



WASHINGTON STATE SENTENCING GUIDELINES COMMISSION ADULT SENTENCING MANUAL 2010 SUPPLEMENT

Dear Criminal Justice Practitioners,

These materials are created to supplement the 2008 Adult Sentencing Manual.*

The Sentencing Guidelines Commission is operating within a very limited budget due to the state revenue crisis, but we wanted to give you an update of 2010 legislation affecting sentencing.

The materials in the supplement include:

1. Table 6: Sentencing Statutes Affected by the 2010 Legislative Session
2. Impact of the 2010 Legislation on Scoring Forms
3. Scoring forms for new 2010 felony offenses and felony offenses where legislature modified seriousness and/or class level.
4. Digest of Court Cases Interpreting The Sentencing Reform Act.

NOTE: The latest version of The Revised Code of Washington is available by linking to <http://apps.leg.wa.gov/RCW/>

* The 2008 Adult Sentencing Manual is available for purchase from the Washington State Department of Printing by calling (360) 570-3062. You can also order it on their web site at <https://fortress.wa.gov/prt/printwa/wsprt/default.asp>. Be sure to include your mailing address with your order. The cost of the 2008 Adult Sentencing Manual is \$46.75, postage included.

Table 6: Sentencing Statutes Affected by 2010 Legislative Session

Amendments per each RCW	Chapter/RCW Title	Effective Dates	Law Reference	Summary of 2010 Session Updates	Bill Number
Chapter 9.68A RCW	Sexual Exploitation of Children	6/10/2010	c. 227	<p>Adds new section to create:</p> <ul style="list-style-type: none"> • Viewing depictions of a minor engaged in sexually explicit conduct first degree is a class B felony • Viewing depictions of a minor engaged in sexually explicit conduct second degree is a class C felony • Each intentional viewing conduct constitutes a separate offense. <i>RCW 9.68A.075</i>. <p>Adds a new section that excludes lawful conduct between spouses</p>	ESHB 2424
RCW 9.68A.001	Relating to Protecting Children from Sexual Abuse	6/10/2010	c. 227	<p>Responds to <i>State v. Sutherby</i>, 204 P.3d 916 (2009), by creating a per depiction or image unit of prosecution for convictions under RCW 9.68A.050, 9.68A.060, and 9.68A.070, for offenses in the first degree and a per incident unit of prosecution for second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070.</p>	ESHB 2424
RCW 9.68A.011	Definitions for Sexual Exploitation of Children	6/10/2010	c. 227	<ul style="list-style-type: none"> • Adds a definition for “internet session.” • Language is added to clarify that it is not necessary that a minor know that he/she is participating in conduct that produces a depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. 	ESHB 2424
RCW 9.68A.050	Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct	6/10/2010	c. 227	<p>Split into two levels of offense:</p> <ul style="list-style-type: none"> • Dealing in depictions of a minor engaged in sexually explicit conduct first degree is a class B felony and each depiction constitutes a separate offense. • Dealing in depictions of a minor engaged in sexually 	ESHB 2424

Amendments per each RCW	Chapter/RCW Title	Effective Dates	Law Reference	Summary of 2010 Session Updates	Bill Number
				explicit conduct second degree is a class C felony and each incident constitutes a separate offense.	
RCW 9.68A.060	Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct	6/10/2010	c. 227	Split into two levels of offense: <ul style="list-style-type: none"> • Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct first degree is a class B felony and each depiction constitutes a separate offense. • Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct second degree is a class C felony and each incident constitutes a separate offense. 	ESHB 2424
RCW 9.68A.070	Possession of Depictions of Minor Engaged in Sexually Explicit Conduct	6/10/2010	c. 227	Split into two levels of offense: <ul style="list-style-type: none"> • Possession of depictions of a minor engaged in sexually explicit conduct first degree is a class B felony and each depiction constitutes a separate offense. • Possession of depictions of a minor engaged in sexually explicit conduct second degree is a class C felony and each incident constitutes a separate offense. 	ESHB 2424
RCW 9.68A.100	Commercial Sexual Abuse of a Minor	6/10/2010	c. 289	Commercial sexual abuse of a minor is reclassified from a class C to a class B felony	ESSB 6476
RCW 9.68A.101	Promoting Commercial Sexual Abuse of a Minor	6/10/2010	c. 289	Promoting commercial sexual abuse of a minor is reclassified from a class B to a class A felony.	ESSB 6476
RCW 9.68A.110	Relating to Protecting Children from Sexual Abuse	6/10/2010	c. 227	Affirmative defenses are added to include persons authorized to assist law enforcement officers, university researchers and legislative employees.	ESHB 2424
			c. 289	Includes Commercial sexual abuse of a minor as an offense where the defendant not knowing the age of the victim is not a defense.	ESSB 6476

Amendments per each RCW	Chapter/RCW Title	Effective Dates	Law Reference	Summary of 2010 Session Updates	Bill Number
Chapter 9.94A RCW	Sentencing Reform Act of 1981	6/10/2010	c. 258	New section added to Chapter 94A RCW for examination of patterns of other states related to the exchange of out-of-stated offenders needing supervision in WA. <i>RCW 9.94A.74505.</i>	SSB 6548
Chapter 9.94A RCW	Sentencing Reform Act of 1981	6/10/2011	c. 244	<p>A new section is added to chapter 9.94A RCW that creates a “parenting sentencing alternative.” <i>RCW 9.94A.655</i></p> <p>To be eligible:</p> <ul style="list-style-type: none"> • the offender’s standard range must exceed one year; • the offender must have no prior or current convictions for a felony sex offense or violent offense; • the offender must not be subject to deportation; • the offender must agree to allow DOC and the courts to share information regarding prior or current child welfare cases; and • the offender must have physical custody of his or her minor child or is a legal guardian or custodian with physical custody of a child under the age of eighteen at the time of the current offense. <p>DOC can be ordered to complete risk assessments when a court considers this option. If this option is deemed appropriate, the court “shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of twelve months of community custody.”</p> <p>Adds a new section for offenders not sentenced under the parenting sentencing alternative but otherwise eligible.</p>	SSB 6639
RCW 9.94A.030	Definitions RCW chapter 9.94A	6/10/2011	c. 227	Adds to the definition of “predatory” to include a teacher, counselor, volunteer, or other person in authority, or providing home-based instruction.	ESHB 2424

Amendments per each RCW	Chapter/RCW Title	Effective Dates	Law Reference	Summary of 2010 Session Updates	Bill Number
			c. 274	Adds definition of “domestic violence” and “repetitive domestic violence offense”.	ESHB 2777
			c. 267	Amends the definition of “sex offense” by including only Failure to Register (FTR) convictions where the offender has been convicted of at least one prior FTR.	SSB 6414
RCW 9.94A.030	Definitions RCW chapter 9.94A	6/10/2010	c. 224	<ul style="list-style-type: none"> Adds definition of “minor child”. Home detention qualifies as “partial confinement” under parenting program. 	SSB 6639
RCW 9.94A.501	Offenders Supervised by the Department of Corrections	6/10/2010	c. 267	<p>Adds to the list of offenders supervised by DOC regardless of risk level:</p> <ul style="list-style-type: none"> Gross misdemeanor Failure to Register convictions. Felony Failure to Register convictions. 	SSB 6414
			c. 244	Adds offenders sentenced to the parenting sentencing alternative to the list of offenders DOC is required to supervise regardless of risk level.	SSB 6639
RCW 9.94A.505	Sentences	6/10/2010	c. 244	Adds the parenting sentencing alternative	SSB 6639
RCW 9.94A.515	Crimes Included within Each Seriousness Level	6/10/2010	c. 227	<p>Assigned the following seriousness levels:</p> <p><u>Level VII</u></p> <ul style="list-style-type: none"> Dealing in depictions of a minor engaged in sexually explicit conduct 1. Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1. <p><u>Level VI</u></p> <ul style="list-style-type: none"> Possession of depictions of a minor engaged in sexually explicit conduct 1. <p><u>Level V</u></p> <ul style="list-style-type: none"> Dealing in depictions of minor engaged in sexually explicit 	ESHB 2424

Amendments per each RCW	Chapter/RCW Title	Effective Dates	Law Reference	Summary of 2010 Session Updates	Bill Number
				<p>conduct 2.</p> <ul style="list-style-type: none"> • Sending, bringing into state depictions of minor engaged in sexually explicit conduct 2. <p><u>Level IV</u></p> <ul style="list-style-type: none"> • Possession of depictions of minor engaged in sexually explicit conduct 2. • Viewing depictions of a minor engaged in sexually explicit conduct 1. 	
RCW 9.94A.515	Crimes Included within Each Seriousness Level	6/10/2010	c. 289	<p>Increases seriousness levels for:</p> <ul style="list-style-type: none"> • Promoting commercial sexual abuse of a minor from a level VIII to a level XII. • Commercial sexual abuse of a minor from a level III to a level VIII. 	ESSB 6476
RCW 9.94A.525	Offender Scoring	6/10/2010	c. 274	Revises scoring for convictions of felony domestic violence offenses where domestic violence was plead and proven.	ESHB 2777
RCW 9.94A.535	Departures from the Guidelines	6/10/2010	c. 227	Adds paying to view over the internet depictions of minor engaged in an act of sexually explicit conduct as an aggravating circumstance.	ESHB 2424
			c. 274	<p>New mitigating circumstances when defendant suffered continuing abuse by the victim.</p> <p>New aggravating circumstance when ongoing pattern of abuse to multiple victims.</p>	ESHB 2777
			c. 9	Adds a new mitigating circumstance allowing for a sentence below the standard range if the defendant made a good faith effort to obtain or provide medical assistance for someone experiencing a drug-related overdose.	ESB 5516
RCW 9.94A.633	Violation of Condition or Requirement	6/10/2010	c. 244	Adds the parenting sentencing alternative to list of sanctions for community custody.	SSB 6639

Amendments per each RCW	Chapter/RCW Title	Effective Dates	Law Reference	Summary of 2010 Session Updates	Bill Number
			c. 258	Suspends the parole/probation of an Interstate Compact offender who is placed in total confinement pending disposition of new charges.	SSB 6548
RCW 9.94A.6332	Violation of Condition or Requirement – Sanctions	6/10/2010	c. 244	Adds that any sanctions shall be imposed by DOC or the court as it applies to this section.	SSB 6339
RCW 9.94A.701	Community Custody – Offenders Sentenced to the Department of Corrections	6/01/2010	c. 267	Adds Failure to Register, when it is the offender’s first violation, as one of the offenses receiving 12 months of community custody.	SSB 6414
			c. 244	Adds that the court shall impose a term of community custody according to the parenting sentencing alternative statute.	SSB 6639
RCW 9.94A.702	Community Custody – Offenders Sentenced to one year or less	6/10/2010	c. 267	Adds Failure to Register offenses as eligible to receive 12 months of community custody.	SSB 6414
RCW 9.94A.728	Release Prior to Expiration of Sentence	6/10/2010	c. 244	Adds that no more than the final twelve months of confinement may be served in partial confinement under the parenting sentencing alternative.	SSB 6639
RCW 9.94A.729	Earned Release Time	6/10/2010	c. 244	Authorizes DOC to approve a jail certification from a correctional agency that calculates earned release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence.	SB 6639
RCW 9.94A.734	Home Detention – Conditions	6/10/2010	c. 244	Allows home detention regardless of offense if imposed as partial confinement in DOC’s parenting program.	SSB 6639

Amendments per each RCW	Chapter/RCW Title	Effective Dates	Law Reference	Summary of 2010 Session Updates	Bill Number
Chapter 9A.44 RCW	Sex Offenses	6/10/2010	c. 267	<ul style="list-style-type: none"> • New section contains definitions formerly found in RCW 9A.44.130. • New section contains Failure to Register offense crime formerly found in RCW 9A.44.130. <i>RCW 9A.44.132</i> <ul style="list-style-type: none"> ○ Failure to Register is a class C felony. ○ Failure to Register is a class B felony with 2 or more prior Failure to Registers in criminal history. • New sections related to relief of registration requirements. 	SSB 6414
RCW 9A.44.130 RCW 9A.44.140 RCW 9A.44.145	Registration of Sex Offenders and Kidnapping Offenders	6/10/2010	c. 267	Modifies sex offender registration requirements	SSB 6414
RCW 9A.76.070	Rendering Criminal Assistance	6/10/2010	c. 255	<ul style="list-style-type: none"> • Limits the gross misdemeanor penalty to defendants who were less than 18 years of age on the date of the offense and provided assistance to relatives. • Reclassifies from a class C felony to a class B felony. 	SSB 6293
Chapter 10.99 RCW	Domestic Violence	6/10/2010	c. 274	Directs courts of limited jurisdiction to consider specific factors when sentencing. The available probation period for such offenders is expanded from 2 years to 5 years.	ESHB 2777
RCW 46.61.5055	DUI Violators	1/01/2011	c. 269	<ul style="list-style-type: none"> • Amends the section so that a subsequent conviction shall not be treated as a prior offense when a deferred prosecution is revoked due to the subsequent conviction. • Modifies the definition of 'within seven years' to be before or after the arrest for the current offense. • Modifies the definition of 'within ten years' to be before or after the arrest for the current offense. 	2SHB 2742

Amendments per each RCW	Chapter/RCW Title	Effective Dates	Law Reference	Summary of 2010 Session Updates	Bill Number
Chapter 69.50 RCW	Uniform Controlled Substances Act	6/10/2010	c. 9	<ul style="list-style-type: none"> • A new section is added to Chapter 69.50 RCW that provides immunity from prosecution for possession of a controlled substance pursuant to RCW 69.50.4013, for a person who seeks medical assistance for someone experiencing a drug-related overdose or who is experiencing a drug related overdose. • The protection in this section from prosecution for possession crimes under RCW 69.50.4013 shall not be grounds for suppression of evidence in other criminal charges. 	ESB 5516
RCW 69.50.204	Schedule I	6/10/2010	c. 177	Expands/modifies the list of drugs included in Schedule I.	SHB 2443
RCW 69.50.206	Schedule II	6/10/2010	c. 177	Expands/modifies the list of drugs included in Schedule II.	SHB 2443
RCW 69.50.208	Schedule III	6/10/2010	c. 177	Expands/modifies the list of drugs included in Schedule III.	SHB 2443
RCW 69.50.210	Schedule IV	6/10/2010	c. 177	Expands the list of drugs included in Schedule IV.	SHB 2443
RCW 69.50.212	Schedule V	6/10/2010	c. 177	Expands/modifies the list of drugs included in Schedule V.	SHB 2443



STATE OF WASHINGTON

SENTENCING GUIDELINES COMMISSION

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IMPACT OF THE 2010 LEGISLATION ON SCORING FORMS

The 2010 legislature made several changes to the Sentencing Reform Act (SRA), including adding or modifying sentencing seriousness levels. This will have an impact on some scoring worksheets in the 2008 Adult Sentencing Manual. The legislature did not add or modify any ranked felony offenses in 2009. The following is a list of those changes and offenses. Updated scoring forms are included in this supplement.

- **SSB 6293 (2010) Changed some provisions related to rendering criminal assistance in the first degree.**
This felony offense is elevated from a class C felony to a class B felony. Limits the gross misdemeanor penalty for violations of RCW 9A.76.070 to defendants who were less than 18 years of age on the date of the offense and who were providing assistance to relatives.
- **SSB 6414 (2010) Improving the administration and efficiency of sex and kidnapping offense registration.**
Amends several sex offender registration provisions in response to two Washington State cases and a legislative request. Moves the offense of failure to register as a sex offender from RCW 9A.44.130 to a new stand alone section, RCW 9A.44.132; RCW 9A.44.135; RCW 9A.44.140; RCW 9A.44.141; RCW 9A.142; RCW 9A.44.143; RCW 9A.44.145.

First FTR conviction is no longer classified as a sex offense.

CLASS LEVEL CHANGES:

1. A first or second violation of the section predicated upon a duty to register because of a prior felony sex offense is a class C felony. A third or subsequent violation of the section is a class B felony. The first offense is unranked under the SRA, while the second and subsequent offenses are still ranked.
2. Renders a state conviction for failure to register a ranked offense if the defendant has a prior federal court conviction for failure to register.

- **ESHB 6476 (2010) Protecting children from sexual exploitation and abuse.**
Effective June 10, 2010. Starting July 1, 2011, if a juvenile is a sexually exploited child, a petition may be filed alleging that the juvenile is a child in need of supervision.

CLASS AND SERIOUSNESS LEVEL CHANGES: The seriousness level and felony class level of certain offenses are altered in RCW 9.94A.515:

1. RCW 9.68A.101 Promoting commercial sexual abuse of a minor is increased from an 8 to 12. Reclassified as a class A felony.
2. RCW 9.68A.100 Commercial sexual abuse of a minor is increased from a 2 to an 8. Reclassified as a class B felony.

- **ESSB 2424 – Revising provisions Related to Sex Crimes Involving Minors**
Creates a *per depiction* or image unit of prosecution for convictions under RCW 9.68A.050, 9.68A.060, and 9.68A.070, for offenses in the first degree.

CLASS AND SERIOUSNESS LEVEL CHANGES:

1. First degree dealing/sending or bringing is a class B felony, with a seriousness level of VII. Second degree is a class C felony with a seriousness level of V.
2. First degree possession is a class B felony, with a seriousness level of VI. Second degree is a class C felony, with a seriousness level of IV.
3. First degree viewing is a class B felony, with a seriousness level of IV. Second degree is an unranked class C felony.

COMMERCIAL SEXUAL ABUSE OF A MINOR

(RCW 9.68A.100)

CLASS B – NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions _____ x 1 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
 (Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VIII)	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	41 - 54 months	46 - 61 months	67 - 89 months	77 - 102 months	87 - 116 months	108 – 120* months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- E. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- **Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1))*

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

DEALING IN DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, FIRST DEGREE

(RCW 9.68A.050(1))

CLASS B – NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other felony convictions _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions..... _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions..... _____ x 1 = _____
 Enter number of other nonviolent felony dispositions..... _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the Offender Score (Round down to the nearest whole number)	
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II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VII)	15 - 20 months	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	41 - 54 months	57 - 75 months	67 - 89 months	77 - 102 months	87 - 116 months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- E. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).
 - *Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670.

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DEALING IN DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, SECOND DEGREE

(RCW 9.68A.050(2))
CLASS C – NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions _____ x 1 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL V)	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	41 - 54 months	51 – 60* months	60* months	60* months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If a sentence is one year or less community custody may be ordered for up to one year (RCW 9.94A.702).
- D. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- F. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- *Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(1)).

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670.
- II. Alternative to Total Confinement; for eligibility and sentencing rules see RCW 9.94A.680.
- III. Community Restitution Hours; eligibility and rules see RCW 9.94A.680(2).

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FAILURE TO REGISTER AS A SEX OFFENDER

For Offense Committed on or after June 7, 2006, and before June 10, 2010
(SECOND OR SUBSEQUENT VIOLATION)

(RCW 9A.44.132(1)(A))

CLASS C* - NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(18))

ADULT HISTORY:

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender* convictions..... _____ x 1 = _____
 Enter number of other felony convictions _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender* convictions..... _____ x 1 = _____
 Enter number of other serious violent and violent felony dispositions..... _____ x 1 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender * convictions _____ x 1 = _____
 Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL II)	0 - 90 days	2 - 6 months	3 - 9 months	4 - 12 months	12+ - 14 months	14 - 18 months	17 - 22 months	22 - 29 months	33 - 43 months	43 - 57 months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody 36 months (RCW 9.94A.701(1)).
- C. A court shall sentence an offender to community custody for one year when the court sentences the person to the custody of the Department of Corrections and it is the offender's first failure to register. (RCW 9.94A.701(3)(d)).

- Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(1)).

*The first violation of Failure to Register as a Sex Offender (unranked level and class C) is not a sex offense per RCW 9.94A.030 (45)(v).

Note: In 2008 it was noted that Failure to Register as a Sex Offender would become a Class B offense as of ninety days sine die 2010 Legislative Session. The statute was changed before this could take effect.

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FAILURE TO REGISTER AS A SEX OFFENDER

For Offense Committed on or after June 10, 2010

(SECOND VIOLATION)

(RCW 9A.44.132(1)(A))

CLASS C* - NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(18))

ADULT HISTORY:

Enter number of sex offense convictions _____ x 3 = _____

Enter number of other Failure to Register as a Sex Offender* convictions _____ x 1 = _____

Enter number of other felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions _____ x 3 = _____

Enter number of other Failure to Register as a Sex Offender* convictions _____ x 1 = _____

Enter number of other serious violent and violent felony dispositions _____ x 1 = _____

Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions..... _____ x 3 = _____

Enter number of other Failure to Register as a Sex Offender * convictions _____ x 1 = _____

Enter number of other felony convictions..... _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL II)	0 - 90 days	2 - 6 months	3 - 9 months	4 - 12 months	12+ - 14 months	14 - 18 months	17 - 22 months	22 - 29 months	33 - 43 months	43 - 57 months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody 36 months (RCW 9.94A.701(1)).**
- C. If a sentence is one year or less community custody may be ordered for up one year (RCW 9.94A.702(1)(e)).**
- D. A court shall sentence an offender to community custody for one year when the court sentences the person to the custody of the Department of Corrections and it is the offender's first failure to register. (RCW 9.94A.701(3)(d)).

- *Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(1)).*

*The first violation of Failure to Register as a Sex Offender (unranked level and class C) is not a sex offense per RCW 9.94A.030 (45)(v).

** Laws of 2010, ch. 267, sec. 13 retroactively reduced community custody to 12 months for the first felony Failure to Register.

Note: In 2008 it was noted that Failure to Register as a Sex Offender would become a **Class B** offense as of ninety days sine die 2010 Legislative Session. The statute was changed before this could take effect.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

FAILURE TO REGISTER AS A SEX OFFENDER

For Offense Committed on or After June 10, 2010
(THIRD OR SUBSEQUENT VIOLATION))

(RCW 9A.44.132(1)(B))

CLASS B* - NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(18))

ADULT HISTORY:

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender* convictions..... _____ x 1 = _____
 Enter number of other felony convictions _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender* convictions..... _____ x 1 = _____
 Enter number of other serious violent and violent felony dispositions..... _____ x 1 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender * convictions..... _____ x 1 = _____
 Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL II)	0 - 90 days	2 - 6 months	3 - 9 months	4 - 12 months	12+ - 14 months	14 - 18 months	17 - 22 months	22 - 29 months	33 - 43 months	43 - 57 months

B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).

- Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1)).

**The first violation of Failure to Register as a Sex Offender (unranked level and class C) is not a sex offense per RCW 9.94A.030 (45)(v). A second or subsequent felony failure to register as a sex offense conviction is classified as a sex offense under RCW 9.94A.030.*

Note: In 2008 it was noted that Failure to Register as a Sex Offender would become a Class B offense as of ninety days sine die 2010 Legislative Session. The statute was changed before this could take effect.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, FIRST DEGREE

(RCW 9.68A.070(1))

CLASS B – NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions _____ x 1 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
 (Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VI)	12+ - 14 months	15 - 20 months	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	46 - 61 months	57 - 75 months	67 - 89 months	77 - 102 months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- E. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- *Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, SECOND DEGREE

(RCW 9.68A.070(2))

CLASS C – NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other felony convictions _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions..... _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions..... _____ x 1 = _____
 Enter number of other nonviolent felony dispositions..... _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the Offender Score (Round down to the nearest whole number)	
--	--

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL IV)	3 - 9 months	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	43 – 57 months	53 – 60* months	60* months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If a sentence is one year or less community custody may be ordered for up to one year (RCW 9.94A.702).
- D. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- F. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- **Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670.
- II. Alternative to Total Confinement; for eligibility and sentencing rules see RCW 9.94A.680.
- III. Community Restitution Hours; eligibility and rules see RCW 9.94A.680(2).

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PROMOTING COMMERCIAL SEXUAL ABUSE OF A MINOR

(RCW 9.68A.101)

CLASS A – VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other serious violent felony convictions..... _____ x 2 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions _____ x 2 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other serious violent felony convictions..... _____ x 2 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
 (Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL XII)	93 - 123 months	102 - 136 months	111 - 147 months	120 - 160 months	129 - 171 months	138 - 184 months	162 - 216 months	178 - 236 months	209 - 277 months	240 - 318 months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If a sentence is one year or less community custody may be ordered for up to one year (RCW 9.94A.702).
- D. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- F. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).
 - *Statutory maximum is a term of life imprisonment in a state correctional institution (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670.

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RENDERING CRIMINAL ASSISTANCE, FIRST DEGREE

(RCW 9A.76.070(2)(a))

CLASS B – NONVIOLENT

I. OFFENDER SCORING (RCW 9.94A.525(7))

ADULT HISTORY:

Enter number of felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of other serious violent and violent felony dispositions _____ x 1 = _____

Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL V)	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	41 - 54 months	51 - 68 months	62 - 82 months	72 - 96 months

- B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- C. For a finding that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, see page III-10, Sexual Motivation Enhancement – Form C.
- D. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- *Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. First-Time Offender Waiver; for eligibility and rules see RCW 9.94A.650.
- II. Alternative to Total Confinement; for eligibility and rules see RCW 9.94A.680.
- III. Community Restitution Hours; eligibility and rules see RCW 9.94A.680(2).
- IV. Work Ethic Camp; for eligibility and sentencing rules see RCW 9.94A.690.
- V. Drug Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.660.
- VI. Family and Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.655.

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SENDING, BRINGING INTO THE STATE DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, FIRST DEGREE

(RCW 9.68A.060(1))

CLASS B – NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions _____ x 1 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
 (Round down to the nearest whole number)

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VII)	15 - 20 months	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	41 - 54 months	57 - 75 months	67 - 89 months	77 - 102 months	87 - 116 months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- E. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- *Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

SENDING, BRINGING INTO THE STATE DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, SECOND DEGREE

(RCW 9.68A.060(2))

CLASS C – NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other felony convictions _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions..... _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions..... _____ x 1 = _____
 Enter number of other nonviolent felony dispositions..... _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the Offender Score (Round down to the nearest whole number)	
--	--

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL V)	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	41 - 54 months	51 – 60* months	60* months	60* months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If a sentence is one year or less: community custody may be ordered for up to one year (RCW 9.94A.702).
- D. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- F. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- **Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670.
- II. Alternative to Total Confinement; for eligibility and sentencing rules see RCW 9.94A.680.
- III. Community Restitution Hours; eligibility and rules see RCW 9.94A.680(2).

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VIEWING DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, FIRST DEGREE

(RCW 9.68A.075(1))

CLASS B – NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(17))

ADULT HISTORY:

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions _____ x 3 = _____
 Enter number of other serious violent and violent felony dispositions _____ x 1 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of sex offense convictions _____ x 3 = _____
 Enter number of other felony convictions..... _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
 (Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL IV)	3 - 9 months	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	43 - 57 months	53 - 70 months	63 - 84 months

- B. When a court sentences an offender to the custody of the department, the court shall also sentence the offender to community custody for 36 months (RCW 9.94A.701(1)).
- C. If the offender is not a persistent offender and has a prior conviction for an offense listed in RCW 9.94A.030(36)(b), then the sentence is subject to the requirements of RCW 9.94A.507(3)(a) including community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See provisions under RCW 9.94A.507(5).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- E. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).
 - *Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670
- II. Alternative to Total Confinement; for eligibility and sentencing rules see RCW 9.94A.680.
- III. Community Restitution Hours; for eligibility and sentencing rules see RCW 9.94A.680(2).

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

ERRATA

Juvenile History – Failure to Register as a Sex Offender Conviction changed to be 1 point

FAILURE TO REGISTER AS A SEX OFFENDER

(SECOND OR SUBSEQUENT VIOLATION)

(RCW 9A.44.130(11))

CLASS C* - NONVIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(18))

ADULT HISTORY:

Enter number of sex offense convictions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender convictions _____ x 1 = _____
 Enter number of other felony convictions _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender convictions _____ x 1 = _____
 Enter number of other serious violent and violent felony dispositions..... _____ x 1 = _____
 Enter number of other nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions..... _____ x 3 = _____
 Enter number of other Failure to Register as a Sex Offender convictions _____ x 1 = _____
 Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
 (Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL II)	0 - 90 days	2 - 6 months	3 - 9 months	4 - 12 months	12+ - 14 months	14 - 18 months	17 - 22 months	22 - 29 months	33 - 43 months	43 - 57 months

- B. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 36 to 48 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.

- *Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(1)).*

**Failure to Register as a Sex Offender* will become a Class B offense as of ninety days sine die 2010 Legislative Session.

III. SENTENCING OPTIONS

- I. Special Sex Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.670.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

ERRATA

Statutory Maximum – corrected to correspond to class B felony

THEFT, FIRST DEGREE

(Excluding Motor Vehicle Theft)

(RCW 9A.56.030)

CLASS B – NONVIOLENT

I. OFFENDER SCORING (RCW 9.94A.525(7))

ADULT HISTORY:

Enter number of felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions _____ x 1 = _____

Enter number of nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of felony convictions..... _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

--

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL II)	0 - 90 days	2 - 6 months	3 - 9 months	4 - 12 months	12+ - 14 months	14 - 18 months	17 - 22 months	22 - 29 months	33 - 43 months	43 - 57 months

- B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.
- C. For a finding that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, see page III-10, Sexual Motivation Enhancement – Form C.
- D. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- *Statutory maximum sentence is 120 months (10 years) (RCW 9A.20.021(1)).*

III. SENTENCING OPTIONS

- I. First-Time Offender Waiver; for eligibility and sentencing rules see RCW 9.94A.650.
- II. Alternative to Total Confinement; for eligibility and sentencing rules see RCW 9.94A.680.
- III. Community Restitution Hours; for eligibility and sentencing rules see RCW 9.94A.680.
- IV. Work Ethic Camp; for eligibility and sentencing rules see RCW 9.94A.690.
- V. Drug Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.660.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

ERRATA

Sentence Range – corrected ranges to reflect Level VI

UNLAWFUL STORAGE OF ANHYDROUS AMMONIA

(RCW 69.55.020) CLASS C - NONVIOLENT

I. OFFENDER SCORING (RCW 9.94A.525(7))

ADULT HISTORY:

Enter number of felony convictions..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions _____ x 1 = _____

Enter number of nonviolent felony dispositions _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other felony convictions _____ x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

II. SENTENCE RANGE

This offense is not effected by RCW 9.94A.517 (drug grid).

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL VI)	12+ - 14 months	15 - 20 months	21 - 27 months	26 - 34 months	31 - 41 months	36 - 48 months	46 - 60* months	60* months	60* months	60* months

B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.

- *Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(1)).

III. SENTENCING OPTIONS FOR VIOLATIONS OF RCW CHAPTERS. 69.50, 69.55, 69.41- See page - III-288

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

DIGEST OF COURT CASES INTERPRETING THE SENTENCING REFORM ACT

The following is a digest of the 2009-2010 Washington Supreme Court and Washington Court of Appeals' cases interpreting the Sentencing Reform Act (SRA) of 1981 (RCW Chapter 9.94A). This digest only includes cases decided up to June 30, 2010. There is a possibility that some cases decided after June 30, 2010 might have changed or affected in some way the courts' previous interpretations of the SRA.

The digest was prepared by the Corrections Division of the Office of the Attorney General of Washington and not by the Sentencing Guidelines Commission. The Commission does not endorse nor necessarily agree with the interpretations of the court cases set forth in this digest. Any questions or concerns regarding this digest should be directed to the Corrections Division of the Office of the Attorney General of Washington.

WASHINGTON SUPREME COURT

State v. Vance, 168 Wn.2d 754, 230 P.3d 1055 (May 6, 2010)

FACTS: Defendant was convicted of three counts of Child Molestation in the First Degree, two counts of Child Molestation in the Second Degree, and three counts of Communication with a Minor for Immoral Purposes in the Snohomish County Superior Court. He was sentenced as a Persistent Offender to life imprisonment without the possibility of early release. Defendant appealed. The Washington Court of Appeals reversed the life sentence and remanded for resentencing. He was then sentenced with exceptional consecutive sentences, totaling 594 months of imprisonment. Defendant appealed. The Washington Court of Appeals affirmed. Defendant petitioned the Washington Supreme Court for discretionary review, which was remanded. The Washington Court of Appeals reversed the exceptional consecutive sentences and remanded with instructions to impose concurrent sentences within the standard range. The State sought discretionary review, which was granted by the Washington Supreme Court.

ISSUE: Did the trial court's imposition of exceptional consecutive sentences violate the Defendant's right to a trial by jury?

HOLDING: No. A trial court can impose an exceptional consecutive sentence upon finding exceptional circumstances pursuant to RCW 9.94A.535. *See Oregon v. Ice, 343 Or. 248, 170 P.3d 1049 (2007), cert. granted, 552 U.S. 1256, 128 S.Ct. 1657, 170 L.Ed.2d 353 (2008).* Under *Ice*, a sentencing judge does not violate the Sixth Amendment by finding facts necessary to impose a consecutive, rather than concurrent sentence for discrete crimes. *Id.* at 717. The court based its ruling on the fact that imposing concurrent sentences is not a jury function historically or through common law, but instead has been left to the discretion of legislatures.

Rivard v. State, 168 Wn.2d 775, 231 P.3d 186 (May 6, 2010)

FACTS: Defendant was convicted of Vehicular Homicide prior to legislative reclassification of that offense from a Class B to a Class A felony. Defendant brought a petition for restoration of the right to possess a firearm. The Spokane County Superior Court granted the petition upon finding that the legislative reclassification of vehicular homicide did not have retroactive effect. The Washington Court of Appeals, though initially affirming the Superior Court, granted the State's motion for reconsideration and reversed. Defendant appealed.

ISSUE: Can a defendant own or possess firearms under RCW 9.41.040 if convicted of vehicular homicide prior to the 1996 legislative reclassification of the crime from a Class B to a Class A felony?

HOLDING: Yes. The saving clause precludes retroactive application of the 1996 reclassification of the vehicular homicide statute. There is no indication that the legislature intended this reclassification to apply retroactively. Therefore, the subsequent reclassification of an offense from a class B to a class A felony does not convert a class B conviction prior to the reclassification into a class A felony.

Under RCW 9.41.040(1)(a), a person convicted of a serious offense is prohibited from owning or possessing a firearm. However, RCW 9.41.040(4) allows one to petition the court to have the right to own or possess a firearm restored, as long as the defendant has not previously been convicted of a sex offense or a class A felony. Because the defendant was convicted only of a class B felony and the felony did not convert into a class A felony after reclassification, the defendant was eligible to petition for the restoration of his right to possess or own a firearm.

***In re Rainey*, 168 Wn.2d 367, 229 P.3d 686 (March 11, 2010)**

FACTS: The Petitioner was convicted of First Degree Kidnapping and Telephone Harassment in the Spokane County Superior Court. Petitioner filed a personal restraint petition challenging the trial court's imposition of a lifetime no-contact order with his three-year old daughter, the victim of the kidnapping, as violative of his rights under *Apprendi* and *Blakely* and of his fundamental right to parent.

ISSUES:

- 1) Does a lifetime no-contact order violate the Defendant's rights under *Apprendi* and *Blakely*?
- 2) Did the trial court err in granting a lifetime no-contact order in violation of the fundamental constitutional right to parent?

HOLDINGS:

- 1) No. Under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), a judge cannot find facts other than prior convictions to support a sentence above the statutory maximum. Under *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), the statutory maximum was defined as the maximum of the standard range. Under RCW 9.94A.505(8), a court may impose crime-related prohibitions as conditions of a sentence. The maximum amount of time these prohibitions can be in place is for the statutory maximum for the crime, not the standard sentencing range. See *State v. Armendariz*, 160 Wn.2d 106, 118-20, 156 P.3d 201 (2007). Therefore, a court has the discretion to impose a crime-related prohibition up to the statutory maximum for the crime without resorting to aggravating factors. Here, the court did not appear to rely on facts beyond the jury verdict in imposing the no-contact order.
- 2) Yes. The right to parent is considered a fundamental constitutional right. See generally *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). Sentencing conditions that interfere with a fundamental right must be imposed so that they are "reasonably necessary to accomplish the essential needs of the State and public order." *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). In this case, there was compelling evidence that the State's interests in protecting the victims were sufficient to conclude that a no-contact order of some duration was appropriate. However, the sentencing court did not provide a reason for the duration and the State did not justify the

lifetime duration. Therefore, the “reasonably necessary” requirement was not satisfied. Remanded for resentencing.

***State v. Aguirre*, 168 Wn.2d 350, 299 P.3d 669 (March 4, 2010)**

FACTS: Defendant was convicted of Second Degree Assault and Second Degree Rape in the Thurston County Superior Court, and received a deadly weapon sentence enhancement for both offenses. Defendant appealed. The Washington Court of Appeals affirmed. Defendant petitioned for review.

ISSUES:

1. Did the trial court violate the defendant’s right to counsel by denying his request for an eight week continuance, thereby preventing him from being represented by his new preferred counsel at sentencing?
2. Did the addition of a weapons enhancement to the sentence for Second Degree Assault violate double jeopardy?

HOLDINGS:

1. No. Although the Sixth Amendment guarantees the right to select and be represented by counsel, there are limits to this right. *State v. Roth*, 75 Wn.App. 808, 824, 881 P.2d 268 (1994). The right to choose counsel does not allow a defendant to delay a proceeding unjustifiably. *Id.* at 824. The decision to grant a motion for continuance falls within the discretion of the trial judge. *State v. DeWeese*, 117 Wn.2d 369, 376, 816 P.2d 1 (1991). The trial court must weigh the defendant’s right to choose counsel against the public’s interest in the prompt and efficient administration of justice. *Roth*, 75 Wn.App. at 824-25.

Here, the defendant had already spent two months preparing with former counsel, the work of which should have been available to newly appointed counsel. Additionally, the victim, who had flown across the country to attend, has a constitutional right to be present at the sentencing. WASH. CONST. art. I, § 35. The trial court acted within its discretion.

2. No. Washington courts have repeatedly held that double jeopardy is not violated by a weapon enhancement, even when being armed with the weapon is an element of the underlying crime. *See, e.g., State v. Claborn*, 95 Wn.2d 629, 636-37, 628 P.2d 467 (1981); *State v. Husted*, 118 Wn.App. 92, 95-96, 74 P.3d 672 (2003). In *State v. Kelley*, 168 Wn.2d 72, 226 P.3d 773 (2010), the court determined that adding a weapon enhancement in this situation did not violate *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).

***State v. Powell*, 167 Wn.2d 672, 223 P.3d 493 (December 17, 2009)**

FACTS: Defendant’s conviction for First Degree Murder was affirmed by the Washington Court of Appeals. Defendant filed a personal restraint petition citing *Blakely*, alleging that judicial determination of aggravating factors had violated his right to a jury trial. The Washington Court of Appeals granted the petition, reversed the exceptional sentence, and remanded to the trial court for resentencing. On remand, the Pierce County Superior Court determined it had authority to impanel a jury to consider whether aggravating factors existed to support an exceptional sentence. Defendant filed a motion for discretionary review, which was granted by the court.

ISSUES:

1. Is the State required to give notice of its intent to seek an exceptional sentence prior to trial, when the trial occurred prior to the 2005 amendment requiring notice under RCW 9.94A.537(1)?
2. Is the State required to include its allegation of aggravating circumstances in the information to receive an indictment?
3. Does impaneling a jury to consider aggravating factors violate the provision against double jeopardy?

HOLDINGS:

1. No. Notice is required under RCW 9.94A.537(1), but applies to defendants who have not yet gone to trial or entered a guilty plea. In contrast, RCW 9.94A.537(2) applies to cases where the defendant's trial began prior to the 2005 amendment and has been remanded for a new sentencing hearing. The plain language of the statute makes clear that the Legislature did not intend the notice provision to apply to the resentencing provision. The notice provision does not apply retroactively.

Upon remand, the State's notice to the Defendant listed six distinct aggravating circumstances along with a reference to the trial judge's findings of fact. This was adequate to put the Defendant on notice of the alleged aggravating circumstances that could support of the statutory maximum sentence. These notices allowed the Defendant to prepare his defense. Therefore, the State fulfilled its constitutional duty.

2. No. Article I, Section 22 of the Washington State Constitution requires that all elements of a crime be set forth in the charging documents. However, the aggravating circumstances under RCW 9.94A.535(3) are not elements to a crime, and thus need not be included in charging documents. The underlying conviction does not depend on whether the jury finds the aggravating circumstances beyond a reasonable doubt. Thus, the absence of an allegation of aggravating circumstances in the Information did not violate the Defendant's rights under article I, section 22 of the Washington Constitution, or the Sixth Amendment to the U.S. Constitution, or due process.
3. No. The Defendant argued that the State sought to try him again for the greater included crime of first degree murder with aggravating circumstances. However, a resentencing hearing on aggravating circumstances is not a prosecution for a crime. Additionally, the United States Supreme Court has found that double jeopardy protections do not apply to sentencing proceedings because "the determinations at issue do not place a defendant in jeopardy for an offense." *Monge v. California*, 524 U.S. 721, 728, 118 S.Ct. 2246, 141 L.Ed.2d 615 (1998). Also, resentencing here is not to increase a valid sentence, but to correct an invalid sentence. By allowing a jury to consider the aggravating sentencing factors, the defendant is not exposed to punishment for a greater offense; therefore, double jeopardy was not violated.

***In re Beito*, 167 Wn.2d 497, 220 P.3d 489 (November 12, 2009)**

FACTS: Petitioner received an exceptional sentence after pleading guilty to First Degree Murder. Following two remands, the Washington Court of Appeals affirmed the exceptional sentence, and the Washington Supreme Court denied review. Petitioner then filed a personal restraint petition challenging his exceptional sentence under *Blakely*. The Washington Court of Appeals dismissed the petition. Petitioner sought discretionary review.

ISSUES:

- 1) Given *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), was it error for the trial court to impose an exceptional sentence based on unstipulated facts or those not proved to a jury beyond a reasonable doubt?
- 2) Can a harmless error analysis be applied once a *Blakely* error has been found?
- 3) Once a *Blakely* error is found, can the case be remanded for the trial court to impanel a jury to determine if the aggravating factors existed when the cases was decided before the relevant 2005 amendment?

HOLDINGS:

- 1) Yes. Under the Sixth Amendment, a criminal defendant is guaranteed the right to a jury trial. After *Blakely*, a court can impose an exceptional sentence only after either the defendant stipulates to or a jury finds beyond a reasonable doubt the factual basis for establishing the aggravating factor existed. When the court fails to establish this factual basis, the court violates the defendant's Sixth Amendment right, as found in *Blakely*.

Here, the Petitioner did not stipulate to the facts relied upon by the sentencing court and a jury was not impaneled to consider whether the aggravating factor existed. Thus, *Blakely* was violated.

- 2) No. There is no harmless error analysis available, as it would undermine the decision of the U. S. Supreme Court that gives that role to a jury to determine the existence of aggravating factors to support an exceptional sentence.
- 3) No. The 2005 amendment that allows juries to decide whether aggravating factors existed does not apply to cases decided before its enactment. *State v. Pillatos*, 159 Wn.2d 459, 150 P.3d 1130 (2007). In 2007, the Legislature amended the SRA to allow trial courts to impanel juries to decide aggravating factors in cases already decided. However, the 2007 amendment limits the jury to consider factors enumerated in RCW 9.94A.537(3) "that were relied upon by the superior court in imposing the previous sentence." RCW 9.94A.537(2). In this case, the trial court imposed the exceptional sentence based on a finding that the victim's rape was motive for and closely related to her murder. This finding is not one of those listed under RCW 9.94A.537(3). Thus, the 2007 amendments are not applicable to the Petitioner's case. The Supreme Court reversed and remanded for resentencing within the standard range.

***In re Pullman*, 167 Wn.2d 205, 218 P.3d 913 (October 8, 2009)**

FACTS: A prisoner filed a personal restraint petition in the Washington Court of Appeals, claiming he was denied due process when his risk classification was changed without advance notice or an opportunity to be heard. The Washington Court of Appeals denied the petition. The Washington Supreme Court granted discretionary review.

ISSUES:

- 1) Does a prisoner have a liberty interest protected by due process in earning credits for early release at a rate of 50%?
- 2) Does a prisoner have a liberty interest protected by due process in the calculation of a potential early release date on the basis of a risk classification that is always subject to change?

HOLDINGS:

- 1) No. There is explicit statutory language which states that allowing 50% reduction did “not create any expectation that the percentage of earned release time cannot be revised and offenders have no reason to conclude that the maximum percentage of earned release time is an entitlement or creates any liberty interest.” RCW 9.94A.7281.
- 2) No. The Petitioner argued that he was entitled to minimal due process requirements before DOC can alter his risk category to a level that lowers the rate of earned release time. Again, the court pointed to the language in RCW 9.94A.7281 that specifically states that an offender should not expect to earn the statutory maximum. The DOC’s policies of reassessment and reclassification make it clear that a risk level is always subject to change, and offenders are made aware that infractions can lead to a change in their risk classification. “DOC’s recalculation of an offender’s potential early release date on the basis of reclassification that is ‘always subject to change’ cannot create a liberty interest where the legislature has made clear none exists.” *Pullman*, 167 Wn.2d at 216. To the extent that *In re Personal Restraint of Adams*, 132 Wn.App. 640, 134 P.3d 1176 (2006) held otherwise, it was overruled.

***State v. McCormick*, 166 Wn.2d 689, 213 P.3d 32 (August 6, 2009)**

FACTS: Defendant appealed from an order of Snohomish County Superior Court revoking the suspension of his Special Sex Offender Sentencing Alternative (SSOSA) sentence and subsequent sentence to 123 months in prison. The Washington Court of Appeals affirmed. Review was granted.

ISSUES:

1. Did the condition of the Defendant’s SSOSA sentence that required the Defendant “not frequent areas where minor children are known to congregate” require that the State prove that the Defendant frequented an area where *he knew* minors congregated?
2. Do the federal and state Due Process Clauses require the State to prove a willful violation of the Defendant’s conditions of community custody before revoking a suspended sentence?
3. Was the evidence sufficient to support the trial court’s revocation of the suspended sentence?

HOLDINGS:

1. No. Under the SRA, the trial court may revoke a suspended SSOSA sentence if the defendant violates a condition of the sentence or if the court determines the defendant is not making satisfactory progress in treatment. *See* former RCW 9.94A.120(8)(a)(vi) (1998), *recodified as* RCW 9.94A.670(10). The plain language of this section of the SRA does not have a provision that a violation be willful. The only reference to a willfulness requirement are for failures to pay legal financial obligations and to perform community service.
2. No. Revocation of a suspended sentence is not its own criminal proceeding, but is an extension of the original criminal conviction. *See State ex. rel. Woodhouse v. Dore*, 69 Wn.2d 64, 416 P.2d 670 (1966). Because an offender has already been found guilty beyond a reasonable doubt in trial, an offender facing revocation has only minimal due process rights:

“(a) written notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for revocation.”

State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999).

Further, it would be contrary to legislative policies to require willfulness for the violation of a condition that is a threat to the safety or welfare of society. Here, because the Defendant frequented an area where minor children were known to congregate, and the crime he committed involved a minor, the State was not required to show he willfully violated the condition.

3. Yes. The trial court’s decision to revoke a suspended sentence due to a violation will not be modified unless the trial court abused its discretion by making a decision “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State ex. re. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Here, the State presented evidence that the Defendant was told by his CCO he could not frequent churches or schools, but frequented a food bank located at a school with a church. Thus, the trial court reasonably determined that the Defendant violated a term of his suspended sentence and was justified in revoking that suspended sentence.

***In re Brooks*, 166 Wn.2d 664, 211 P.3d 1023 (July 23, 2009)**

FACTS: Petitioner was convicted of three counts of First Degree Attempted Robbery in the Whatcom County Superior Court and was sentenced to 120 months of total confinement and 18-36 months of community custody. Petitioner filed a personal restraint petition, arguing that the combination of confinement and community custody exceeded the ten year statutory maximum and that his sentence was therefore invalid. The Washington Court of Appeals denied the petition, and Petitioner sought discretionary review. The Commissioner denied review on the condition that the State obtain an amended judgment and sentence that clarified that the period of total confinement and community custody together could not exceed the statutory maximum for a Class B felony. The State obtained the clarification from the sentencing court. Petitioner then filed a motion to modify the Commissioner’s ruling.

ISSUES:

1. Did the Petitioner’s sentence exceed the statutory maximum in violation of the SRA?
2. Was the sentence indeterminate and invalid under the SRA?

HOLDINGS:

1. No. When a defendant is sentenced to a term of confinement and community custody that has the potential to exceed the statutory maximum, the appropriate remedy is to remand to the trial court to amend or clarify the sentence to make explicit that the total time under custody will not exceed the maximum. The defendant’s sentence specifically directed the DOC to ensure that whatever release date it set, under no circumstances may the offender serve more than the statutory maximum.
2. No. The SRA specifically states that a sentence is not made indeterminate simply because a defendant may earn early release credits. Because of early release credits, the only thing that can be determined at the time of sentencing is the maximum amount of time an offender will serve in confinement. As long as the court imposes a definite range

and a definite maximum, the sentence is determinate. It “is the SRA itself that gave courts the power to impose sentences and the DOC the responsibility to set the amount of community custody to be served within that sentence.” *Brooks*, 166 Wn.2d at 674.

***State v. Hughes*, 166 Wn.2d 675, 212 P.3d 558 (July 23, 2009)**

FACTS: Defendant pled guilty and was convicted of Second Degree Child Rape and Second Degree Rape in the Spokane County Superior Court. The State appealed and Defendant cross-appealed. The Washington Court of Appeals affirmed and remanded. Defendant petitioned for review.

ISSUES:

1. Does two convictions for rape resulting from one act of sexual intercourse with a child violate double jeopardy?
2. Does the trial court have the authority to impose an indeterminate exceptional minimum sentence?

HOLDINGS:

1. Yes. Two statutory offenses are the same for purposes of double jeopardy if the offenses are identical in fact and in law. Both offenses are same in fact because they arose out of one act of sexual intercourse with the same victim. Both are the same in law because, although the elements facially differ, both require proof of non-consent because of the victim’s status. Further, the Legislature generally intends to preclude multiple punishments for one act, and two cases recognized the legislature’s intent to prohibit multiple convictions for rape and child rape where there was a single act of intercourse. *See State v. Calle*, 125 Wn.2d 769, 888 P.2d 155 (1995); *State v. Birgen*, 33 Wn.App. 1, 651 P.2d 240 (1982).
2. Yes. The Defendant is not subject to the 2005 amendments to RCW 9.94A.535, because his convictions were entered in 2004 before those amendments became effective. *State v. Pillatos*, 159 Wn.2d 459, 470, 150 P.3d 1130 (2007), held that the 2005 amendments are applicable only to cases where trials had not yet begun or pleas not yet entered before the amendments’ effective date. Further, even under the current SRA, exceptional minimum indeterminate sentences are permissible. When the Legislature amended RCW 9.94A.712, it did not remove the language permitting an exceptional minimum sentence. Had the Legislature intended to prohibit indeterminate exceptional minimum sentences or to convert them into determinate sentences pursuant to RCW 9.94A.535, it would have made those alterations explicit.

WASHINGTON COURT OF APPEALS

State v. Cross, 156 Wn.App., 234 P.3d 288 (2010) (June 29, 2010)

FACTS: Defendant was convicted of First Degree Unlawful Possession of a Firearm, Gross Misdemeanor Harassment, Resisting Arrest, and Obstructing a Law Enforcement Officer in the Pierce County Superior Court. Defendant appealed.

ISSUE: For the purposes of applying the SRA's wash-out provision, can an uncertified district and municipal court information system (DISCIS) printout be used to satisfy the State's burden of proving prior misdemeanor convictions by a preponderance of the evidence?

HOLDING: Yes. Although the best evidence of a prior conviction is a certified copy of the judgment and sentence, other comparable evidence may be introduced if the State shows that a certified copy of the judgment and sentence is unavailable for reasons other than the serious fault of the proponent. See *State v. Lopez*, 147 Wn.2d 515, 519, 55 P.3d 609 (2002). However, the State has to show that the comparable evidence relied upon has some minimal reliability.

DISCIS is a case management system used by courts of limited jurisdiction that draws information from the JIS database, which is Washington courts' information management system. DISCIS creates a listing of a person's criminal history based on cases entered in the JIS database. Because only court personnel have access to be able to create records in JIS, the information stored in it is secure and is an official court record. Even though not certified, the DISCIS printout based on information from the JIS database is sufficiently reliable a source to meet the State's burden of proving by a preponderance of the evidence that the Defendant had misdemeanor convictions relevant in calculating his offender score.

State v. N.S.T., 156 Wn. App. 444, 232 P.3d 584 (2010) (June 7, 2010)

FACTS: A 14-year-old juvenile offender was charged with Residential Burglary and Malicious Mischief in the First Degree and received a juvenile deferred disposition for 12 months. If, after the end of the 12 months, the juvenile offender had performed all conditions, the court would dismiss the case with prejudice. After about 11 months, the juvenile probation counselor submitted a report indicating that the juvenile offender was in compliance with all terms except the repayment of restitution. Because an outstanding balance was due, the court extended the deferral period for an additional 12 months, which would end in November 2008. Toward the end of that period, a balance was still owed and the juvenile probation counselor recommended revocation. Due to a number of continuances, the revocation hearing occurred after the period of supervision had expired in January 2009.

ISSUES:

1. Did the juvenile court have the authority to revoke the deferred disposition in January 2009 when the period of supervision was set to expire in November 2008?
2. Does RCW 13.40.127(7) and due process obligate the State to file formal written notice of the basis for revocation?
3. Did the court violate the juvenile offender's due process rights and equal protection rights when it revoked her deferred disposition without finding that her failure to comply was willful?

HOLDINGS:

1. Yes. Washington courts have ruled that a court's authority to revoke a deferred disposition terminates upon expiration of the supervisory period unless violation proceedings are initiated before the period expires. Because the revocation proceeding was initiated before the period of supervision was set to expire, the court had the authority to revoke the deferred disposition at the final hearing in January 2009.
2. No. There is no requirement for written notice under the statute. The statute only states that proceedings may be initiated by either the prosecutor or the community supervision counselor. Here, written documents were filed with the court that notified the juvenile offender that proceedings would result in revocation if the restitution was not paid by a certain date. Thus, the juvenile offender received adequate written notice that her counselor was recommending revocation due to failure to pay restitution and received all notice required to her under the law.
3. No. Under the SRA, which applies to adults, the State has the burden to prove by a preponderance of the evidence that the defendant failed to comply with conditions. Once accomplished, the burden shifts to the defendant to show cause why he or she should not be punished. To do this, the juvenile offender must plead more than general poverty; the offender should be able to show proof of 1) actual income; 2) reasonable living expenses; 3) efforts to find legal means of employment and other resources from which restitution can be paid; and 4) any lawful excuse explaining failure to comply with terms of community supervision. *State v. Woodward*, 116 Wn.App. 697, 702, 67 P.3d 530 (2003). The court held that this same analysis applies to juvenile revocation proceedings under the Juvenile Justice Act. In this case, the juvenile offender did not present documentation in evidence, and thus failed to meet her burden.

***State v. McNeal*, 156 Wn. App. 340, 231 P.3d 1266 (May 25, 2010)**

FACTS: Defendant was convicted by a jury in the Lewis County Superior Court of Vehicular Homicide, Vehicular Assault, and Possession of a Controlled Substance with Intent to Deliver. The trial court imposed two exceptional sentences: an above-range sentence on the Possession with Intent to Deliver conviction and consecutive sentences on all three convictions. Defendant appealed the convictions and the exceptional sentences to Washington Court of Appeals, which affirmed. The Washington Supreme Court affirmed the convictions but did not address the sentences, leaving the exceptional sentences intact. Defendant then filed a PRP, challenging the length of his sentence because it exceeded the statutory minimum. The Washington Court of Appeals vacated and remanded for resentencing of the drug offense. On remand, the Lewis County Superior Court reimposed the exceptional sentences and ordered that the sentences run consecutively. Defendant appealed. The Washington Court of Appeals vacated and remanded for resentencing. On remand, the State asked the sentencing court to impanel a jury to consider the exceptional sentencing factor. The court granted the request, stayed sentencing, and certified its order. Defendant sought discretionary review.

ISSUES:

1. Does a sentencing court on remand have the jurisdiction to impanel a jury pursuant to RCW 9.94A.537(2) for the purpose of considering an aggravating factor not specifically contained in RCW 9.94A.535(3)?
2. Does a sentencing court on remand have the jurisdiction to consider remaining exceptional sentencing ("free crimes") factors without a jury finding, and impose an exceptional sentence based on those factors?

HOLDINGS:

1. No. Where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, RCW 9.94A.537(2) permits the court to “impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.” *McNeal*, 156 Wn.App. at 352 and RCW 9.94A.537(2). However, the aggregating factor considered on remand was one enumerated in RCW 9.94A.535(2), all of which must be considered and imposed by the court and not a jury. The Washington Supreme Court has held that trial courts do not have the inherent authority to impanel a jury to determine exceptional sentencing factors. *See State v. Pillatos*, 159 Wn.2d 459, 470, 150 P.3d 1130 (2007); *State v. Hughes*, 154 Wn.2d 118, 151-52, 110 P.3d 192 (2005). Based on a plain language reading of RCW 9.94A.537(2), the resentencing court may impanel a jury *only* when the aggravating circumstance in question is listed in RCW 9.94A.535(3). Thus, the court cannot impanel a jury because the statute has not given it the authority to do so for this type of aggravating factor.
2. Yes. RCW 9.94A.537(2) does not prohibit the resentencing court from considering the sole remaining aggravating factors without a jury or from imposing an exceptional sentence based on such a factor. Here, the exceptional sentencing factor was under RCW 9.94A.535(2)(c) and was not a factor that required any fact finding by a jury under RCW 9.94A.535(3). As such, the court was authorized to determine whether the aggravating factor applied.

***State v. Langstead*, 155 Wn. App. 448, 228 P.3d 799 (April 12, 2010)**

FACTS: Defendant pled guilty and was convicted of two counts of Robbery in the Second Degree and two counts of Robbery in the First Degree in the King County Superior Court. He was sentenced as a persistent offender to life without parole. Defendant appealed.

ISSUE: Did the trial court violate the Sixth and Fourteenth Amendments of the U.S. Constitution or the Equal Protection Clause when the trial court, and not a jury, determined by a preponderance of the evidence that the Defendant had two prior strikes for sentencing under RCW 9.94A.570?

HOLDING: No. “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” *Blakely v. Washington*, 542 U.S. 296, 301, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). Because of the exception for prior convictions, there was no violation of the Sixth Amendment or the Due Process Clause of the Fourteenth Amendment.

Defendant also argued that equal protection was violated because where a prior conviction is an element of the crime rather than an aggravating factor, the State must prove its existence to the jury beyond a reasonable doubt. However, a prior conviction as an aggravating factor only increases the maximum punishment to the crime; a prior conviction as an element actually changes the crime that may be charged.

***State v. Hylton*, 154 Wn. App. 945, 226 P.3d 246 (March 9, 2010)**

FACTS: Defendant was convicted of Third Degree Child Rape in the Lewis County Superior Court. Defendant appealed.

ISSUE: Does retroactive application of an aggravating factor for abuse of trust enacted in 2005 violate RCW 10.01.040 or the Ex Post Facto Clauses of the State and Federal Constitutions?

HOLDING: No. Prior to the 2005 amendment, a court could find abuse of trust as an aggravating factor in noneconomic crimes at common law. *See State v. Harp*, 43 Wn.App. 340, 343, 717 P.2d 282 (1986); *State v. Jennings*, 106 Wn.App. 532, 550, 24 P.3d 430 (2001). Because the law both prior to and after enactment of the 2005 amendment allowed for an exceptional sentence, this change was procedural rather than substantive. RCW 10.01.040 requires that a crime be prosecuted under the law in effect at the time it was committed. However, this statute applies only to substantive changes in the law and not merely procedural changes. *State v. Pillatos*, 159 Wn.2d 459, 472, 150 P.3d 1130 (2007); *State v. Hodgson*, 108 Wn.2d 662, 669-70, 740 P.2d 848 (1987). Therefore, because codification of the aggravating factor for abuse of trust was procedural in nature, applying it retroactively does not violate RCW 10.01.040.

To violate the Ex Post Facto Clauses, a statute or amendment must (1) be substantive; (2) be retrospective; and (3) disadvantage the defendant. A new law is retrospective only if it changes the legal consequences of an act completed before the law was enacted. *Miller v. Florida*, 482 U.S. 423, 430, 107 S.Ct. 2446, 96 L.Ed.2d 351 (1987). For an act already criminally punishable, disadvantage means that the statute alters the standard of punishment that existed prior to the law. Here, as discussed above, the amendment is procedural and not substantive. Further, the amendment did not change the legal consequences of committing the crime, but only created a new criminal procedure and codified existing common law. Laws of 2005, ch. 68, § 1.

***State v. Elmore*, 154 Wn. App. 885, 228 P.3d 760 (March 9, 2010)**

FACTS: The reversal of the defendant's convictions was affirmed. On remand, defendant was convicted of First Degree Felony Murder, First Degree Burglary, First Degree Kidnapping, Second Degree Assault, and Second Degree Conspiracy to Commit Robbery in the Pierce County Superior Court. Defendant appealed.

ISSUES:

- 1) To avoid double jeopardy, should the burglary conviction have been merged with the felony murder conviction at sentencing?
- 2) When an original trial occurred pre-*Blakely* and the re-trial occurred post-*Blakely*, do post-*Blakely* amendments apply to the re-trial?
- 3) Would applying 2007 amendments to the SRA violate the separation of powers doctrine?

HOLDINGS:

- 1) No. Under the merger doctrine, when one crime requires proof of another crime, it is presumed the Legislature intended to punish both offenses through a single sentence for the greater crime. However, multiple punishments can be given and will not violate double jeopardy if the Legislature expresses its intent to punish each crime separately. Here, the burglary anti-merger statute states that “[e]very person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well for the burglary, and may be prosecuted for each crime separately.” RCW 9A.52.050. This shows the Legislature intended that crimes committed during a burglary not merge with the burglary itself. *See State v. Sweet*, 138 Wn.2d 466, 478, 980 P.2d 1223 (1999).

- 2) Yes. In 2004, the U.S. Supreme Court held that a criminal defendant has a constitutional right to have a jury determine beyond a reasonable doubt any aggravating factor that would be used to sentence the defendant beyond the standard range. *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). In response, the Washington Legislature amended the SRA to authorize a new procedure for juries to consider aggravating factors to support an exceptional sentence. RCW 9.94A.537(2) (2005). However, courts determined that under the statute's plain language, the amendment was not retroactive, and therefore did not apply to cases where trials had already begun or guilty pleas had been entered. *State v. Pillatos*, 159 Wn.2d 459, 150 P.3d 1130 (2007). Because no procedure was in place to apply the standards constitutionally required under *Blakely* to defendants who had pled guilty or tried prior to enactment of the 2005 amendments, the Legislature amended RCW 9.94A.537 in 2007. Under this change, superior court judges have authority to empanel sentencing juries to find aggravating circumstances in all cases that come before the court, regardless of the date of the original trial or sentencing.

- 3) No. Separation of powers issues arise when one branch of government attempts to perform functions of another. Here, Defendant argues that the 2007 amendment attempted to perform judicial functions by clarifying the law counter to the Supreme Court's prior interpretation of the statute. However, the court determined that the legislative enactment was an amendment rather than a clarification of existing law. A new legislative enactment is presumed an amendment rather than a clarification. *Johnson v. Morris*, 87 Wn.2d 922, 926, 557 P.2d 1299 (1976). This presumption may be overcome only if it is clear the legislature intended to interpret rather than change the law. *Id.* An ambiguous statute is an indication of an intent to clarify; in contrast, an amendment tends to modify an unambiguous statute. *Marine Power & Equip. Co. v. Human Rights Comm'n Hearing Tribunal*, 39 Wn.App. 609, 615, 694 P.2d 697. The fact that an amendment is enacted in response to a court decision does not alone render it a clarification. *State v. Ramirez*, 140 Wn.App. 278, 289, 165 P.3d 61 (2007). Here, the court determined that the 2007 amendment was a change to, rather than a clarification of, the statute. Therefore, the Defendant failed to show that the application of the 2007 amendments would violate the separation of powers doctrine, and the 2007 amendments should apply to her retrial.

***State v. Brandenburg*, 153 Wn. App. 944, 223 P.3d 1259 (December 29, 2009)**

FACTS: Defendant was convicted by guilty plea of Possession of Methamphetamine in the Benton County Superior Court. Defendant appealed.

ISSUE: Did the sentencing court err in imposing an aggravated exceptional sentence based on unscored misdemeanor criminal history resulting in a clearly too lenient sentence?

HOLDING: No. Because the Defendant stipulated to an aggravating factor, he cannot now say that the court wrongly imposed an exceptional sentence. Additionally, even had he not stipulated, RCW 9.94A.535 allows a court to impose an exceptional sentence outside the standard range if it determines that there are substantial and compelling reasons to justify an exceptional sentence. Here, the Defendant's unscored criminal history would have resulted in too lenient a sentence, which is a substantial and compelling reason to justify the imposition of an exceptional sentence.

***State v. Madsen*, 153 Wn. App. 471, 228 P.3d 24 (December 14, 2009)**

FACTS: Defendant was convicted of Violation of No-Contact Order and sentenced. He violated community custody conditions three times and was ordered back to prison by a hearing officer for the Washington Department of Corrections (DOC) to complete the remainder of his sentence. Defendant moved for relief from judgment, order, or proceeding, which was granted by King County Superior Court. Defendant was released. The DOC appealed.

ISSUE: Does a statute that became effective after conviction and before a community custody violation occurred violate the Ex Post Facto Clause?

HOLDING: Yes. The new statute requires that an inmate be sent back to prison for the remainder of his original sentence when he violates the conditions of community custody for a third time. The new statute was effective before the third violation but after the he committed the crimes for which he was originally sentenced. Prior to the statute change, returning an offender to prison for the remainder of his term was discretionary. The Ex Post Facto Clause prohibits changes to the punishment and infliction of a greater punishment than the law at the time the original crime was committed. U.S. Const., art. 1, sec. 9. A statute violates the Ex Post Facto Clause if it: 1) is substantive, rather than procedural; 2) is retrospective; and 3) disadvantages the person it affects. Here, because the statute is criminal and punitive in nature, it is substantive and not procedural.

Second, because punishment for violations of community custody is attributed to the original conviction, punishment for violations must be given based on the law at the time of the original conviction. *See Johnson v. United States*, 529 U.S. 694, 699, 120 S.Ct. 1795, 146 L.Ed.2d 727 (2000). Here, because the DOC applied punishment under a statute that was not in effect at the time of the original conviction, it was applied retroactively in violation of the Ex Post Facto Clause.

Third, although the punishment to return an offender to prison for the remainder of his sentence was an option prior to the statute change, a statute increases punishment if it makes mandatory a penalty that formerly was optional. *See Lindsey v. Washington*, 301 U.S. 397, 57 S.Ct. 797, 81 L.Ed. 1182 (1937). A law is disadvantageous when it alters the standard of punishment from that under the prior law. *See State v. Ward*, 123 Wn.3d 488, 498, 869 P.2d 1062 (1994). Here, the Defendant had the opportunity under the older law to receive a less harsh punishment for his third violation of community custody. That he was punished under the new law, disadvantaged him in violation of the Ex Post Facto Clause.

***State v. Devitt*, 152 Wn. App. 907, 218 P.3d 647 (November 3, 2009)**

FACTS: Defendant was convicted by a jury in Spokane County Superior Court of Residential Burglary, Obstructing A Police Officer, and Resisting Arrest. Defendant appealed.

ISSUE: Was the evidence sufficient to support a conviction for residential burglary?

HOLDING: No. Residential burglary requires a showing that the defendant intended to commit a crime against a person or property in the dwelling. RCW 9A.52.025(1). Here, the Defendant entered an unlocked apartment to avoid the police who were chasing him. The trial court concluded that the Defendant's intention to obstruct an officer and resist arrest by being in the apartment was sufficient to satisfy the residential burglary statute. However, the statute requires more than an intent to commit any crime; the defendant must intend to commit a crime against a person or property therein. According to RCW 9.94A.411(2)(a), which advises prosecutors of the standards to apply to help determine which crimes to prosecute, neither

obstructing a police officer nor resisting arrest are classified as crimes against a person or property. Even if obstructing a police officer were considered a crime against a person, the officer would have to have been within the apartment when the defendant entered with the intent of obstructing, which did not happen here.

***State v. Stately*, 152 Wn. App. 604, 216 P.3d 1102 (September 29, 2009)**

FACTS: Defendant pled guilty to Vehicular Homicide With Disregard in Grays Harbor County Superior Court and was sentenced under a first-time offender waiver. State appealed the sentencing decision.

ISSUE: Does the SRA define Vehicular Homicide With Disregard For The Safety Of Others as a violent offense?

HOLDING: No. There are three types of Vehicular Homicide, all class A felonies. Former RCW 9.94A.030(50)(a)(xiv), (*recodified* as RCW 9.94A.030(53)(xiv)), lists Vehicular Homicide by Intoxication and Recklessness as violent crimes, but does not list Vehicular Homicide With Disregard. “Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature...” *Stately*, 152 Wn.App. at 609, citing *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999). If the Legislature had intended that Vehicular Homicide With Disregard be a violent crime, it would have included the language.

Although former RCW 9.94A.030(50)(a)(i) had a general provision that defined all class A felonies as violent crimes, subsection (xiv) specifically defines only two types of vehicular homicide as violent crimes. When there is a conflict between a statute’s general and specific terms, the specific terms will prevail. *See City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 102, 758 P.2d 480 (1988) (*quoting* 2A N. Singer, *Statutory Construction* § 46.05 (4th ed. 1984)). Thus, while Vehicular Homicide by Intoxication and Recklessness are violent crimes, Vehicular Homicide by Disregard is not.

***State v. Booth*, 152 Wn. App. 364, 215 P.3d 264 (September 15, 2009)**

FACTS: Defendant was convicted by guilty plea of Second Degree Assault and Second Degree Assault With A Deadly Weapon in the Lewis County Superior Court. The trial court imposed a sentence of 96 months of total confinement – 84 months for the assaults, plus 12 months for a mandatory deadly weapon enhancement. The trial court also ordered that the Defendant serve 18 to 36 months of community custody. Defendant appealed his sentence, asserting that former RCW 9.94A.505(5) (2002) prohibited a court from imposing a sentence beyond the statutory maximum, which for the Defendant’s convictions was 120 months.

ISSUES: Does a sentence violate RCW 9.94A.505(5) when the total sentence of confinement and community custody exceeds the statutory maximum, when the trial court added language to the judgment and sentence that the total time imposed for incarceration and community custody would not exceed the statutory maximum?

HOLDING: No. When a defendant is sentenced to a term of confinement and community custody that totals more than the statutory maximum, the sentencing court should include language that the total time imposed will not exceed the statutory maximum. Should the court fail to include this language, the appropriate remedy is to remand to the trial court to amend the sentence to make it explicit that the total time under custody will not exceed the statutory maximum.

Here, the trial court added language to the judgment and sentence that stated that “[t]he statutory maximum is 120 months. The total time imposed for both incarceration and community custody shall not exceed 120 months.” Thus, the language that the trial court added to the judgment and sentence ensured that the Defendant would not serve a sentence that exceeded the statutory maximum.

State v. Lucero, 152 Wn. App. 287, 217 P.3d 369 (September 14, 2009)

FACTS: Defendant was convicted by jury verdict in the Snohomish County Superior Court of Second Degree Assault. The jury also returned a special verdict finding that he was armed with a deadly weapon. Defendant was sentenced based on an offender score of 7. Defendant appealed his sentence because the trial court included two prior convictions from California in his offender score.

ISSUE: Did the Defendant affirmatively acknowledge in the trial court two prior California convictions, such that he cannot dispute it on appeal?

HOLDING: Yes. The Defendant affirmatively acknowledged that both California convictions should be included in his offender score when he only argued that a third conviction should not be included and that, if the third conviction were excluded, his offender score would be 6. By challenging inclusion of only the third conviction, he conceded that that other two convictions would count toward his score. Further, by agreeing that his score would be at least 6, the Defendant conceded the comparability of the two California convictions to Washington convictions. Once he agreed with the State as to his offender score calculation, the Defendant waived his right to dispute that issue on appeal.

State v. Mihali, 152 Wn. App. 879, 218 P.3d 922 (September 3, 2009)

FACTS: Defendant, who had been convicted of Conspiracy to Manufacture a Controlled Substance, filed a petition for firearms restoration. Pierce County Superior Court granted the petition. The State appealed.

ISSUE: In determining whether the Defendant had “no prior felony convictions” that would be included in her offender score and prohibit possessing a firearm under RCW 9.41.040(4), did the trial court err in using the date of the disabling offense instead of the date of the petition?

HOLDING: Yes. The relevant date is the date the Defendant filed the petition for restoration, not the date of the disabling offense. *See Graham v. State*, 116 Wn.App. 185, 189, 64 P.3d 684 (2003); *State v. Hunter*, 147 Wn.App. 177, 185, 195 P.3d 556 (2008). Using both statutory language and legislative intent, the reference to “prior convictions” means any conviction prior to time the petition was submitted. First, the statute’s use of the word ‘prohibit’ in the present tense refers to the petitioner’s criminal history at the time one files the petition. Second, the Legislature explicitly stated that “the person must also have passed the ‘washout’ period under the Sentencing Reform Act before he or she may petition the court.” *Mihali*, 152 Wn.App. at 884, citing the Final Bill Rep. on Substitute H.B. 2420, at 2, 54th Leg., Reg. Sess. (1996).

Although the Defendant satisfied the requirement that she not be convicted of a crime for five or more years in the community, because the ten-year washout period had not passed at the time the petition was filed, the Defendant still had a criminal history that would prevent her possessing a firearm.

***State v. Harstad*, 153 Wn. App. 10, 218 P.3d 624 (August 24, 2009)**

FACTS: Defendant was convicted of Child Molestation, Indecent Exposure, and Felony Communication With a Minor For Immoral Purposes in the King County Superior Court. Defendant appealed.

ISSUES:

- 1) When sentencing a defendant to an indeterminate sentence under former RCW 9.94A.712(3) (*recodified* as RCW 9.94A.507(3)), does the court impose an exceptional sentence when the minimum term is set at the top of the standard range?
- 2) Did the trial court err in running the defendant's misdemeanor convictions consecutively to the sentence for the felony?

HOLDINGS:

- 1) No. Under former RCW 9.94A.712(3), the minimum term should be set within the standard range and the maximum term at the statutory maximum. To be an exceptional sentence, the trial court must have set the minimum sentence to be above the standard range. Here, even though the jury found aggravating factors, the trial court imposed a minimum sentence that was within the standard range, and thus did not impose an exceptional sentence.
- 2) No. Because the SRA applies only to felonies (*see State v. Besio*, 80 Wn.App. 426, 431, 907 P.2d 1220 (1995)), the trial court has the discretion to run misdemeanor sentences consecutively, even if there are no aggravating factors. Further, public policy supports this practice to ensure that a defendant is adequately punished for "free crimes."

***State v. Adamy*, 151 Wn. App. 583, 213 P.3d 627 (August 13, 2009)**

FACTS: Defendant pled guilty to First Degree Child Rape and Third Degree Assault of a Child in the Grant County Superior Court. He was sentenced to a minimum of 102 months and a maximum of life in prison. Defendant appealed.

ISSUE: Did the trial court abuse its discretion by refusing to consider a SSOSA sentence because the Defendant was subject to a deportation hold?

HOLDING: Yes. The trial court's refusal to order treatment under SSOSA is reviewed for an abuse of discretion. *See State v. Onefrey*, 119 Wn.2d 572, 575, 835 P.2d 213 (1992). A trial court abuses its discretion when its decision is manifestly unreasonable or is based upon untenable grounds or reasons. *See State v. Cunningham*, 96 Wn.2d 31, 34, 633 P.2s 886 (1981). A decision is based on untenable grounds or made for untenable reasons if it was reached by applying an incorrect legal standard. *See State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). The SRA does not expressly prohibit a SSOSA if the defendant is an alien. *See State v. Osman*, 157 Wn.2d 474, 486, 139 P.3d 334 (2006).

Here, the trial court abused its discretion by ordering a non-SSOSA sentencing based on its erroneous belief that it could not grant a SSOSA because the Defendant was subject to a deportation order. The case was remanded for consideration of a SSOSA.

***State v. Birch*, 151 Wn. App. 504, 213 P.3d 63 (August 11, 2009)**

FACTS: Defendant was convicted by a jury in Spokane County Superior Court of First Degree Robbery and was sentenced as a Persistent Offender. Defendant appealed.

ISSUE: Did the trial court err in counting the Defendant's California robbery conviction as a persistent offender strike?

HOLDING: No. An offender is a persistent offender when he has been convicted in Washington of a felony classified as a most serious offense and has at least two prior felonies. Out-of-state convictions can count toward persistent offender strikes. Generally, the burden is on the State to prove by a preponderance of the evidence that an out-of-state conviction is comparable to a Washington felony offense. An out-of-state conviction may not be used as a strike unless the State satisfies this burden. However, if the defendant affirmatively agrees at sentencing that a prior out-of-state conviction is comparable and will count as a persistent offender strike, the State is no longer required to satisfy this burden.

Here, because the Defendant asserted at sentencing that a prior conviction was properly included in calculating the offender score, the conviction was properly included.

***In re Personal Restraint Petition of Spires*, 151 Wn. App. 236, 211 P.3d 437 (July 13, 2009)**

FACTS: Petitioner was convicted of Unlawful Issuance of Bank Check in King County Superior Court. During the ten-year period after release from prison, Petitioner was ordered to serve time in jail for a probation violation for failure to pay legal financial obligations (LFOs). After more than ten years had passed since serving his initial term of confinement, Petitioner filed a petition to terminate LFOs imposed after conviction. King County Superior Court denied the petition. Petitioner then filed a PRP challenging the continued enforcement of LFOs.

ISSUE: Does the 10-year limitations period following the term of total confinement for enforcing LFOs restart after subsequent periods of incarceration?

HOLDING: No. RCW 9.94A.753(4), which governs restitution orders for offenses committed after July 1, 1985 and before July 1, 2000, states that the offender will "remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement." The plain language of the statute mandates that after the expiration of the 10-year limitations period following the term of total confinement for which the defendant is sentenced, the court has no power, absent a timely extension, to enforce unpaid LFOs. Total confinement, for purposes of determining commencement of the ten-year period for enforcing payment of LFOs, occurred when the Petitioner was released from initial period of incarceration, not on subsequent dates when he was released from confinement for violating probation terms related to original conviction.