the fine authorized by RCW 69.50.401(a)(1) (i) or (ii),
4 by a term of imprisonment of up to twice that authorized by RCW
5 69.50.401(a)(1) (i) or (ii), or by both.

6 (b) Any person eighteen years of age or over who violates RCW
7 69.50.401(a) by distributing any other controlled substance listed in
8 Schedules I, II, III, IV, and V to a person under eighteen years of age
9 who is at least three years his junior is punishable by the fine
10 authorized by RCW 69.50.401(a)(1) (iii), (iv), or (v), by a term of
11 imprisonment up to twice that authorized by RCW 69.50.401(a)(1) (iii),
12 (iv), or (v), or both.

13 **Sec. 3.** RCW 9.94A.030 and 1997 c 365 s 1, 1997, c 340 s 4, 1997 c
14 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each
15 reenacted and amended to read as follows:

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

18 (1) "Collect," or any derivative thereof, "collect and remit," or
19 "collect and deliver," when used with reference to the department of
20 corrections, means that the department is responsible for monitoring
21 and enforcing the offender's sentence with regard to the legal
22 financial obligation, receiving payment thereof from the offender, and,
23 consistent with current law, delivering daily the entire payment to the
24 superior court clerk without depositing it in a departmental account.

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

26 (3) "Community corrections officer" means an employee of the
27 department who is responsible for carrying out specific duties in
28 supervision of sentenced offenders and monitoring of sentence
29 conditions.

30 (4) "Community custody" means that portion of an inmate's sentence
31 of confinement in lieu of earned early release time or imposed pursuant
32 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
33 controls placed on the inmate's movement and activities by the
34 department of corrections.

35 (5) "Community placement" means that period during which the
36 offender is subject to the conditions of community custody and/or
37 postrelease supervision, which begins either upon completion of the
38 term of confinement (postrelease supervision) or at such time as the

1 offender is transferred to community custody in lieu of earned early
2 release. Community placement may consist of entirely community
3 custody, entirely postrelease supervision, or a combination of the two.

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

7 (7) "Community supervision" means a period of time during which a
8 convicted offender is subject to crime-related prohibitions and other
9 sentence conditions imposed by a court pursuant to this chapter or RCW
10 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
11 may include crime-related prohibitions and other conditions imposed
12 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
13 for out-of-state supervision of parolees and probationers, RCW
14 9.95.270, community supervision is the functional equivalent of
15 probation and should be considered the same as probation by other
16 states.

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

19 (9) "Conviction" means an adjudication of guilt pursuant to Titles
20 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
21 acceptance of a plea of guilty.

22 (10) "Court-ordered legal financial obligation" means a sum of
23 money that is ordered by a superior court of the state of Washington
24 for legal financial obligations which may include restitution to the
25 victim, statutorily imposed crime victims' compensation fees as
26 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
27 drug funds, court-appointed attorneys' fees, and costs of defense,
28 fines, and any other financial obligation that is assessed to the
29 offender as a result of a felony conviction. Upon conviction for
30 vehicular assault while under the influence of intoxicating liquor or
31 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
32 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
33 legal financial obligations may also include payment to a public agency
34 of the expense of an emergency response to the incident resulting in
35 the conviction, subject to the provisions in RCW 38.52.430.

36 (11) "Crime-related prohibition" means an order of a court
37 prohibiting conduct that directly relates to the circumstances of the
38 crime for which the offender has been convicted, and shall not be
39 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct. However, affirmative acts necessary to monitor
3 compliance with the order of a court may be required by the department.

4 (12) "Criminal history" means the list of a defendant's prior
5 convictions and juvenile adjudications, whether in this state, in
6 federal court, or elsewhere. The history shall include, where known,
7 for each conviction (a) whether the defendant has been placed on
8 probation and the length and terms thereof; and (b) whether the
9 defendant has been incarcerated and the length of incarceration.

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

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

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

20 (16) "Determinate sentence" means a sentence that states with
21 exactitude the number of actual years, months, or days of total
22 confinement, of partial confinement, of community supervision, the
23 number of actual hours or days of community service work, or dollars or
24 terms of a legal financial obligation. The fact that an offender
25 through "earned early release" can reduce the actual period of
26 confinement shall not affect the classification of the sentence as a
27 determinate sentence.

28 (17) "Disposable earnings" means that part of the earnings of an
29 individual remaining after the deduction from those earnings of any
30 amount required by law to be withheld. For the purposes of this
31 definition, "earnings" means compensation paid or payable for personal
32 services, whether denominated as wages, salary, commission, bonuses, or
33 otherwise, and, notwithstanding any other provision of law making the
34 payments exempt from garnishment, attachment, or other process to
35 satisfy a court-ordered legal financial obligation, specifically
36 includes periodic payments pursuant to pension or retirement programs,
37 or insurance policies of any type, but does not include payments made
38 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
39 or Title 74 RCW.

1 (18) "Drug offense" means:

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

5 (b) Any offense defined as a felony under federal law that relates
6 to the possession, manufacture, distribution, or transportation of a
7 controlled substance; or

8 (c) Any out-of-state conviction for an offense that under the laws
9 of this state would be a felony classified as a drug offense under (a)
10 of this subsection.

11 (19) "Escape" means:

12 (a) Escape in the first degree (RCW 9A.76.110), escape in the
13 second degree (RCW 9A.76.120), willful failure to return from furlough
14 (RCW 72.66.060), willful failure to return from work release (RCW
15 72.65.070), or willful failure to be available for supervision by the
16 department while in community custody (RCW 72.09.310); or

17 (b) Any federal or out-of-state conviction for an offense that
18 under the laws of this state would be a felony classified as an escape
19 under (a) of this subsection.

20 (20) "Felony traffic offense" means:

21 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
22 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
23 and-run injury-accident (RCW 46.52.020(4)); or

24 (b) Any federal or out-of-state conviction for an offense that
25 under the laws of this state would be a felony classified as a felony
26 traffic offense under (a) of this subsection.

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

29 (22) "First-time offender" means any person who is convicted of a
30 felony (a) not classified as a violent offense or a sex offense under
31 this chapter, or (b) that is not the manufacture, delivery, or
32 possession with intent to manufacture or deliver a controlled substance
33 classified in Schedule I or II that is a narcotic drug or flunitrazepam
34 classified in Schedule IV, nor the manufacture, delivery, or possession
35 with intent to deliver methamphetamine, its salts, isomers, and salts
36 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
37 profit of any controlled substance or counterfeit substance classified
38 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
39 marihuana, who previously has never been convicted of a felony in this

1 state, federal court, or another state, and who has never participated
2 in a program of deferred prosecution for a felony offense.

3 (23) "Most serious offense" means any of the following felonies or
4 a felony attempt to commit any of the following felonies, as now
5 existing or hereafter amended:

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

9 (b) Assault in the second degree;

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Promoting prostitution in the first degree;

21 (n) Rape in the third degree;

22 (o) Robbery in the second degree;

23 (p) Sexual exploitation;

24 (q) Vehicular assault;

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

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

31 (t) Any other felony with a deadly weapon verdict under RCW
32 9.94A.125;

33 (u) Any felony offense in effect at any time prior to December 2,
34 1993, that is comparable to a most serious offense under this
35 subsection, or any federal or out-of-state conviction for an offense
36 that under the laws of this state would be a felony classified as a
37 most serious offense under this subsection;

38 (v)(i) A prior conviction for indecent liberties under RCW
39 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.

1 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
2 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
3 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

4 (ii) A prior conviction for indecent liberties under RCW
5 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
6 if: (A) The crime was committed against a child under the age of
7 fourteen; or (B) the relationship between the victim and perpetrator is
8 included in the definition of indecent liberties under RCW
9 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
10 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
11 through July 27, 1997.

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

14 (25) "Offender" means a person who has committed a felony
15 established by state law and is eighteen years of age or older or is
16 less than eighteen years of age but whose case is under superior court
17 jurisdiction under RCW 13.04.030 or has been transferred by the
18 appropriate juvenile court to a criminal court pursuant to RCW
19 13.40.110. Throughout this chapter, the terms "offender" and
20 "defendant" are used interchangeably.

21 (26) "Partial confinement" means confinement for no more than one
22 year in a facility or institution operated or utilized under contract
23 by the state or any other unit of government, or, if home detention or
24 work crew has been ordered by the court, in an approved residence, for
25 a substantial portion of each day with the balance of the day spent in
26 the community. Partial confinement includes work release, home
27 detention, work crew, and a combination of work crew and home detention
28 as defined in this section.

29 (27) "Persistent offender" is an offender who:

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

32 (ii) Has, before the commission of the offense under (a) of this
33 subsection, been convicted as an offender on at least two separate
34 occasions, whether in this state or elsewhere, of felonies that under
35 the laws of this state would be considered most serious offenses and
36 would be included in the offender score under RCW 9.94A.360; provided
37 that of the two or more previous convictions, at least one conviction
38 must have occurred before the commission of any of the other most
39 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
2 of a child in the first degree, child molestation in the first degree,
3 rape in the second degree, rape of a child in the second degree, or
4 indecent liberties by forcible compulsion; (B) murder in the first
5 degree, murder in the second degree, homicide by abuse, kidnapping in
6 the first degree, kidnapping in the second degree, assault in the first
7 degree, assault in the second degree, assault of a child in the first
8 degree, or burglary in the first degree, with a finding of sexual
9 motivation; or (C) an attempt to commit any crime listed in this
10 subsection (27)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this
12 subsection, been convicted as an offender on at least one occasion,
13 whether in this state or elsewhere, of an offense listed in (b)(i) of
14 this subsection. A conviction for rape of a child in the first degree
15 constitutes a conviction under subsection (27)(b)(i) only when the
16 offender was sixteen years of age or older when the offender committed
17 the offense. A conviction for rape of a child in the second degree
18 constitutes a conviction under subsection (27)(b)(i) only when the
19 offender was eighteen years of age or older when the offender committed
20 the offense.

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

23 (29) "Restitution" means the requirement that the offender pay a
24 specific sum of money over a specific period of time to the court as
25 payment of damages. The sum may include both public and private costs.
26 The imposition of a restitution order does not preclude civil redress.

27 (30) "Serious traffic offense" means:

28 (a) Driving while under the influence of intoxicating liquor or any
29 drug (RCW 46.61.502), actual physical control while under the influence
30 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
31 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
32 or

33 (b) Any federal, out-of-state, county, or municipal conviction for
34 an offense that under the laws of this state would be classified as a
35 serious traffic offense under (a) of this subsection.

36 (31) "Serious violent offense" is a subcategory of violent offense
37 and means:

38 (a) Murder in the first degree, homicide by abuse, murder in the
39 second degree, manslaughter in the first degree, assault in the first

1 degree, kidnapping in the first degree, or rape in the first degree,
2 assault of a child in the first degree, or an attempt, criminal
3 solicitation, or criminal conspiracy to commit one of these felonies;
4 or

5 (b) Any federal or out-of-state conviction for an offense that
6 under the laws of this state would be a felony classified as a serious
7 violent offense under (a) of this subsection.

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

10 (33) "Sex offense" means:

11 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
12 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
13 criminal attempt, criminal solicitation, or criminal conspiracy to
14 commit such crimes;

15 (b) A felony with a finding of sexual motivation under RCW
16 9.94A.127 or 13.40.135; or

17 (c) Any federal or out-of-state conviction for an offense that
18 under the laws of this state would be a felony classified as a sex
19 offense under (a) of this subsection.

20 (34) "Sexual motivation" means that one of the purposes for which
21 the defendant committed the crime was for the purpose of his or her
22 sexual gratification.

23 (35) "Total confinement" means confinement inside the physical
24 boundaries of a facility or institution operated or utilized under
25 contract by the state or any other unit of government for twenty-four
26 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

33 (37) "Victim" means any person who has sustained emotional,
34 psychological, physical, or financial injury to person or property as
35 a direct result of the crime charged.

36 (38) "Violent offense" means:

37 (a) Any of the following felonies, as now existing or hereafter
38 amended: Any felony defined under any law as a class A felony or an
39 attempt to commit a class A felony, criminal solicitation of or

1 criminal conspiracy to commit a class A felony, manslaughter in the
2 first degree, manslaughter in the second degree, indecent liberties if
3 committed by forcible compulsion, kidnapping in the second degree,
4 arson in the second degree, assault in the second degree, assault of a
5 child in the second degree, extortion in the first degree, robbery in
6 the second degree, drive-by shooting, vehicular assault, and vehicular
7 homicide, when proximately caused by the driving of any vehicle by any
8 person while under the influence of intoxicating liquor or any drug as
9 defined by RCW 46.61.502, or by the operation of any vehicle in a
10 reckless manner;

11 (b) Any conviction for a felony offense in effect at any time prior
12 to July 1, 1976, that is comparable to a felony classified as a violent
13 offense in (a) of this subsection; and

14 (c) Any federal or out-of-state conviction for an offense that
15 under the laws of this state would be a felony classified as a violent
16 offense under (a) or (b) of this subsection.

17 (39) "Work crew" means a program of partial confinement consisting
18 of civic improvement tasks for the benefit of the community of not less
19 than thirty-five hours per week that complies with RCW 9.94A.135. The
20 civic improvement tasks shall have minimal negative impact on existing
21 private industries or the labor force in the county where the service
22 or labor is performed. The civic improvement tasks shall not affect
23 employment opportunities for people with developmental disabilities
24 contracted through sheltered workshops as defined in RCW 82.04.385.
25 Only those offenders sentenced to a facility operated or utilized under
26 contract by a county or the state are eligible to participate on a work
27 crew. Offenders sentenced for a sex offense as defined in subsection
28 (33) of this section are not eligible for the work crew program.

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

35 (41) "Work release" means a program of partial confinement
36 available to offenders who are employed or engaged as a student in a
37 regular course of study at school. Participation in work release shall
38 be conditioned upon the offender attending work or school at regularly
39 defined hours and abiding by the rules of the work release facility.

1 (42) "Home detention" means a program of partial confinement
2 available to offenders wherein the offender is confined in a private
3 residence subject to electronic surveillance.

4 **Sec. 4.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c
5 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each
6 reenacted and amended to read as follows:

7 TABLE 2

8 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

9	XV	Aggravated Murder 1 (RCW 10.95.020)
10	XIV	Murder 1 (RCW 9A.32.030)
11		Homicide by abuse (RCW 9A.32.055)
12		Malicious explosion 1 (RCW 70.74.280(1))
13	XIII	Murder 2 (RCW 9A.32.050)
14		Malicious explosion 2 (RCW 70.74.280(2))
15		Malicious placement of an explosive 1 (RCW
16		70.74.270(1))
17	XII	Assault 1 (RCW 9A.36.011)
18		Assault of a Child 1 (RCW 9A.36.120)
19		Rape 1 (RCW 9A.44.040)
20		Rape of a Child 1 (RCW 9A.44.073)
21		Malicious placement of an imitation device
22		1 (RCW 70.74.272(1)(a))
23	XI	Rape 2 (RCW 9A.44.050)
24		Rape of a Child 2 (RCW 9A.44.076)
25		Manslaughter 1 (RCW 9A.32.060)
26	X	Kidnapping 1 (RCW 9A.40.020)
27		Child Molestation 1 (RCW 9A.44.083)
28		Malicious explosion 3 (RCW 70.74.280(3))
29		Over 18 and deliver heroin ((or)) , <u>a</u>
30		narcotic from Schedule I or II, <u>or</u>
31		<u>flunitrazepam from Schedule IV to</u>
32		someone under 18 (RCW 69.50.406)
33		Leading Organized Crime (RCW
34		9A.82.060(1)(a))

1 Indecent Liberties (with forcible
2 compulsion) (RCW 9A.44.100(1)(a))

3 IX Assault of a Child 2 (RCW 9A.36.130)
4 Robbery 1 (RCW 9A.56.200)
5 Explosive devices prohibited (RCW
6 70.74.180)
7 Malicious placement of an explosive 2 (RCW
8 70.74.270(2))
9 Over 18 and deliver narcotic from Schedule
10 III, IV, or V or a nonnarcotic, except
11 flunitrazepam, from Schedule I-V to
12 someone under 18 and 3 years junior
13 (RCW 69.50.406)
14 Controlled Substance Homicide (RCW
15 69.50.415)
16 Sexual Exploitation (RCW 9.68A.040)
17 Inciting Criminal Profiteering (RCW
18 9A.82.060(1)(b))
19 Vehicular Homicide, by being under the
20 influence of intoxicating liquor or
21 any drug (RCW 46.61.520)

22 VIII Arson 1 (RCW 9A.48.020)
23 Promoting Prostitution 1 (RCW 9A.88.070)
24 Selling for profit (controlled or
25 counterfeit) any controlled substance
26 (RCW 69.50.410)
27 Manufacture, deliver, or possess with
28 intent to deliver heroin or cocaine
29 (RCW 69.50.401(a)(1)(i))
30 Manufacture, deliver, or possess with
31 intent to deliver methamphetamine (RCW
32 69.50.401(a)(1)(ii))
33 Possession of ephedrine or pseudoephedrine
34 with intent to manufacture
35 methamphetamine (RCW 69.50.440)
36 Vehicular Homicide, by the operation of any
37 vehicle in a reckless manner (RCW
38 46.61.520)

1 Manslaughter 2 (RCW 9A.32.070)

2 VII Burglary 1 (RCW 9A.52.020)

3 Vehicular Homicide, by disregard for the

4 safety of others (RCW 46.61.520)

5 Introducing Contraband 1 (RCW 9A.76.140)

6 Indecent Liberties (without forcible

7 compulsion) (RCW 9A.44.100(1) (b) and

8 (c))

9 Child Molestation 2 (RCW 9A.44.086)

10 Dealing in depictions of minor engaged in

11 sexually explicit conduct (RCW

12 9.68A.050)

13 Sending, bringing into state depictions of

14 minor engaged in sexually explicit

15 conduct (RCW 9.68A.060)

16 Involving a minor in drug dealing (RCW

17 69.50.401(f))

18 Drive-by Shooting (RCW 9A.36.045)

19 Unlawful Possession of a Firearm in the

20 first degree (RCW 9.41.040(1)(a))

21 Malicious placement of an explosive 3 (RCW

22 70.74.270(3))

23 VI Bribery (RCW 9A.68.010)

24 Rape of a Child 3 (RCW 9A.44.079)

25 Intimidating a Juror/Witness (RCW

26 9A.72.110, 9A.72.130)

27 Malicious placement of an imitation device

28 2 (RCW 70.74.272(1)(b))

29 Incest 1 (RCW 9A.64.020(1))

30 Manufacture, deliver, or possess with

31 intent to deliver narcotics from

32 Schedule I or II (except heroin or

33 cocaine) or flunitrazepam from

34 Schedule IV (RCW 69.50.401(a)(1)(i))

35 Intimidating a Judge (RCW 9A.72.160)

36 Bail Jumping with Murder 1 (RCW

37 9A.76.170(2)(a))

38 Theft of a Firearm (RCW 9A.56.300)

1 V Persistent prison misbehavior (RCW
2 9.94.070)
3 Criminal Mistreatment 1 (RCW 9A.42.020)
4 Abandonment of dependent person 1 (RCW
5 9A.42.060)
6 Rape 3 (RCW 9A.44.060)
7 Sexual Misconduct with a Minor 1 (RCW
8 9A.44.093)
9 Child Molestation 3 (RCW 9A.44.089)
10 Kidnapping 2 (RCW 9A.40.030)
11 Extortion 1 (RCW 9A.56.120)
12 Incest 2 (RCW 9A.64.020(2))
13 Perjury 1 (RCW 9A.72.020)
14 Extortionate Extension of Credit (RCW
15 9A.82.020)
16 Advancing money or property for
17 extortionate extension of credit (RCW
18 9A.82.030)
19 Extortionate Means to Collect Extensions of
20 Credit (RCW 9A.82.040)
21 Rendering Criminal Assistance 1 (RCW
22 9A.76.070)
23 Bail Jumping with class A Felony (RCW
24 9A.76.170(2)(b))
25 Sexually Violating Human Remains (RCW
26 9A.44.105)
27 Delivery of imitation controlled substance
28 by person eighteen or over to person
29 under eighteen (RCW 69.52.030(2))
30 Possession of a Stolen Firearm (RCW
31 9A.56.310)

32 IV Residential Burglary (RCW 9A.52.025)
33 Theft of Livestock 1 (RCW 9A.56.080)
34 Robbery 2 (RCW 9A.56.210)
35 Assault 2 (RCW 9A.36.021)
36 Escape 1 (RCW 9A.76.110)
37 Arson 2 (RCW 9A.48.030)
38 Commercial Bribery (RCW 9A.68.060)

1 Bribing a Witness/Bribe Received by Witness
2 (RCW 9A.72.090, 9A.72.100)
3 Malicious Harassment (RCW 9A.36.080)
4 Threats to Bomb (RCW 9.61.160)
5 Willful Failure to Return from Furlough
6 (RCW 72.66.060)
7 Hit and Run--Injury Accident (RCW
8 46.52.020(4))
9 Hit and Run with Vessel--Injury Accident
10 (RCW 88.12.155(3))
11 Vehicular Assault (RCW 46.61.522)
12 Manufacture, deliver, or possess with
13 intent to deliver narcotics from
14 Schedule III, IV, or V or nonnarcotics
15 from Schedule I-V (except marijuana
16 (~~(or)~~), methamphetamines, or
17 flunitrazepam) (RCW 69.50.401 (a)(1)
18 (iii) through (v))
19 Influencing Outcome of Sporting Event (RCW
20 9A.82.070)
21 Use of Proceeds of Criminal Profiteering
22 (RCW 9A.82.080 (1) and (2))
23 Knowingly Trafficking in Stolen Property
24 (RCW 9A.82.050(2))

25 III Criminal Gang Intimidation (RCW 9A.46.120)
26 Criminal Mistreatment 2 (RCW 9A.42.030)
27 Abandonment of dependent person 2 (RCW
28 9A.42.070)
29 Extortion 2 (RCW 9A.56.130)
30 Unlawful Imprisonment (RCW 9A.40.040)
31 Assault 3 (RCW 9A.36.031)
32 Assault of a Child 3 (RCW 9A.36.140)
33 Custodial Assault (RCW 9A.36.100)
34 Unlawful possession of firearm in the
35 second degree (RCW 9.41.040(1)(b))
36 Harassment (RCW 9A.46.020)
37 Promoting Prostitution 2 (RCW 9A.88.080)
38 Willful Failure to Return from Work Release
39 (RCW 72.65.070)

Burglary 2 (RCW 9A.52.030)
Introducing Contraband 2 (RCW 9A.76.150)
Communication with a Minor for Immoral
Purposes (RCW 9.68A.090)
Patronizing a Juvenile Prostitute (RCW
9.68A.100)
Escape 2 (RCW 9A.76.120)
Perjury 2 (RCW 9A.72.030)
Bail Jumping with class B or C Felony (RCW
9A.76.170(2)(c))
Intimidating a Public Servant (RCW
9A.76.180)
Tampering with a Witness (RCW 9A.72.120)
Manufacture, deliver, or possess with
intent to deliver marijuana (RCW
69.50.401(a)(1)(iii))
Delivery of a material in lieu of a
controlled substance (RCW
69.50.401(c))
Manufacture, distribute, or possess with
intent to distribute an imitation
controlled substance (RCW
69.52.030(1))
Recklessly Trafficking in Stolen Property
(RCW 9A.82.050(1))
Theft of livestock 2 (RCW 9A.56.080)
Securities Act violation (RCW 21.20.400)
II Unlawful Practice of Law (RCW 2.48.180)
Malicious Mischief 1 (RCW 9A.48.070)
Possession of Stolen Property 1 (RCW
9A.56.150)
Theft 1 (RCW 9A.56.030)
Class B Felony Theft of Rental, Leased, or
Lease-purchased Property (RCW
9A.56.096(4))
Trafficking in Insurance Claims (RCW
48.30A.015)
Unlicensed Practice of a Profession or
Business (RCW 18.130.190(7))

1 Health Care False Claims (RCW 48.80.030)
2 Possession of controlled substance that is
3 either heroin or narcotics from
4 Schedule I or II or flunitrazepam from
5 Schedule IV (RCW 69.50.401(d))
6 Possession of phencyclidine (PCP) (RCW
7 69.50.401(d))
8 Create, deliver, or possess a counterfeit
9 controlled substance (RCW
10 69.50.401(b))
11 Computer Trespass 1 (RCW 9A.52.110)
12 Escape from Community Custody (RCW
13 72.09.310)
14 I Theft 2 (RCW 9A.56.040)
15 Class C Felony Theft of Rental, Leased, or
16 Lease-purchased Property (RCW
17 9A.56.096(4))
18 Possession of Stolen Property 2 (RCW
19 9A.56.160)
20 Forgery (RCW 9A.60.020)
21 Taking Motor Vehicle Without Permission
22 (RCW 9A.56.070)
23 Vehicle Prowl 1 (RCW 9A.52.095)
24 Attempting to Elude a Pursuing Police
25 Vehicle (RCW 46.61.024)
26 Malicious Mischief 2 (RCW 9A.48.080)
27 Reckless Burning 1 (RCW 9A.48.040)
28 Unlawful Issuance of Checks or Drafts (RCW
29 9A.56.060)
30 Unlawful Use of Food Stamps (RCW 9.91.140
31 (2) and (3))
32 False Verification for Welfare (RCW
33 74.08.055)
34 Forged Prescription (RCW 69.41.020)
35 Forged Prescription for a Controlled
36 Substance (RCW 69.50.403)
37 Possess Controlled Substance that is a
38 Narcotic from Schedule III, IV, or V
39 or Non-narcotic from Schedule I-V

1 (except phencyclidine or
2 flunitrazepam) (RCW 69.50.401(d))

3 **Sec. 5.** RCW 13.40.0357 and 1997 c 338 s 12 and 1997 c 66 s 6 are
4 each reenacted and amended to read as follows:

5 **DESCRIPTION AND OFFENSE CATEGORY**

JUVENILE	JUVENILE DISPOSITION	
DISPOSITION	CATEGORY FOR ATTEMPT,	
OFFENSE	BAILJUMP, CONSPIRACY,	
CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION
.....		

11 **Arson and Malicious Mischief**

A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (<\$50 is	
	E class) (9A.48.090)	E
E	Tampering with Fire Alarm	
	Apparatus (9.40.100)	E
A	Possession of Incendiary Device	
	(9.40.120)	B+

24 **Assault and Other Crimes**

25 **Involving Physical Harm**

A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting	
	(9A.36.045)	C+
D+	Reckless Endangerment	
	(9A.36.050)	E
C+	Promoting Suicide Attempt	
	(9A.36.060)	D+
D+	Coercion (9A.36.070)	E

1	C+	Custodial Assault (9A.36.100)	D+
2		Burglary and Trespass	
3	B+	Burglary 1 (9A.52.020)	C+
4	B	Residential Burglary	
5		(9A.52.025)	C
6	B	Burglary 2 (9A.52.030)	C
7	D	Burglary Tools (Possession of)	
8		(9A.52.060)	E
9	D	Criminal Trespass 1 (9A.52.070)	E
10	E	Criminal Trespass 2 (9A.52.080)	E
11	C	Vehicle Prowling 1 (9A.52.095)	D
12	D	Vehicle Prowling 2 (9A.52.100)	E
13		Drugs	
14	E	Possession/Consumption of Alcohol	
15		(66.44.270)	E
16	C	Illegally Obtaining Legend Drug	
17		(69.41.020)	D
18	C+	Sale, Delivery, Possession of Legend	
19		Drug with Intent to Sell	
20		(69.41.030)	D+
21	E	Possession of Legend Drug	
22		(69.41.030)	E
23	B+	Violation of Uniform Controlled	
24		Substances Act - Narcotic ((or)),	
25		<u>Methamphetamine, or Flunitrazepam</u>	
26		Sale (69.50.401(a)(1)(i) or (ii))	B+
27	C	Violation of Uniform Controlled	
28		Substances Act - Nonnarcotic Sale	
29		(69.50.401(a)(1)(iii))	C
30	E	Possession of Marihuana <40 grams	
31		(69.50.401(e))	E
32	C	Fraudulently Obtaining Controlled	
33		Substance (69.50.403)	C
34	C+	Sale of Controlled Substance	
35		for Profit (69.50.410)	C+
36	E	Unlawful Inhalation (9.47A.020)	E

1	B	Violation of Uniform Controlled	
2		Substances Act - Narcotic ((or)),	
3		<u>Methamphetamine, or Flunitrazepam</u>	
4		Counterfeit Substances	
5		(69.50.401(b)(1)(i) or (ii))	B
6	C	Violation of Uniform Controlled	
7		Substances Act - Nonnarcotic	
8		Counterfeit Substances	
9		(69.50.401(b)(1) (iii), (iv), (v))	C
10	C	Violation of Uniform Controlled	
11		Substances Act - Possession of a	
12		Controlled Substance	
13		(69.50.401(d))	C
14	C	Violation of Uniform Controlled	
15		Substances Act - Possession of a	
16		Controlled Substance	
17		(69.50.401(c))	C
18		Firearms and Weapons	
19	B	Theft of Firearm (9A.56.300)	C
20	B	Possession of Stolen Firearm	
21		(9A.56.310)	C
22	E	Carrying Loaded Pistol Without	
23		Permit (9.41.050)	E
24	C	Possession of Firearms by Minor (<18)	
25		(9.41.040(1) (b) (iii))	C
26	D+	Possession of Dangerous Weapon	
27		(9.41.250)	E
28	D	Intimidating Another Person by use	
29		of Weapon (9.41.270)	E
30		Homicide	
31	A+	Murder 1 (9A.32.030)	A
32	A+	Murder 2 (9A.32.050)	B+
33	B+	Manslaughter 1 (9A.32.060)	C+
34	C+	Manslaughter 2 (9A.32.070)	D+
35	B+	Vehicular Homicide (46.61.520)	C+
36		Kidnapping	
37	A	Kidnap 1 (9A.40.020)	B+
38	B+	Kidnap 2 (9A.40.030)	C+

1	C+	Unlawful Imprisonment	
2		(9A.40.040)	D+
3		Obstructing Governmental Operation	
4	D	Obstructing a Law Enforcement	
5		Officer (9A.76.020)	E
6	E	Resisting Arrest (9A.76.040)	E
7	B	Introducing Contraband 1	
8		(9A.76.140)	C
9	C	Introducing Contraband 2	
10		(9A.76.150)	D
11	E	Introducing Contraband 3	
12		(9A.76.160)	E
13	B+	Intimidating a Public Servant	
14		(9A.76.180)	C+
15	B+	Intimidating a Witness	
16		(9A.72.110)	C+
17		Public Disturbance	
18	C+	Riot with Weapon (9A.84.010)	D+
19	D+	Riot Without Weapon	
20		(9A.84.010)	E
21	E	Failure to Disperse (9A.84.020)	E
22	E	Disorderly Conduct (9A.84.030)	E
23		Sex Crimes	
24	A	Rape 1 (9A.44.040)	B+
25	A-	Rape 2 (9A.44.050)	B+
26	C+	Rape 3 (9A.44.060)	D+
27	A-	Rape of a Child 1 (9A.44.073)	B+
28	B+	Rape of a Child 2 (9A.44.076)	C+
29	B	Incest 1 (9A.64.020(1))	C
30	C	Incest 2 (9A.64.020(2))	D
31	D+	Indecent Exposure	
32		(Victim <14) (9A.88.010)	E
33	E	Indecent Exposure	
34		(Victim 14 or over) (9A.88.010)	E
35	B+	Promoting Prostitution 1	
36		(9A.88.070)	C+

1	C+	Promoting Prostitution 2	
2		(9A.88.080)	D+
3	E	O & A (Prostitution) (9A.88.030)	E
4	B+	Indecent Liberties (9A.44.100)	C+
5	A-	Child Molestation 1 (9A.44.083)	B+
6	B	Child Molestation 2 (9A.44.086)	C+
7		Theft, Robbery, Extortion, and Forgery	
8	B	Theft 1 (9A.56.030)	C
9	C	Theft 2 (9A.56.040)	D
10	D	Theft 3 (9A.56.050)	E
11	B	Theft of Livestock (9A.56.080)	C
12	C	Forgery (9A.60.020)	D
13	A	Robbery 1 (9A.56.200)	B+
14	B+	Robbery 2 (9A.56.210)	C+
15	B+	Extortion 1 (9A.56.120)	C+
16	C+	Extortion 2 (9A.56.130)	D+
17	B	Possession of Stolen Property 1	
18		(9A.56.150)	C
19	C	Possession of Stolen Property 2	
20		(9A.56.160)	D
21	D	Possession of Stolen Property 3	
22		(9A.56.170)	E
23	C	Taking Motor Vehicle Without	
24		Owner's Permission (9A.56.070)	D
25		Motor Vehicle Related Crimes	
26	E	Driving Without a License	
27		(46.20.005)	E
28	C	Hit and Run - Injury	
29		(46.52.020(4))	D
30	D	Hit and Run-Attended	
31		(46.52.020(5))	E
32	E	Hit and Run-Unattended	
33		(46.52.010)	E
34	C	Vehicular Assault (46.61.522)	D
35	C	Attempting to Elude Pursuing	
36		Police Vehicle (46.61.024)	D
37	E	Reckless Driving (46.61.500)	E

1	D	Driving While Under the Influence	
2		(46.61.502 and 46.61.504)	E
3		Other	
4	B	Bomb Threat (9.61.160)	C
5	C	Escape 1 (9A.76.110)	C
6	C	Escape 2 (9A.76.120)	C
7	D	Escape 3 (9A.76.130)	E
8	E	Obscene, Harassing, Etc.,	
9		Phone Calls (9.61.230)	E
10	A	Other Offense Equivalent to an	
11		Adult Class A Felony	B+
12	B	Other Offense Equivalent to an	
13		Adult Class B Felony	C
14	C	Other Offense Equivalent to an	
15		Adult Class C Felony	D
16	D	Other Offense Equivalent to an	
17		Adult Gross Misdemeanor	E
18	E	Other Offense Equivalent to an	
19		Adult Misdemeanor	E
20	V	Violation of Order of Restitution,	
21		Community Supervision, or	
22		Confinement (13.40.200)	V

23 Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
24 and the standard range is established as follows:

25 1st escape or attempted escape during 12-month period - 4 weeks
26 confinement

27 2nd escape or attempted escape during 12-month period - 8 weeks
28 confinement

29 3rd and subsequent escape or attempted escape during 12-month
30 period - 12 weeks confinement

31 If the court finds that a respondent has violated terms of an order,
32 it may impose a penalty of up to 30 days of confinement.

33 JUVENILE SENTENCING STANDARDS

34 This schedule must be used for juvenile offenders. The court may
35 select sentencing option A, B, or C.

OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE

Current Offense Category	A+	180 WEEKS TO AGE 21 YEARS			
	A	103 WEEKS TO 129 WEEKS			
	A-	15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	52-65 WEEKS 	80-100 WEEKS 	103-129 WEEKS
	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS
	B	LOCAL SANCTIONS (LS)	 15-36 WEEKS	52-65 WEEKS	 WEEKS
	C+	LS	 15-36 WEEKS	 15-36 WEEKS	 15-36 WEEKS
	C	LS	Local Sanctions: 0 to 30 Days	 	
	D+	LS	0 to 12 Months Community Supervision 0 to 150 Hours Community Service	 	
	D	LS	\$0 to \$500 Fine	 	
	E	LS		 	
PRIOR ADJUDICATIONS					
0 1 2 3 4 or more					

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation,

1 misdemeanor, and gross misdemeanor adjudication shall count as 1/4
2 point. Fractional points shall be rounded down.

3 (3) The standard range disposition for each offense is determined
4 by the intersection of the column defined by the prior adjudications
5 and the row defined by the current offense category.

6 (4) RCW 13.40.180 applies if the offender is being sentenced for
7 more than one offense.

8 (5) A current offense that is a violation is equivalent to an
9 offense category of E. However, a disposition for a violation shall
10 not include confinement.

11 OR

12 **OPTION B**

13 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

14 If the juvenile offender is subject to a standard range
15 disposition of local sanctions or 15 to 36 weeks of confinement and has
16 not committed an A- or B+ offense, the court may impose a disposition
17 under RCW 13.40.160(5) and 13.40.165.

18 OR

19 **OPTION C**

20 **MANIFEST INJUSTICE**

21 If the court determines that a disposition under option A or B would
22 effectuate a manifest injustice, the court shall impose a disposition
23 outside the standard range under RCW 13.40.160(2).

24 **Sec. 6. RCW 9A.44.050 and 1997 c 392 s 514 are each amended to*
25 *read as follows:*

26 *(1) A person is guilty of rape in the second degree when, under*
27 *circumstances not constituting rape in the first degree, the person*
28 *engages in sexual intercourse with another person:*

29 *(a) By forcible compulsion;*

30 *(b) When the victim is incapable of consent by reason of being*
31 *physically helpless or mentally incapacitated, including physical*
32 *helplessness or mental incapacity induced by any controlled substance*
33 *and the perpetrator knows of the helplessness or incapacity;*

1 (c) When the victim is developmentally disabled and the
2 perpetrator is a person who is not married to the victim and who has
3 supervisory authority over the victim;

4 (d) When the perpetrator is a health care provider, the victim is
5 a client or patient, and the sexual intercourse occurs during a
6 treatment session, consultation, interview, or examination. It is an
7 affirmative defense that the defendant must prove by a preponderance of
8 the evidence that the client or patient consented to the sexual
9 intercourse with the knowledge that the sexual intercourse was not for
10 the purpose of treatment;

11 (e) When the victim is a resident of a facility for mentally
12 disordered or chemically dependent persons and the perpetrator is a
13 person who is not married to the victim and has supervisory authority
14 over the victim; or

15 (f) When the victim is a frail elder or vulnerable adult and the
16 perpetrator is a person who is not married to the victim and who has a
17 significant relationship with the victim.

18 (2) Rape in the second degree is a class A felony.

19 *Sec. 6 was vetoed. See message at end of chapter.

20 *Sec. 7. RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
21 read as follows:

22 (1) A person is guilty of indecent liberties when he knowingly
23 causes another person who is not his spouse to have sexual contact with
24 him or another:

25 (a) By forcible compulsion;

26 (b) When the other person is incapable of consent by reason of
27 being mentally defective, mentally incapacitated, or physically
28 helpless, including mental incapacity or physical helplessness induced
29 by any controlled substance and the perpetrator knows of the defect,
30 incapacity, or helplessness;

31 (c) When the victim is developmentally disabled and the
32 perpetrator is a person who is not married to the victim and who has
33 supervisory authority over the victim;

34 (d) When the perpetrator is a health care provider, the victim is
35 a client or patient, and the sexual contact occurs during a treatment
36 session, consultation, interview, or examination. It is an affirmative
37 defense that the defendant must prove by a preponderance of the
38 evidence that the client or patient consented to the sexual contact

1 with the knowledge that the sexual contact was not for the purpose of
2 treatment;

3 (e) When the victim is a resident of a facility for mentally
4 disordered or chemically dependent persons and the perpetrator is a
5 person who is not married to the victim and has supervisory authority
6 over the victim; or

7 (f) When the victim is a frail elder or vulnerable adult and the
8 perpetrator is a person who is not married to the victim and who has a
9 significant relationship with the victim.

10 (2) Indecent liberties is a class B felony.

11 *Sec. 7 was vetoed. See message at end of chapter.

12 *NEW SECTION. Sec. 8. A new section is added to chapter 9A.44
13 RCW to read as follows:

14 Rape crisis centers, law enforcement, and hospital emergency rooms
15 shall provide to all personnel investigating cases of sexual assault
16 training on how to recognize the presence of sedating substances, how
17 to test for the substances, and the appropriate chain of custody
18 procedures to follow so that the evidence may be used in a court of
19 law. The training required by this section may be incorporated into
20 existing training programs.

21 *Sec. 8 was vetoed. See message at end of chapter.

22 NEW SECTION. Sec. 9. This act applies to crimes committed on or
23 after July 1, 1998.

24 NEW SECTION. Sec. 10. This act takes effect July 1, 1998.

25 NEW SECTION. Sec. 11. If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

Passed the Senate March 9, 1998.

Passed the House March 3, 1998.

Approved by the Governor April 2, 1998, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 6, 7,
3 and 8, Engrossed Substitute Senate Bill No. 5305 entitled:

4 "AN ACT Relating to controlling drugs used to facilitate rape;"

1 I support the main goal of ESSB 5305, to treat flunitrazepam, the
2 so-called "date rape" drug, with the seriousness it deserves. However,
3 prosecutors and legislators who sponsored and worked for passage of
4 this bill have asked me to veto sections 6 and 7. Those sections would
5 add confusing language to the definitions of second-degree rape and
6 indecent liberties, two very serious sex offenses. The language is not
7 necessary to convict people who use drugs to make victims helpless, and
8 it could make conviction more difficult for other crimes by requiring
9 proof that the accused person knew of the victim's helpless condition.

10 Section 8 of ESSB 5305 would require rape crisis centers, law
11 enforcement, and hospital emergency rooms to train personnel who
12 investigate sexual assault cases on how to recognize and test for
13 sedatives like flunitrazepam, and how to preserve evidence for use in
14 court. The intent of that section is commendable, but it is vague and
15 lacks any mechanism for implementation. For example, it does not
16 adequately specify who is required to train whom. It is also misplaced
17 in the criminal code. I urge the interested parties to work together
18 to develop effective, workable legislation on this subject for the next
19 session.

20 For these reasons, I have vetoed sections 6, 7, and 8 of Engrossed
21 Substitute Senate Bill No. 5305.

22 With the exception of sections 6, 7, and 8, I am approving
23 Engrossed Substitute Senate Bill No. 5305."