

# DRAFT\*\*Washington Felony Sentencing Provisions\*\*DRAFT

1990 - 1999

- “Sexual Motivation finding” created.
- SSOSA eligible sentencing ranges increased from 6 to 8 years (reflects level increases for some sex offenses) Eff 7/1/90
- Current SV offense of 2 or more are served consecutively (was 3 or more). Eff 7/1/90

**Initiative 593** - “Three-Strikes Sentences” also known as Persistent Offender Sentencing, was approved by the voters and effective 30 days later on 12/02/93.

- DOSA sentencing is created (Eff 7/95)
- **Initiative 159** – “Hard Time for Armed Crimes” was approved by the legislature. The initiative increased penalties for all offenses committed with a firearm or deadly weapon.

- SSOSA eligible sentencing ranges increase from 8 to 11 years.
- Failure to Register as a Sex Offender on a class B or C sex offense becomes an unranked class C felony.
- Increased seriousness level of Manslaughter 1 from IX to XI.
- Increased Manslaughter 2 class from C to B and seriousness level from VI to VIII.

1990

1991

1992

1993

1994

1995

1996

1997

1998

1999

- “Serious Offense” subcategory created.
- Decline hearing must be held when juvenile 12+ committed offense with use of a deadly weapon.
- Original exclusive jurisdiction given to superior court for 16-17 year old juveniles committing “serious violent” or “violent” offenses with specific criminal history.

- Expands the “Persistent Offender” sentencing option to include “Two Strike Sex Offenders”.
- Creates new crimes related to methamphetamines.
- Offenses under superior court’s original exclusive jurisdiction for juveniles is expanded.

- DOSA sentencing rules are amended and eligibility rules are expanded.
- Additional seriousness level created in sentencing grid for Murder 2.
- Scoring rule changes for Manslaughter, Veh Homicide-DUI, and multiple weapon-related offenses.
- 12 unranked offenses where assigned seriousness levels.



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2000 - 2008

- SSOSA eligibility rules amended to allow those w/o a violent prior within last 10 years.
  - o Mandatory 12 months of total confinement (up from 6 months)
  - o Treatment length is expanded from 3 to 5 years. Not Earned Release eligible.

*Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 2004 U.S. LEXIS 4573, 72 U.S.L.W. 4546, 6 A.L.R. Fed. 2d 619, 17 Fla. L. Weekly Fed. S 430 (U.S. June 24, 2004)*

- Blakely v WA is heard by the Supreme Court and results in changes to how a finding for an exceptional sentence can be imposed.

Three new “allegations” for select sex offenses with children or vulnerable victims:

- o Predatory
- o Victim was less than 15 years of age
- o Victim had diminished capacity

These allegations, if proven, result in a statutory minimum sentence of the high end of the range or 25 years, whichever is greatest (RCW 9.94A.540).

- Failure to Register as a Sex Offender increased to Class B felony.
- Criminal Mistreatment seriousness level increased from IX to XII.
- “Most Serious Offense” to include any out-of-state conviction of 10+ years with a finding of sexual motivation.

Non Persistent Sex Offender Sentencing under RCW 9.94A.712 is created.

2000

- Offender Accountability Act is established.
- SRA is recodified and restructured.

2001

- Amended scoring of statutory drug offenses to single scoring against prior violations of chapter 69.50 (excludes Mfg of Meth & Deliver C/H w/sex or violent priors).
- Some specific violations of 69.50 for the delivery of cocaine or heroin become level VII offenses.

2002

2003

- Drug Grid and Drug Levels are established under RCW 9.94A3.517 and .518. Effective for drug offenses occurring on or after 7/2003.
- Earned Release Allowances amended.

2004

2005

- Residential DOSA Community Treatment Option is created and effective for “sentences” imposed on or after 10/1/2005
- DOSA sentencing eligible is expanded again to include as eligible for DOSA those offenders w/o a prior sex offense in the last 10 years.

2006

Establishes the court’s authority to empanel a jury for the purposed of establishing a “finding” for an aggravated exceptional sentence.

2007

2008

- Three new sentencing provisions for offenses involving Criminal Street Gang Activities;
  - o Aggravated finding
  - o 12 months community custody for any jail term conviction of Unlawful Possession of a Firearm 1 or 2, if the offender is a gang member.
  - o Increased penalties for adult Criminal Street Gang Members who involve a minor in a gang-related felony.



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2009-2010

- Language clarified so that DOSA community custody shall equal one-half of the midpoint of the standard range.
- Term of community custody established for unranked offenses that exceed 12 months based on exceptional sentence and for which there is no established sentence range.
- Terms of community custody are changed from ranges to specific terms: 36 months for sex offenses, serious violent offenses, and sex offenders convicted of Failure to Register; 18 months for violent offenses; 12 months for crimes against a person, drug offense, offense involving unlawful possession of a firearm by a gang member.
- Adds periods of community supervision or parole supervision to the maximum sentence for a juvenile convicted of a felony motor vehicle offense.

- Directs DOC to supervise only:
  - o Offenders with high risk classification
  - o Sex offenders
  - o DMIO
  - o Offenders with an indeterminate sentence
  - o DOSA, SSOSA or FTOW
  - o All offenders requiring supervision under the Interstate Compact
  - o Offenders sentenced to probation by superior court and convicted of the following misdemeanor offenses: misdemeanant sex offenders, including those convicted of Failure to Register; Assault 4th or violation of Domestic Violence court order with a prior conviction.

2009

- Adds offenders with serious violent offense conviction to the list of those supervised by DOC regardless of risk to reoffend.
- Modification of sentencing provisions for juveniles convicted of Taking a Motor Vehicle Without Permission 1 or 2, Theft of a Motor Vehicle or Possession of Stolen Vehicle.
- Allows the juvenile court to have jurisdiction over a juvenile, even if the juvenile has previously been the subject of adult court jurisdiction as a result of a decline hearing, if in adult court the juvenile is either acquitted of the offense charged or convicted of a lesser offense.
- Allows the prosecutor and the respondent to waive the exclusive adult court jurisdiction triggered by certain offenses when the juvenile is age 16 or 17 years and excludes juveniles age 15 years from mandatory decline hearings.
- Monetary thresholds for property crimes are increased.

2010

- Parenting Sentence Alternative was created
- Dealing and Sending or Bringing into the State:
  - o 1<sup>st</sup> – class B, level VII
  - o 2<sup>nd</sup> – class C, level V
- Possession:
  - o 1<sup>st</sup> – class B, level VI
  - o 2<sup>nd</sup> – class C, level IV
- Viewing:
  - o 1<sup>st</sup> – class B, level IV
  - o 2<sup>nd</sup> – class C, unranked
- Felony DUI – definition of prior offense is clarified
- Adjusts scoring of prior felony and non-felony domestic violent-related offenses.
- The first conviction of Failure to Register as a Sex Offender is no longer considered a sex offense but can receive 1 year of community supervision.
- Creation of aggravating factor for Viewing When Paying to View Depictions of a Minor over the Internet.



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2011-2014

- Felony DUI - all predicate crimes for the offense must be included in the offender score which include a deferred sentence for Negligent Driving 1, Reckless Driving, or Reckless Endangerment, when the original charge, which was pled down to a lesser charge, was filed as a DUI, PC, equivalent ordinance, Veh Homicide, or Veh Assault.
- DOC must supervise individuals convicted of Veh Homicide, Veh Assault, felony DUI or PC regardless of risk classification.

- Creates a new sentencing scheme for offenders convicted of Aggravated Murder in the first degree under the age of 18: (1) if under 16 years of age at the date of offense, the offender will receive an indeterminate sentence with a minimum of 25 years and a maximum term of life; or (2) if 16 or 17 years old at the time of offense, the offender will receive an indeterminate sentence with a minimum of 25 years or more and a maximum term of life.

- Promoting Commercial Sex Abuse of a Minor is added as a gang-related offense.
- Veh Homicide seriousness level increased from IX to XI.
- Commercial Sex Abuse of a Minor and Promoting Commercial Sex Abuse of a Minor are added to list of offenses constituting criminal profiteering activity.

2011

2012

2013

2014

- DOC community supervision was eliminated for those convicted of first Failure to Register with a moderate/low risk level, and those with a prior offense and convicted after 8/1/11 of misdemeanor Assault 4 or Violation of Domestic Violence Court Order.
- DOC must supervise those convicted after 8/1/11 of 2+ domestic violence convictions.
- Maximum terms of community custody were reduced for offenders sentenced under the First-Time Offender Waiver.

- Tolling of community custody while an offender is confined for violating a sentencing condition is eliminated.
- Veh Assault-DUI and Veh Homicide-DUI are considered prior offenses for felony DUI.
- Once convicted of felony DUI, any subsequent DUI becomes a felony DUI.
- Creates aggravating factor when offense was intentionally committed due to perceived homelessness of victim.

- Provides for resentencing of offenders previously sentenced to a term of life for an offense committed under the age of 18.
- Allows a person convicted of an offense committed prior to his or her eighteenth birthday to petition the Indeterminate Sentence Review Board for early release after serving 20 years.

- Sentences for a felony driving under the influence or being in physical control of a motor vehicle under the influence of intoxicating liquor or any drug must be served consecutively with any sentences imposed for circumventing an ignition interlock device or operating a motor vehicle without a required ignition interlock device, both gross misdemeanor offenses. Sentences for circumventing an ignition interlock device or operating a motor vehicle without a required ignition interlock device are also served consecutively.



# DRAFT\*\*Washington Felony Sentencing Provisions\*\*DRAFT

2015-2018

- Authorizes the DOC to supervise offenders up to the length of supervision that can be imposed by a court.
- Veh Homicide-Reckless seriousness level increased from VIII to XI.
- New mitigating factor if the person has committed no other previous serious traffic offenses and the current sentence is clearly excessive.

2015

2016

- Requires the Department of Corrections (DOC) to supervise any offender released by the Indeterminate Sentence Review Board (ISRB) and who was sentenced to community custody or subject to community custody under the terms of release.
- Prohibits an offender convicted of Aggravated first degree Murder prior to the person's eighteenth birthday from receiving earned early release time during the minimum term of confinement imposed by the court.

- Felony DUI if three or more prior offenses within ten years.
- Felony DUI seriousness level increased from V to IV.
- Creates the crimes of Theft from a Vulnerable Adult 1 and 2.
- Categorizes Criminal Mistreatment (first and second degree) and Theft from a Vulnerable Adult as crimes against persons.

2017

- Eliminates exclusive adult court jurisdiction for 16 and 17 year olds charged with Robbery in the first degree; Drive-by Shooting; Burglary in the first degree with one or more prior adjudications; and any violent offense when the juvenile is alleged to have been armed with a firearm.
- Limits discretionary decline hearings to 15 year olds and older who are charged with a serious violent felony and 14 year olds and younger who are charged with Murder in the first or second degree.

- Elevates Assault 4 involving domestic violence to a class C felony when defendant has 2+ prior adult convictions in prior 10 years for certain crimes involving DV.
- Assault 4-DV is considered a crime against a person.
- Counts prior adult convictions for Assault of a Child or Criminal Mistreatment involving DV as two points when calculating an offender score for sentencing pursuant to a felony DV conviction.

2018

- Limits mandatory decline hearings to individuals charged with Escape when the respondent is serving a minimum sentence to age 21.
- Creates a new offense category called A++ that includes a range of 129 weeks to 260 weeks of confinement for individuals age 16 or 17 that are adjudicated of Robbery in the first degree, and Drive-by Shooting.

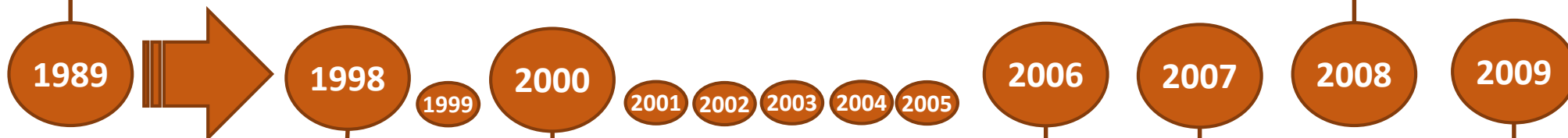


# DRAFT\*\* Washington Felony Sentencing Enhancements\*\* DRAFT

1989 - 2009

- **“School Zone”** enhancement of 24 months for a violation of RCW 69.50 within 1000 ft of a school or school bus stop. Enhancements will double for subsequent violations.
- **“While in a county jail or state correctional facility”** enhancement for specific violations of RCW 69.50.401 or 69.50.410. Based on class of the offenses, the enhancements are an additional 12, 15 or 18 months of confinement.
- **“School Zones”** are expanded to include “other” public areas and renamed **“Protected Zones”** and are eligible for a 24 month enhancement for violations of RCW 69.50.

- **“Adult offender that uses a minor in the commission of a criminal street gang-related felony by threat or by solicitation”** enhancement shall multiply the standard range by 125%. Enhancement is unavailable if prosecution seeks an exceptional sentence based on an aggravating factor under RCW 9.94A.535.
- **“Endangerment of Another”** enhancement of 12 months and 1 day for a finding of endangering another during the commission of Attempting to Elude a Police Vehicle.
- **“Eluding Police Vehicle “** enhancement shall add 12 months and 1 day to standard sentencing range.



- Enhancement of 24 months for each prior DUI\* conviction when the current offense is a conviction of **Vehicular Homicide-DUI**. (\*only DUI's that are not part of the offender score).
- Clarifies that firearm and deadly weapon enhancements may not be reduced if sentence exceeds statutory maximum.

**“Child on the Premises”** enhancement of 24 months is created for convictions of Manufacture of Meth or Possession of Ephedrine or Pseudoephedrine with intent to Manufacture Meth, while a minor is present.

**“Sexual Motivation”** enhancement shall add a period of 24, 18 or 12 months (based on the underlying offense class) to the standard sentencing range for offenses committed with sexual motivation. Qualifying “subsequent violations” for sexual motivation findings will double the period of enhancement.

**“Sexual Contact for a Fee”** enhancement of 24 months shall be imposed for a finding of “sexual contact for a fee” on offenses of Rape of a Child and Child Molestation.

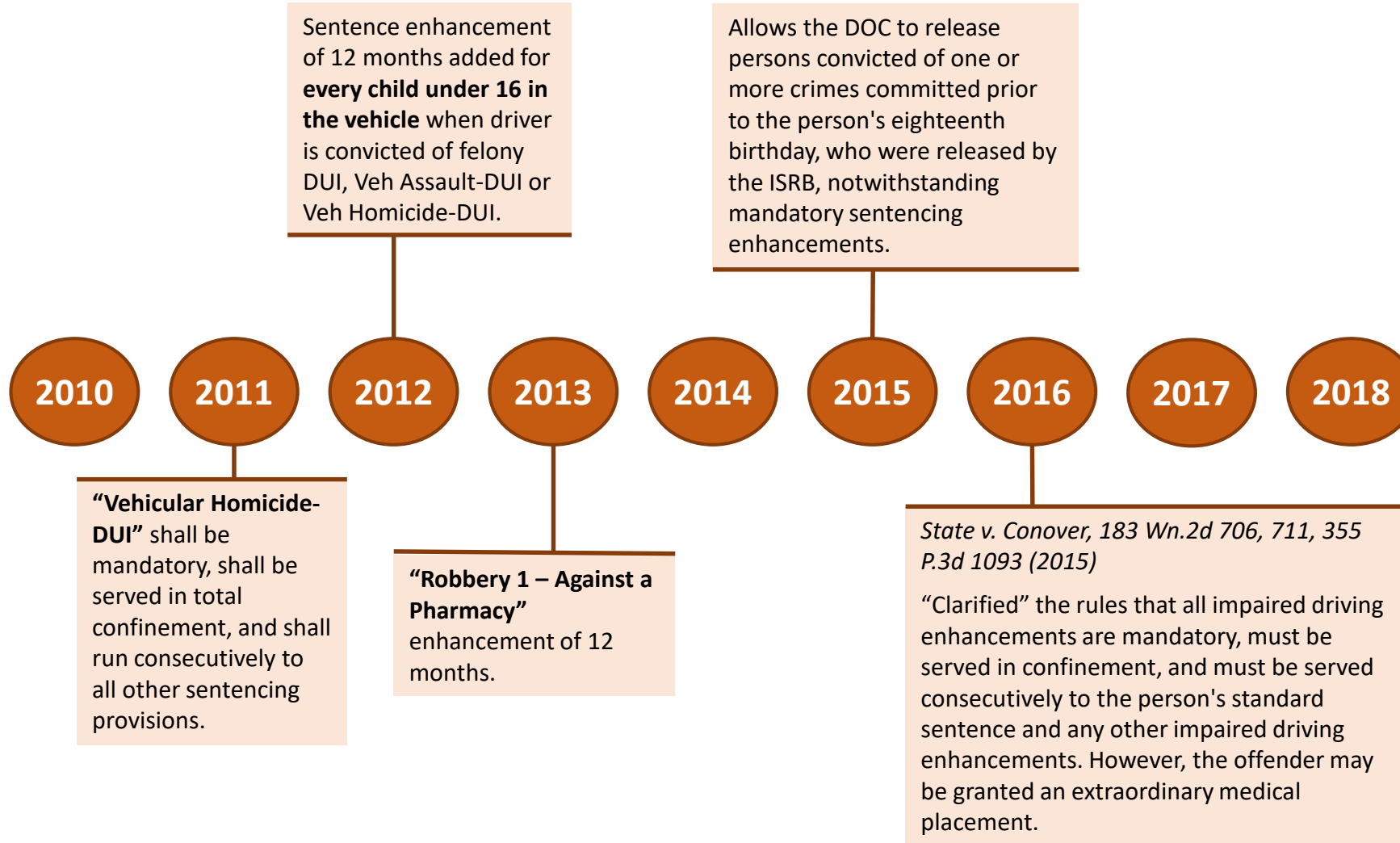
**“Assaulting a Law Enforcement Officer/Employee”** enhancement of 12 months imposed for finding that offense occurred while they were performing official duties.





# DRAFT\*\*Washington Felony Sentencing Enhancements\*\*DRAFT

## 2010 - 2018



# DRAFT\*\* Washington Weapon Enhancements\*\* DRAFT

1990 - 2018

