

Washington Felony Sentencing Provisions

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.



Washington Felony Sentencing Provisions

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 7/2004.
- 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.



Washington Felony Sentencing Provisions

2009-2010

- Directs DOC to supervise only:
 - o Offenders with high-risk classification
 - o Serious violent offenses
 - o Sex offense
 - o DMIO
 - o Indeterminate sentences
 - o DOSA, SSOSA or FTOW
 - o Supervision required under the Interstate Compact
 - o Certain misdemeanor offenses: sex offenses; convictions for Failure to Register; Assault 4th or violation of Domestic Violence court order with a prior conviction.

- Parenting Sentence Alternative and Community Parenting Alternative were created
- 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.
- Created several new aggravating and mitigating factors.

- New offenses related to depictions of a minor engaged in sexually explicit conduct:
 - Dealing in:
 - o 1st – class B, level VII
 - o 2nd – class C , level V
 - Sending or Bringing into state:
 - o 1st – class B, level VII
 - o 2nd – class C , level V
 - Possession:
 - o 1st – class B, level VI
 - o 2nd – class C, level IV
 - Viewing:
 - o 1st – class B, level IV
 - o 2nd – class C, unranked

2009

- 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 and apply retroactively: 36, 18 and 12 months.
- 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

- Commercial sexual abuse of a minor reclassified to B and increased to SL 8.
- Promoting commercial sexual abuse of a minor reclassified to A and increased to SL 12.
- Schedules, deletes, or reschedules 69 drugs, substances, or immediate precursors to bring Washington's Controlled Substances Act into conformance with the Board of Pharmacy rules and federal law.



Washington Felony Sentencing Provisions

2011-2016

- Reduces terms of community custody for offenders sentenced under the First-Time Offender Waiver.
- Eliminated tolling of community custody while an offender is confined for violating a sentencing condition.
- Veh Assault-DUI and Veh Homicide-DUI are considered prior offenses for felony DUI.
- Any subsequent felony DUI/PC is also a felony DUI/PC.

- Veh Homicide seriousness level increased from IX to XI.
- *Miller v. Alabama, 567 U.S. 460 (2012)* The U.S. Supreme Court held that mandatory sentences of LWOP are unconstitutional for juvenile offenders.

- 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.

- Requires the Department of Corrections to supervise any offender released by the Indeterminate Sentence Review Board and who was sentenced to community custody or subject to community custody under the terms of release.
- Prohibits an offender convicted of Aggravated Murder 1 prior to the person's 18th birthday from receiving earned early release time during the minimum term of confinement imposed by the court.

2011

2012

2013

2014

2015

2016

- Community Supervision Eliminated:
 - first Failure to Register with moderate/low risk level.
 - Assault 4 or Violation of Domestic Violence Court Order w/prior conviction (post 8/1/11).
- Community Supervision Added: prior and current repetitive domestic violence offense where DV was plead and proven after 8/1/11.

Washington's Miller Fix:

- Creates a new sentencing scheme for Aggravated Murder 1 when under age 18: (1) indeterminate sentence of 25 to Life if <16 years of age at time of offense; or (2) indeterminate sentence of 25+ to Life if 16 or 17 years old at the time of offense.

- Provides for resentencing of offenders previously sentenced to LWOP for an offense committed under the age of 18.

- Allows a person convicted of an offense committed prior to 18th birthday to petition the Indeterminate Sentence Review Board for early release after serving 20 years.

- 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.



Washington Felony Sentencing Provisions

2015-2020

- Felony DUI if 3+ prior offenses within 10 years.
- Felony DUI increased to SL 6.
- Creates the crimes of Theft from a Vulnerable Adult 1 and 2.
- Categorizes Criminal Mistreatment 1/2 and Theft from a Vulnerable Adult as crimes against persons.
- Assault 4-DV is considered a crime against a person.

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

2017

2018

2019

2020

- Eliminates exclusive adult court jurisdiction for 16 and 17 year olds charged with Robbery 1; Drive-by Shooting; Burglary 1 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 charged with a serious violent felony and 14 year olds and younger charged with Murder 1 or 2.

- 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.

- Extends maximum age for confinement at JR to 25.
- Robbery 2 removed from Most Serious Offense list.
- For certain motor vehicle offenses, authorizes court to impose community custody and requires DOC to supervise them.
- Certain persons with prior misdemeanor marijuana possession may apply for vacation of record.

- Supervision Compliance Credit is created.
- Requires community custody terms be served concurrently, unless ordered otherwise.
- Modified eligibility of FOSA and CPA.
- Prosecuting attorneys may petition court to resentencing defendant if original sentence no longer serves interests of justice. Incarcerated individual may present postconviction information to court for resentencing.
- Expands eligibility of DOSA



Washington Felony Sentencing Provisions

2021 - 2023

- Modifies eligibility criteria for Graduated Reentry Program at DOC and modifies participation length and confinement requirements.
- Changes to definition of sex trafficking victims and vacation of related offenses and misdemeanors.
- Creates the Mental Health Sentencing Alternative
- The WA Supreme Court determined in *State v. Blake, No. 98873-0 (February 25, 2021)* that RCW 69.50.4013 was unconstitutional and any WA felonies were invalidated. This decision resulted in many changes, including reducing possession of a controlled/counterfeit substance from a felony to a misdemeanor.

2021

2022

2023

- Eliminates all juvenile adjudications except Murder 1&2 and Class A sex offenses from being included in adult score calculation.
- Earned Release Allowances amended.

- Allows court to not impose full or partial restitution and accrued interest on LFOs.
- Eliminates supervision fees charged and the Cost of Supervision Fund is repealed.

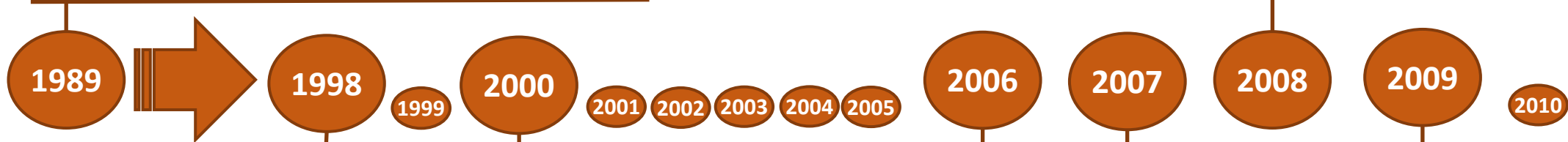


Washington Felony Sentencing Enhancements

1989 - 2010

- **“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.

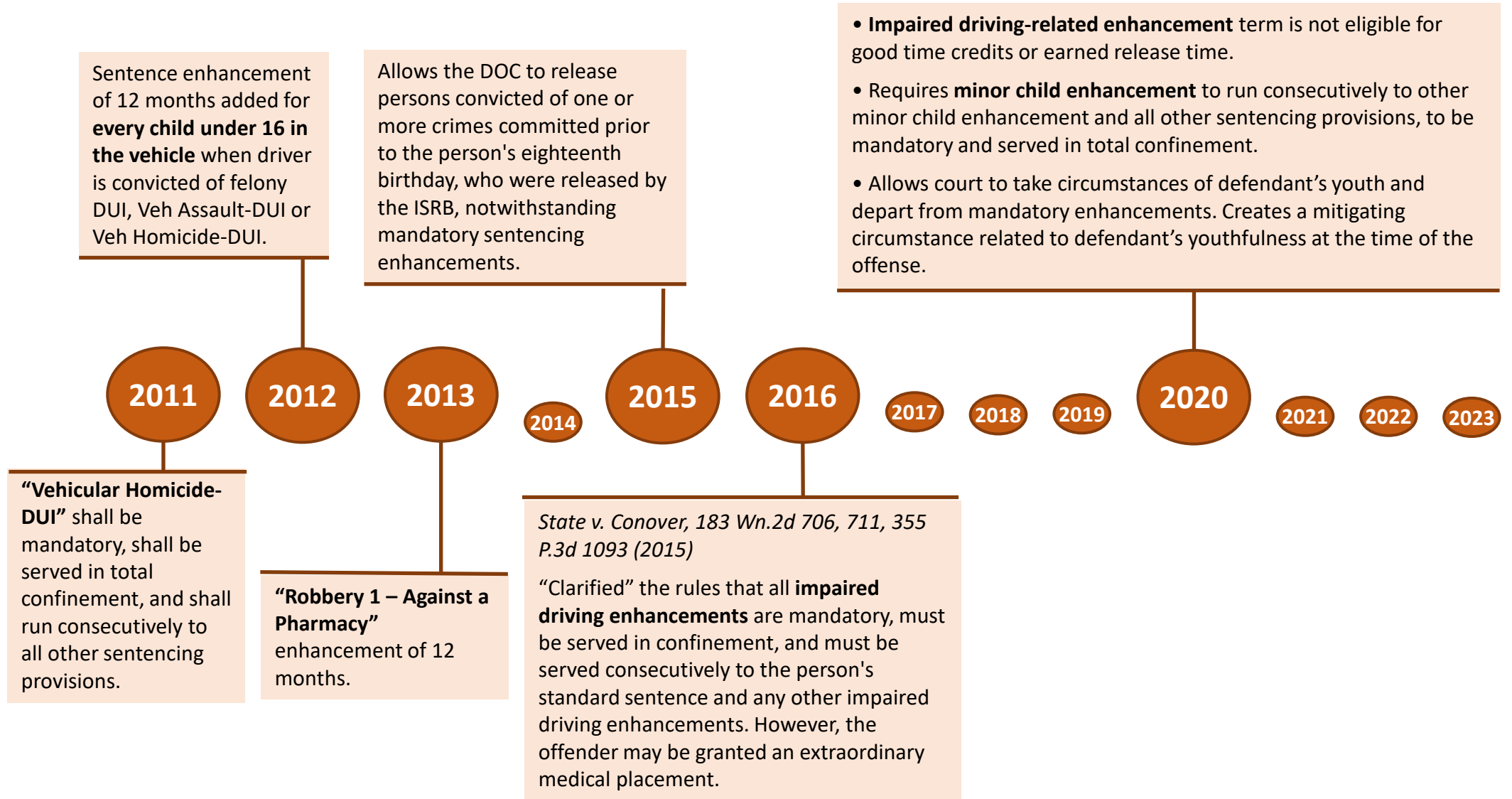
“Sexual Contact for a Fee” enhancement of 24 months shall be imposed for a finding of “sexual contact for a fee” on offenses of Rape of a Child and Child Molestation.

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



Washington Felony Sentencing Enhancements

2010 - 2023



Washington Weapon Enhancements

1990 - 2023

