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HOUSE BILL 1646

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State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives Orcutt, Ahern, Pearson, Hope, Klippert, and McCune

Read first time 01/27/11. Referred to Committee on Judiciary.

1            AN ACT Relating to vehicular homicide and vehicular assault  
2 sentences; amending RCW 9.94A.589; reenacting and amending RCW  
3 9.94A.515; and prescribing penalties.

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

5            **Sec. 1.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to read  
6 as follows:

7            (1)(a) Except as provided in (b) (~~(c)~~), (c), or (d) of this  
8 subsection, whenever a person is to be sentenced for two or more  
9 current offenses, the sentence range for each current offense shall be  
10 determined by using all other current and prior convictions as if they  
11 were prior convictions for the purpose of the offender score:  
12 PROVIDED, That if the court enters a finding that some or all of the  
13 current offenses encompass the same criminal conduct then those current  
14 offenses shall be counted as one crime. Sentences imposed under this  
15 subsection shall be served concurrently. Consecutive sentences may  
16 only be imposed under the exceptional sentence provisions of RCW  
17 9.94A.535. "Same criminal conduct," as used in this subsection, means  
18 two or more crimes that require the same criminal intent, are committed

1 at the same time and place, and involve the same victim. This  
2 definition applies in cases involving vehicular assault or vehicular  
3 homicide even if the victims occupied the same vehicle.

4 (b) Whenever a person is convicted of two or more serious violent  
5 offenses arising from separate and distinct criminal conduct, the  
6 standard sentence range for the offense with the highest seriousness  
7 level under RCW 9.94A.515 shall be determined using the offender's  
8 prior convictions and other current convictions that are not serious  
9 violent offenses in the offender score and the standard sentence range  
10 for other serious violent offenses shall be determined by using an  
11 offender score of zero. The standard sentence range for any offenses  
12 that are not serious violent offenses shall be determined according to  
13 (a) of this subsection. All sentences imposed under ~~((b) of)~~ this  
14 subsection (1)(b) shall be served consecutively to each other and  
15 concurrently with sentences imposed under (a) of this subsection.

16 (c) If an offender is convicted under RCW 9.41.040 for unlawful  
17 possession of a firearm in the first or second degree and for the  
18 felony crimes of theft of a firearm or possession of a stolen firearm,  
19 or both, the standard sentence range for each of these current offenses  
20 shall be determined by using all other current and prior convictions,  
21 except other current convictions for the felony crimes listed in this  
22 subsection (1)(c), as if they were prior convictions. The offender  
23 shall serve consecutive sentences for each conviction of the felony  
24 crimes listed in this subsection (1)(c), and for each firearm  
25 unlawfully possessed.

26 (d) Whenever a person is convicted of two or more counts of  
27 vehicular homicide, the standard sentence range for the first count  
28 shall be determined using the offender's prior convictions and other  
29 current convictions that are not vehicular homicide in the offender  
30 score and the standard sentence range for other counts of vehicular  
31 homicide shall be determined by using an offender score of zero. The  
32 standard sentence range for any offenses that are not vehicular  
33 homicide shall be determined according to (a) of this subsection. All  
34 sentences imposed under this subsection (1)(d) shall be served  
35 consecutively to each other and concurrently with sentences imposed  
36 under (a) of this subsection.

37 (2)(a) Except as provided in (b) of this subsection, whenever a

1 person while under sentence for conviction of a felony commits another  
2 felony and is sentenced to another term of confinement, the latter term  
3 shall not begin until expiration of all prior terms.

4 (b) Whenever a second or later felony conviction results in  
5 community supervision with conditions not currently in effect, under  
6 the prior sentence or sentences of community supervision the court may  
7 require that the conditions of community supervision contained in the  
8 second or later sentence begin during the immediate term of community  
9 supervision and continue throughout the duration of the consecutive  
10 term of community supervision.

11 (3) Subject to subsections (1) and (2) of this section, whenever a  
12 person is sentenced for a felony that was committed while the person  
13 was not under sentence for conviction of a felony, the sentence shall  
14 run concurrently with any felony sentence which has been imposed by any  
15 court in this or another state or by a federal court subsequent to the  
16 commission of the crime being sentenced unless the court pronouncing  
17 the current sentence expressly orders that they be served  
18 consecutively.

19 (4) Whenever any person granted probation under RCW 9.95.210 or  
20 9.92.060, or both, has the probationary sentence revoked and a prison  
21 sentence imposed, that sentence shall run consecutively to any sentence  
22 imposed pursuant to this chapter, unless the court pronouncing the  
23 subsequent sentence expressly orders that they be served concurrently.

24 (5) In the case of consecutive sentences, all periods of total  
25 confinement shall be served before any partial confinement, community  
26 restitution, community supervision, or any other requirement or  
27 conditions of any of the sentences. Except for exceptional sentences  
28 as authorized under RCW 9.94A.535, if two or more sentences that run  
29 consecutively include periods of community supervision, the aggregate  
30 of the community supervision period shall not exceed twenty-four  
31 months.

32 **Sec. 2.** RCW 9.94A.515 and 2010 c 289 s 11 and 2010 c 227 s 9 are  
33 each reenacted and amended to read as follows:  
34

TABLE 2

CRIMES INCLUDED WITHIN  
EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) <u>Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)</u> <u>Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)</u>
X	Child Molestation 1 (RCW 9A.44.083) Criminal Mistreatment 1 (RCW 9A.42.020)

1 Indecent Liberties (with forcible  
2 compulsion) (RCW  
3 9A.44.100(1)(a))  
4 Kidnapping 1 (RCW 9A.40.020)  
5 Leading Organized Crime (RCW  
6 9A.82.060(1)(a))  
7 Malicious explosion 3 (RCW  
8 70.74.280(3))  
9 Sexually Violent Predator Escape  
10 (RCW 9A.76.115)  
11 IX Abandonment of Dependent Person 1  
12 (RCW 9A.42.060)  
13 Assault of a Child 2 (RCW 9A.36.130)  
14 Explosive devices prohibited (RCW  
15 70.74.180)  
16 Hit and Run--Death (RCW  
17 46.52.020(4)(a))  
18 Homicide by Watercraft, by being  
19 under the influence of intoxicating  
20 liquor or any drug (RCW  
21 79A.60.050)  
22 Inciting Criminal Profiteering (RCW  
23 9A.82.060(1)(b))  
24 Malicious placement of an explosive 2  
25 (RCW 70.74.270(2))  
26 Robbery 1 (RCW 9A.56.200)  
27 Sexual Exploitation (RCW 9.68A.040)  
28 ~~((Vehicular Homicide, by being under  
29 the influence of intoxicating liquor  
30 or any drug (RCW 46.61.520)))~~  
31 VIII Arson 1 (RCW 9A.48.020)  
32 Commercial Sexual Abuse of a Minor  
33 (RCW 9.68A.100)  
34 Homicide by Watercraft, by the  
35 operation of any vessel in a  
36 reckless manner (RCW  
37 79A.60.050)

1 Manslaughter 2 (RCW 9A.32.070)  
2 Promoting Prostitution 1 (RCW  
3 9A.88.070)  
4 Theft of Ammonia (RCW 69.55.010)  
5 (~~Vehicular Homicide, by the operation~~  
6 ~~of any vehicle in a reckless manner~~  
7 ~~(RCW 46.61.520))~~)  
8 Vehicular Homicide, by disregard for  
9 the safety of others (RCW  
10 46.61.520)  
11 VII Burglary 1 (RCW 9A.52.020)  
12 Child Molestation 2 (RCW 9A.44.086)  
13 Civil Disorder Training (RCW  
14 9A.48.120)  
15 Dealing in depictions of minor engaged  
16 in sexually explicit conduct 1  
17 (RCW 9.68A.050(1))  
18 Drive-by Shooting (RCW 9A.36.045)  
19 Homicide by Watercraft, by disregard  
20 for the safety of others (RCW  
21 79A.60.050)  
22 Indecent Liberties (without forcible  
23 compulsion) (RCW 9A.44.100(1)  
24 (b) and (c))  
25 Introducing Contraband 1 (RCW  
26 9A.76.140)  
27 Malicious placement of an explosive 3  
28 (RCW 70.74.270(3))  
29 Negligently Causing Death By Use of a  
30 Signal Preemption Device (RCW  
31 46.37.675)  
32 Sending, bringing into state depictions  
33 of minor engaged in sexually  
34 explicit conduct 1 (RCW  
35 9.68A.060(1))  
36 Unlawful Possession of a Firearm in  
37 the first degree (RCW 9.41.040(1))

1 Use of a Machine Gun in Commission  
2 of a Felony (RCW 9A.41.225)  
3 (~~Vehicular Homicide, by disregard for~~  
4 ~~the safety of others (RCW~~  
5 ~~46.61.520))~~)  
6 VI Bail Jumping with Murder 1 (RCW  
7 9A.76.170(3)(a))  
8 Bribery (RCW 9A.68.010)  
9 Incest 1 (RCW 9A.64.020(1))  
10 Intimidating a Judge (RCW 9A.72.160)  
11 Intimidating a Juror/Witness (RCW  
12 9A.72.110, 9A.72.130)  
13 Malicious placement of an imitation  
14 device 2 (RCW 70.74.272(1)(b))  
15 Possession of Depictions of a Minor  
16 Engaged in Sexually Explicit  
17 Conduct 1 (RCW 9.68A.070(1))  
18 Rape of a Child 3 (RCW 9A.44.079)  
19 Theft of a Firearm (RCW 9A.56.300)  
20 Unlawful Storage of Ammonia (RCW  
21 69.55.020)  
22 Vehicular Assault, by being under the  
23 influence of intoxicating liquor or  
24 any drug, or by the operation or  
25 driving of a vehicle in a reckless  
26 manner (RCW 46.61.522)  
27 V Abandonment of Dependent Person 2  
28 (RCW 9A.42.070)  
29 Advancing money or property for  
30 extortionate extension of credit  
31 (RCW 9A.82.030)  
32 Bail Jumping with class A Felony  
33 (RCW 9A.76.170(3)(b))  
34 Child Molestation 3 (RCW 9A.44.089)  
35 Criminal Mistreatment 2 (RCW  
36 9A.42.030)

1 Custodial Sexual Misconduct 1 (RCW  
2 9A.44.160)  
3 Dealing in Depictions of Minor  
4 Engaged in Sexually Explicit  
5 Conduct 2 (RCW 9.68A.050(2))  
6 Domestic Violence Court Order  
7 Violation (RCW 10.99.040,  
8 10.99.050, 26.09.300, 26.10.220,  
9 26.26.138, 26.50.110, 26.52.070,  
10 or 74.34.145)  
11 Driving While Under the Influence  
12 (RCW 46.61.502(6))  
13 Extortion 1 (RCW 9A.56.120)  
14 Extortionate Extension of Credit (RCW  
15 9A.82.020)  
16 Extortionate Means to Collect  
17 Extensions of Credit (RCW  
18 9A.82.040)  
19 Incest 2 (RCW 9A.64.020(2))  
20 Kidnapping 2 (RCW 9A.40.030)  
21 Perjury 1 (RCW 9A.72.020)  
22 Persistent prison misbehavior (RCW  
23 9.94.070)  
24 Physical Control of a Vehicle While  
25 Under the Influence (RCW  
26 46.61.504(6))  
27 Possession of a Stolen Firearm (RCW  
28 9A.56.310)  
29 Rape 3 (RCW 9A.44.060)  
30 Rendering Criminal Assistance 1  
31 (RCW 9A.76.070)  
32 Sending, Bringing into State Depictions  
33 of Minor Engaged in Sexually  
34 Explicit Conduct 2 (RCW  
35 9.68A.060(2))  
36 Sexual Misconduct with a Minor 1  
37 (RCW 9A.44.093)



1 Sexually Violating Human Remains  
2 (RCW 9A.44.105)  
3 Stalking (RCW 9A.46.110)  
4 Taking Motor Vehicle Without  
5 Permission 1 (RCW 9A.56.070)  
6 IV Arson 2 (RCW 9A.48.030)  
7 Assault 2 (RCW 9A.36.021)  
8 Assault 3 (of a Peace Officer with a  
9 Projectile Stun Gun) (RCW  
10 9A.36.031(1)(h))  
11 Assault by Watercraft (RCW  
12 79A.60.060)  
13 Bribing a Witness/Bribe Received by  
14 Witness (RCW 9A.72.090,  
15 9A.72.100)  
16 Cheating 1 (RCW 9A.46.1961)  
17 Commercial Bribery (RCW 9A.68.060)  
18 Counterfeiting (RCW 9.16.035(4))  
19 Endangerment with a Controlled  
20 Substance (RCW 9A.42.100)  
21 Escape 1 (RCW 9A.76.110)  
22 Hit and Run--Injury (RCW  
23 46.52.020(4)(b))  
24 Hit and Run with Vessel--Injury  
25 Accident (RCW 79A.60.200(3))  
26 Identity Theft 1 (RCW 9.35.020(2))  
27 Indecent Exposure to Person Under  
28 Age Fourteen (subsequent sex  
29 offense) (RCW 9A.88.010)  
30 Influencing Outcome of Sporting Event  
31 (RCW 9A.82.070)  
32 Malicious Harassment (RCW  
33 9A.36.080)  
34 Possession of Depictions of a Minor  
35 Engaged in Sexually Explicit  
36 Conduct 2 (RCW 9.68(~~{A}~~))  
37 (A).070(2))

1 Residential Burglary (RCW  
2 9A.52.025)  
3 Robbery 2 (RCW 9A.56.210)  
4 Theft of Livestock 1 (RCW 9A.56.080)  
5 Threats to Bomb (RCW 9.61.160)  
6 Trafficking in Stolen Property 1 (RCW  
7 9A.82.050)  
8 Unlawful factoring of a credit card or  
9 payment card transaction (RCW  
10 9A.56.290(4)(b))  
11 Unlawful transaction of health  
12 coverage as a health care service  
13 contractor (RCW 48.44.016(3))  
14 Unlawful transaction of health  
15 coverage as a health maintenance  
16 organization (RCW 48.46.033(3))  
17 Unlawful transaction of insurance  
18 business (RCW 48.15.023(3))  
19 Unlicensed practice as an insurance  
20 professional (RCW 48.17.063(2))  
21 Use of Proceeds of Criminal  
22 Profiteering (RCW 9A.82.080 (1)  
23 and (2))  
24 ~~((Vehicular Assault, by being under the  
25 influence of intoxicating liquor or  
26 any drug, or by the operation or  
27 driving of a vehicle in a reckless  
28 manner (RCW 46.61.522)))~~  
29 Vehicular Assault, by the operation or  
30 driving of a vehicle with disregard  
31 for the safety of others (RCW  
32 46.61.522)  
33 Viewing of Depictions of a Minor  
34 Engaged in Sexually Explicit  
35 Conduct 1 (RCW 9.68A.075(1))  
36 Willful Failure to Return from  
37 Furlough (RCW 72.66.060)

1 III Animal Cruelty 1 (Sexual Conduct or  
2 Contact) (RCW 16.52.205(3))  
3 Assault 3 (Except Assault 3 of a Peace  
4 Officer With a Projectile Stun  
5 Gun) (RCW 9A.36.031 except  
6 subsection (1)(h))  
7 Assault of a Child 3 (RCW 9A.36.140)  
8 Bail Jumping with class B or C Felony  
9 (RCW 9A.76.170(3)(c))  
10 Burglary 2 (RCW 9A.52.030)  
11 Communication with a Minor for  
12 Immoral Purposes (RCW  
13 9.68A.090)  
14 Criminal Gang Intimidation (RCW  
15 9A.46.120)  
16 Custodial Assault (RCW 9A.36.100)  
17 Cyberstalking (subsequent conviction  
18 or threat of death) (RCW  
19 9.61.260(3))  
20 Escape 2 (RCW 9A.76.120)  
21 Extortion 2 (RCW 9A.56.130)  
22 Harassment (RCW 9A.46.020)  
23 Intimidating a Public Servant (RCW  
24 9A.76.180)  
25 Introducing Contraband 2 (RCW  
26 9A.76.150)  
27 Malicious Injury to Railroad Property  
28 (RCW 81.60.070)  
29 Mortgage Fraud (RCW 19.144.080)  
30 Negligently Causing Substantial Bodily  
31 Harm By Use of a Signal  
32 Preemption Device (RCW  
33 46.37.674)  
34 Organized Retail Theft 1 (RCW  
35 9A.56.350(2))  
36 Perjury 2 (RCW 9A.72.030)

1 Possession of Incendiary Device (RCW  
2 9.40.120)  
3 Possession of Machine Gun or Short-  
4 Barreled Shotgun or Rifle (RCW  
5 9.41.190)  
6 Promoting Prostitution 2 (RCW  
7 9A.88.080)  
8 Retail Theft with Extenuating  
9 Circumstances 1 (RCW  
10 9A.56.360(2))  
11 Securities Act violation (RCW  
12 21.20.400)  
13 Tampering with a Witness (RCW  
14 9A.72.120)  
15 Telephone Harassment (subsequent  
16 conviction or threat of death)  
17 (RCW 9.61.230(2))  
18 Theft of Livestock 2 (RCW 9A.56.083)  
19 Theft with the Intent to Resell 1 (RCW  
20 9A.56.340(2))  
21 Trafficking in Stolen Property 2 (RCW  
22 9A.82.055)  
23 Unlawful Imprisonment (RCW  
24 9A.40.040)  
25 Unlawful possession of firearm in the  
26 second degree (RCW 9.41.040(2))  
27 (~~Vehicular Assault, by the operation or~~  
28 ~~driving of a vehicle with disregard~~  
29 ~~for the safety of others (RCW~~  
30 ~~46.61.522)))  
31 Willful Failure to Return from Work  
32 Release (RCW 72.65.070)  
33 II Computer Trespass 1 (RCW  
34 9A.52.110)  
35 Counterfeiting (RCW 9.16.035(3))  
36 Escape from Community Custody  
37 (RCW 72.09.310)~~

1 Failure to Register as a Sex Offender  
2 (second or subsequent offense)  
3 (RCW ((9A.44.130(11)(a)))  
4 9A.44.132)  
5 Health Care False Claims (RCW  
6 48.80.030)  
7 Identity Theft 2 (RCW 9.35.020(3))  
8 Improperly Obtaining Financial  
9 Information (RCW 9.35.010)  
10 Malicious Mischief 1 (RCW  
11 9A.48.070)  
12 Organized Retail Theft 2 (RCW  
13 9A.56.350(3))  
14 Possession of Stolen Property 1 (RCW  
15 9A.56.150)  
16 Possession of a Stolen Vehicle (RCW  
17 9A.56.068)  
18 Retail Theft with Extenuating  
19 Circumstances 2 (RCW  
20 9A.56.360(3))  
21 Theft 1 (RCW 9A.56.030)  
22 Theft of a Motor Vehicle (RCW  
23 9A.56.065)  
24 Theft of Rental, Leased, or Lease-  
25 purchased Property (valued at one  
26 thousand five hundred dollars or  
27 more) (RCW 9A.56.096(5)(a))  
28 Theft with the Intent to Resell 2 (RCW  
29 9A.56.340(3))  
30 Trafficking in Insurance Claims (RCW  
31 48.30A.015)  
32 Unlawful factoring of a credit card or  
33 payment card transaction (RCW  
34 9A.56.290(4)(a))  
35 Unlawful Practice of Law (RCW  
36 2.48.180)

1 Unlicensed Practice of a Profession or  
2 Business (RCW 18.130.190(7))  
3 Voyeurism (RCW 9A.44.115)  
4 I Attempting to Elude a Pursuing Police  
5 Vehicle (RCW 46.61.024)  
6 False Verification for Welfare (RCW  
7 74.08.055)  
8 Forgery (RCW 9A.60.020)  
9 Fraudulent Creation or Revocation of a  
10 Mental Health Advance Directive  
11 (RCW 9A.60.060)  
12 Malicious Mischief 2 (RCW  
13 9A.48.080)  
14 Mineral Trespass (RCW 78.44.330)  
15 Possession of Stolen Property 2 (RCW  
16 9A.56.160)  
17 Reckless Burning 1 (RCW 9A.48.040)  
18 Taking Motor Vehicle Without  
19 Permission 2 (RCW 9A.56.075)  
20 Theft 2 (RCW 9A.56.040)  
21 Theft of Rental, Leased, or Lease-  
22 purchased Property (valued at two  
23 hundred fifty dollars or more but  
24 less than one thousand five  
25 hundred dollars) (RCW  
26 9A.56.096(5)(b))  
27 Transaction of insurance business  
28 beyond the scope of licensure  
29 (RCW 48.17.063)  
30 Unlawful Issuance of Checks or Drafts  
31 (RCW 9A.56.060)  
32 Unlawful Possession of Fictitious  
33 Identification (RCW 9A.56.320)  
34 Unlawful Possession of Instruments of  
35 Financial Fraud (RCW 9A.56.320)  
36 Unlawful Possession of Payment  
37 Instruments (RCW 9A.56.320)

1 Unlawful Possession of a Personal  
2 Identification Device (RCW  
3 9A.56.320)  
4 Unlawful Production of Payment  
5 Instruments (RCW 9A.56.320)  
6 Unlawful Trafficking in Food Stamps  
7 (RCW 9.91.142)  
8 Unlawful Use of Food Stamps (RCW  
9 9.91.144)  
10 Vehicle Prowl 1 (RCW 9A.52.095)

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