

Suggested Changes to Offense Seriousness Level Rankings

Vehicular Homicide Disregard for the Safety of Others

RCW 46.61.520(1)(c)

CLASS A – VIOLENT/TRAFFIC OFFENSE/CRIMES AGAINST PERSONS

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL VII	17.5m 15 - 20	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	47.5m 41 - 54	66m 57 - 75	78m 67 - 89	89.5m 77 - 102	101.5m 87 - 116

Increasing from seriousness level VII to level VIII to more appropriately reflect the immense gravity and irremediable nature of the crime.

An offender can spend less than a year in jail if they have no criminal history while the traumatic grief imposed upon the family has lifelong impacts. There are very few support groups or services in place specific to vehicular homicide and Crime Victims Compensation caps the grief counseling benefit at 12 sessions total for immediate family members only. The current sentence and treatment of these crime victims is not just. Following the logic that Vehicular Homicide by being under the influence of an intoxicant and by operating a vehicle in a reckless manner are ranked with Manslaughter in the first degree, Vehicular Homicide by disregard for the safety of others should be ranked with the similar offense of Manslaughter in the second degree. [Maia McCoy]

Malicious Placement of an Imitation Device Second Degree

RCW 70.74.272(1)(b)

CLASS C* – NONVIOLENT

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL VI	13m 12+ - 14	17.5m 15 - 20	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	53m 46 - 60*	58.5m 57 - 60*	60 - 60*	60 - 60*

Decreasing the seriousness level, which is currently a level VI offense.

In order to charge Malicious Placement 1, intent to commit a terrorist attack must be proven, but the second degree designation is broad and may encompass bomb threats or pranks perpetrated by youthful offenders. The sentence length cannot be justified by deterrence alone, as we understand it to be a flawed legal concept, and it doesn't seem appropriately ranked with other level VI crimes against persons, such as Incest 1 or Rape of a Child 3. [Maia McCoy]

Suggested Changes to Offense Seriousness Level Rankings

Vehicular Assault in a Reckless Manner or While under the Influence of Intoxicating Liquor or Any Drug

RCW 46.61.522(1)(a) & (b)

CLASS B – VIOLENT/TRAFFIC OFFENSE/CRIMES AGAINST PERSONS

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	61.5m 53 - 70	73.5m 63 - 84

Increase seriousness level from level IV to level V.

Along with Assault 2 this is the only other offense in seriousness level IV, which results in substantial bodily harm. A Vehicular Assault victim may be faced with long-term rehabilitation and collateral costs at his or her own expense, as crime disproportionately impacts indigent persons. An incident of Vehicular Assault can very easily cause long-term disability, contributing to further social closure. [Maia McCoy]

Assault Second Degree

RCW 9A.36.021(2)(a)

CLASS B – VIOLENT/CRIMES AGAINST PERSONS

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	61.5m 53 - 70	73.5m 63 - 84

Increasing the severity level of from level IV to level VI.

The difference between Assault 1, which carries a seriousness ranking of XII and Assault 2, carrying a seriousness level of IV, is too wide-ranging. An offender with no prior criminal history charged with Assault 2 could receive fewer than 2 months in jail, versus 5.8 years on the Assault 1 charge. Currently, the minimal sentence for Assault 2 does not provide incentive for assault survivors to testify against the assailant. Most victims are reluctant to cooperate and compromise their own safety, if they know an offender is going to be immediately released. Assault 2 requires a finding of substantial bodily injury -- broken vertebra, stab wounds, and so forth, which is not consistent with other offenses at seriousness level IV, such as Influencing Outcome of a Sporting Event and Identity Theft 1. Assault 2 is commonly charged in cases of strangulation and other crimes against women. While we have long minimized gender-based violence, our cultural mores are shifting, and public policy including sentencing should reflect that. [Maia McCoy]

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Assault in the Second Degree is a class B felony. There is a considerable gap in the ranking of Assault in the First degree (seriousness level 13 now and proposed level 12) vs. Assault in the Second Degree (seriousness level 4). Assault in the Second Degree can be committed by a variety of actions (sub-sections a – g) with a variety of resulting injury to the victim. For example, the actions that constitute an assault by strangulation could quickly become the actions for a homicide by strangulation. This type of action with the potential consequences should have a higher seriousness level. On the other hand, infliction of fear of an assault without physical injury (for example by use of a deadly weapon that does not inflict injury) is qualitatively different. *The Assault 2 crime should be classified differently as to the specific sub-category in the statutory definition.* The different sub-categories may be used for a B+ to B to B- categorization. [Judge Houser]

Assault First Degree

RCW 9A.36.011

CLASS A – SERIOUS VIOLENT/CRIMES AGAINST PERSONS

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL XII	108m 93 - 123	119m 102 - 136	129m 111 - 147	140m 120 - 160	150m 129 - 171	161m 138 - 184	189m 162 - 216	207m 178 - 236	243m 209 - 277	279m 240 - 318

Assault in the First Degree may also be broken down to sub-categories because of the different ways the crime could be committed. This is a way to bridge the gap between the present spread between the two crimes of Assault in the First Degree and Assault in the Second Degree. This could be done whether we continue to use the current seriousness level grid or whether we move to the A+ through C- grid. [Judge Houser]

Theft of Livestock First Degree

RCW 9A.56.080

CLASS B – NONVIOLENT

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	61.5m 53 - 70	73.5m 63 - 84

Theft of Livestock in the First Degree (RCW 9A.56.080) is a level 4 offense. Identity Theft in the First Degree is also a level 4. Trafficking in Stolen Property in the First Degree is a level 4. In my opinion, Theft of Livestock should be treated as any other theft. Theft 1 is a level 2 crime and Theft in the Second Degree is a level 1. *I would place Theft of Livestock in these two levels based upon either the type of livestock (more expensive vs. less expensive) or by value in level 1 and 2.* [Judge Houser]

Suggested Changes to Offense Seriousness Level Rankings

Theft of Ammonia

RCW 69.55.010

CLASS C* – NONVIOLENT

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL VIII	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	47.5m 41 - 54	53.m 46 - 60*	60 - 60*	60 - 60*	60 - 60*	60 - 60*

Theft of Ammonia (RCW 69.55.010) is a C felony with a maximum prison sentence of 5 years. It is a level 8 crime. A defendant with an offender score of 5 faces a sentence of 46 – 61 months. This is not appropriately placed in the present guidelines grid. *I would place it at the same seriousness level as Theft in the First Degree.* [Judge Houser]

Air Bag Offenses

RCW 46.37.660

CLASS C – NONVIOLENT

Statute (RCW)	Offense	Current Class	Current Seriousness Level (RCW 9.95A.515)
46.37.660(2)(b)	Air Bag Diagnostic Systems (Causing Bodily Injury or Death)	C	7
46.37.660(1)(b)	Air Bag Replacement Requirements (Causing Bodily Injury or Death)	C	7
46.37.650(1)(b)	Manufacture or Import Counterfeit, Nonfunctional, Damaged, or Previously Deployed Air Bag (Causing Bodily Injury or Death)	C	7
46.37.650(2)(b)	Sale [of], Install, or Reinstall Counterfeit, Nonfunctional, Damaged, or Previously Deployed Airbag	C	7
46.37.660(2)(c)	Air Bag Diagnostic Systems	C	5
46.37.660(1)(c)	Air Bag Replacement Requirements	C	5
46.37.650(1)(c)	Manufacture or Import Counterfeit, Nonfunctional, Damaged, or Previously Deployed Air Bag	C	5
46.37.650(2)(c)	Sale [of], Install, or Reinstall Counterfeit, Nonfunctional, Damaged, or Previously Deployed Airbag	C	5

Suggested Changes to Offense Seriousness Level Rankings

		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
LEVEL VII		17.5m	24m	30m	36m	42m	47.5m	66m	78m	89.5m	101.5m
		15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	57 - 75	67 - 89	77 - 102	87 - 116

		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
LEVEL V		9m	13m	15m	17.5m	25.5m	38m	47.5m	59.5m	72m	84m
		6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	41 - 54	51 - 68	62 - 82	72 - 96

There are a series of crimes concerning automobile air bags (RCW 46.37.660). Each of these crimes is a C Felony with the maximum penalty of 5 years. They are listed as a level 5 or level 7 crime. A defendant reaches the maximum statutory penalty in an offender score 6 or 7. *These should be reclassified as a level 3 crime.* The maximum statutory penalty would then be reached at a level 9. [Judge Houser]

Failure to Register As a Sex Offender Second or Subseq Violation Committed On or After 6/7/2006 but Before 6/10/2010

RCW 9A.44.132(1)(a)

CLASS C – NONVIOLENT/SEX

Failure to Register As a Sex Offender Second Violation Committed On or After 6/10/2010

RCW 9A.44.132(1)(a)

CLASS C – NONVIOLENT/SEX

Failure to Register As a Sex Offender Third or Subseq Violation Committed On or After 6/10/2010

RCW 9A.44.132(1)(b)

CLASS B – NONVIOLENT/SEX

		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
LEVEL II			4m	6m	8m	13m	16m	19.5m	25.5m	38m	50m
		0-90 days	2 - 6	3 - 9	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29	33 - 43	43 - 57

All Failure to register offenses should be level 1. The crime is a failure to file a form with the local sheriff's office. Under the R group proposed grid, the crime should be a C- and B- as presently designated; however, since the crime is the failure to file a form with the sheriff, the crime should be a C felony at the most. [Judge Houser]

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RANGE EXCEED STATUTORY MAXIMUM

I have mentioned a couple of instances where the statutory maximum sentence is below the seriousness level 9 sentencing range. We should take a look at any crime where this occurs and place the crime in a seriousness level that is appropriate where the maximum statutory sentence may not be reached unless the offender has an offender score of 9 or greater. [Judge Houser]

All Crimes Where Stat Max Occurs Before Offender Score 9+

Malicious Placement of an Imitation Device First Degree, RCW 70.74.272(1)(a), CLASS B* – NONVIOLENT

		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
LEVEL XII		106.5m	111m	115.5m							
		93 - 120*	102 - 120*	111 - 120*	120 - 120*	120 - 120*	120 - 120*	120 - 120*	120 - 120*	120 - 120*	120 - 120*

Criminal Mistreatment First Degree, RCW 9A.42.020, CLASS B* – NONVIOLENT/CRIMES AGAINST PERSONS

Malicious Explosion of a Substance Third Degree, RCW 70.74.280(3), CLASS B* – NONVIOLENT

		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
LEVEL X		59.5m	66m	72m	78m	84m	89.5m	109m			
		51 - 68	57 - 75	62 - 82	67 - 89	72 - 96	77 - 102	98 - 120*	120 - 120*	120 - 120*	120 - 120*

Kidnapping First Degree with a Finding of Sexual Motivation, RCW 9A.40.020, SERIOUS VIOLENT/SEX/CRIMES AGAINST PERSONS
SOLICIATION/CONSPIRACY = CLASS B*

		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
LEVEL X		59.5m	66m	72m	78m	84m	89.5m	114m	114m		
		51 - 68	57 - 75	62 - 82	67 - 89	72 - 96	77 - 102	98 - 130	108 - 120*	120 - 120*	120 - 120*

Suggested Changes to Offense Seriousness Level Rankings

Abandonment of Dependent Persons First Degree, RCW 9A.42.060, CLASS B* – NONVIOLENT

Assault of a Child Second Degree, RCW 9A.36.130, CLASS B* – VIOLENT/CRIMES AGAINST PERSONS

Assault of a Child Second Degree with a Finding of Sexual Motivation, RCW 9A.36.130, CLASS B* – VIOLENT/SEX/CRIMES AGAINST PERSONS

Hit And Run – Death, RCW 46.52.020(4)(a), CLASS B* – NONVIOLENT/TRAFFIC OFFENSE

Leading Organized Crime Inciting Criminal Profiteering, RCW 9A.82.060(1)(b), CLASS B* – NONVIOLENT

Malicious Placement of an Explosive Second Degree, RCW 70.74.270(2), CLASS B* – NONVIOLENT

Sexual Exploitation of a Minor, RCW 9.68A.040, CLASS B* – NONVIOLENT/SEX

Offender Score										
	0	1	2	3	4	5	6	7	8	9+
LEVEL IX	36m	42m	47.5m	53.5m	59.5m	66m	89.5m	101.5m	114m	
	31 - 41	36 - 48	41 - 54	46 - 61	51 - 68	57 - 75	77 - 102	87 - 116	108 - 120*	120 - 120*

Rape of a Child Third Degree, RCW 9A.44.079, CLASS C* – NONVIOLENT/SEX/CRIMES AGAINST PERSONS

Unlawful Storage of Ammonia, RCW 69.55.020, CLASS C* – NONVIOLENT

Malicious Placement of an Imitation Device Second Degree, RCW 70.74.272(1)(b), CLASS C* – NONVIOLENT

Offender Score										
	0	1	2	3	4	5	6	7	8	9+
LEVEL VI	13m	17.5m	24m	30m	36m	42m	53m	58.5m		
	12+ - 14	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	46 - 60*	57 - 60*	60 - 60*	60 - 60*

Child Molestation Third Degree, RCW 9A.44.089, CLASS C* – NONVIOLENT/SEX/CRIMES AGAINST PERSONS

Criminal Mistreatment Second Degree, RCW 9A.42.030, CLASS C* – NONVIOLENT/CRIMES AGAINST PERSONS

Custodial Sexual Misconduct First Degree, RCW 9A.44.160, CLASS C* – NONVIOLENT/SEX

Domestic Violence Court Order Violation, RCW 26.50.110, CLASS C* – NONVIOLENT/CRIMES AGAINST PERSONS

Rape Third Degree, RCW 9A.44.060, CLASS C* – NONVIOLENT/SEX/CRIMES AGAINST PERSONS

Sexual Misconduct with a Minor First Degree, RCW 9A.44.093, CLASS C* – NONVIOLENT/SEX

Suggested Changes to Offense Seriousness Level Rankings

Sexually Violating Human Remains, RCW 9A.44.105, CLASS C* – NONVIOLENT/SEX

Persistent Prison Misbehavior, RCW 9.94.070, CLASS C* – NONVIOLENT

Incest Second Degree, RCW 9A.64.020(2), CLASS C* – NONVIOLENT/SEX/CRIMES AGAINST PERSONS

Abandonment of Dependent Persons Second Degree, RCW 9A.42.070, CLASS C* – NONVIOLENT

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL V	9m	13m	15m	17.5m	25.5m	38m	47.5m	55.5m		
	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	41 - 54	51 - 60*	60 - 60*	60 - 60*

Assault Third Degree of a Peace Officer with a Projectile Stun Gun, RCW 9A.36.031(1)(h), CLASS C* – NONVIOLENT/CRIMES AGAINST PERSONS

Cheating First Degree, RCW 9.46.1961, CLASS C* – NONVIOLENT

Counterfeiting - Endanger Public Health or Safety, RCW 9.16.035(4), CLASS C* – NONVIOLENT/CRIMES AGAINST PERSONS

Hit And Run – Injury, RCW 46.52.020(4)(b), CLASS C* – NONVIOLENT/TRAFFIC OFFENSE

Hit and Run With a Vessel – Injury Accident, RCW 79A.60.200(3), CLASS C* – NONVIOLENT

Indecent Exposure to a Person under Age 14 Subsequent Conviction Or Has Prior Sex Offense Conviction, RCW 9A.88.010(2)(c), CLASS C* – NONVIOLENT

Influencing Outcome of Sporting Event, RCW 9A.82.070, CLASS C* – NONVIOLENT

Malicious Harassment, RCW 9A.36.080, CLASS C* – NONVIOLENT

Physical Control of a Vehicle While Under the Influence of Intoxicating Liquor or Any Drug, RCW 46.61.504(6), CLASS C* – NONVIOLENT/TRAFFIC OFFENSE/CRIMES AGAINST PERSONS

Vehicle Prowling Second Degree (Third or Subsequent Offense), RCW 9A.52.100(3), CLASS C* – NONVIOLENT

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL IV	6m	9m	13m	15m	17.5m	25.5m	38m	50m	56.5m	
	3 - 9	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	43 - 57	53 - 60*	60 - 60*

Suggested Changes to Offense Seriousness Level Rankings

Involving a Minor in Drug Dealing, RCW 69.50.4015, CLASS C* – NONVIOLENT/DRUG

Selling For Profit (Controlled or Counterfeit) Any Controlled Substance in Schedule I, RCW 69.50.410, CLASS C* – NONVIOLENT/DRUG

Offender Score			
	0 to 2	3 to 5	6 to 9+
LEVEL III	55.5m		
	51 - 60*	60 - 60*	60 - 60*

Create, Deliver or Possess a Counterfeit Controlled Substance Schedule I-II Nonnarcotic, Schedule III-V except Flunitrazepam or Methamphetamine, RCW 69.50.4011(2)(c-e), CLASS C* – NONVIOLENT/DRUG

Delivery of a Material In Lieu Of a Controlled Substance, RCW 69.50.4012, CLASS C* – NONVIOLENT/DRUG

Manufacture, Deliver or Possess With Intent to Deliver Narcotics from Schedule III, IV or V or Nonnarcotics from Schedule I-V except Marijuana, Amphetamine, Methamphetamine or Flunitrazepam, RCW 69.50.401(2)(c-e), CLASS C* – NONVIOLENT/DRUG

Manufacture, Distribute or Possess With Intent to Distribute an Imitation Controlled Substance, RCW 69.52.030(1), CLASS C* – NONVIOLENT

Offender Score			
	0 to 2	3 to 5	6 to 9+
LEVEL II	16m	40m	
	12+ - 20	20+ - 60	60 - 60*

Maintaining a Dwelling or Place for Controlled Substances RCW 69.50.402 CLASS C* – NONVIOLENT/DRUG

Offender Score			
	0 to 2	3 to 5	6 to 9+
LEVEL II	16m	22m	
	12+ - 20	20+ - 24*	24*

Maintaining a Dwelling or Place for Controlled Substances (Subsequent) RCW 69.50.402 CLASS C* – NONVIOLENT/DRUG

Offender Score			
	0 to 2	3 to 5	6 to 9+
LEVEL II	16m	34m	
	12+ - 20	20+ - 48*	48*