
SUBSTITUTE HOUSE BILL 2777

State of Washington

61st Legislature

2010 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives Goodman, O'Brien, Driscoll, Kessler, Maxwell, Finn, Hurst, Williams, Appleton, Hudgins, Kelley, Ericks, Morrell, McCoy, Seaquist, Green, Carlyle, Conway, Pearson, and Simpson)

READ FIRST TIME 01/29/10.

1 AN ACT Relating to modifying domestic violence provisions; amending
2 RCW 9.94A.030, 9.94A.525, and 3.66.068; and reenacting and amending RCW
3 9.94A.535.

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

5 **Sec. 1.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Board" means the indeterminate sentence review board created
10 under chapter 9.95 RCW.

11 (2) "Collect," or any derivative thereof, "collect and remit," or
12 "collect and deliver," when used with reference to the department,
13 means that the department, either directly or through a collection
14 agreement authorized by RCW 9.94A.760, is responsible for monitoring
15 and enforcing the offender's sentence with regard to the legal
16 financial obligation, receiving payment thereof from the offender, and,
17 consistent with current law, delivering daily the entire payment to the
18 superior court clerk without depositing it in a departmental account.

19 (3) "Commission" means the sentencing guidelines commission.

1 (4) "Community corrections officer" means an employee of the
2 department who is responsible for carrying out specific duties in
3 supervision of sentenced offenders and monitoring of sentence
4 conditions.

5 (5) "Community custody" means that portion of an offender's
6 sentence of confinement in lieu of earned release time or imposed as
7 part of a sentence under this chapter and served in the community
8 subject to controls placed on the offender's movement and activities by
9 the department.

10 (6) "Community protection zone" means the area within eight hundred
11 eighty feet of the facilities and grounds of a public or private
12 school.

13 (7) "Community restitution" means compulsory service, without
14 compensation, performed for the benefit of the community by the
15 offender.

16 (8) "Confinement" means total or partial confinement.

17 (9) "Conviction" means an adjudication of guilt pursuant to Title
18 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
19 acceptance of a plea of guilty.

20 (10) "Crime-related prohibition" means an order of a court
21 prohibiting conduct that directly relates to the circumstances of the
22 crime for which the offender has been convicted, and shall not be
23 construed to mean orders directing an offender affirmatively to
24 participate in rehabilitative programs or to otherwise perform
25 affirmative conduct. However, affirmative acts necessary to monitor
26 compliance with the order of a court may be required by the department.

27 (11) "Criminal history" means the list of a defendant's prior
28 convictions and juvenile adjudications, whether in this state, in
29 federal court, or elsewhere.

30 (a) The history shall include, where known, for each conviction (i)
31 whether the defendant has been placed on probation and the length and
32 terms thereof; and (ii) whether the defendant has been incarcerated and
33 the length of incarceration.

34 (b) A conviction may be removed from a defendant's criminal history
35 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
36 a similar out-of-state statute, or if the conviction has been vacated
37 pursuant to a governor's pardon.

1 (c) The determination of a defendant's criminal history is distinct
2 from the determination of an offender score. A prior conviction that
3 was not included in an offender score calculated pursuant to a former
4 version of the sentencing reform act remains part of the defendant's
5 criminal history.

6 (12) "Criminal street gang" means any ongoing organization,
7 association, or group of three or more persons, whether formal or
8 informal, having a common name or common identifying sign or symbol,
9 having as one of its primary activities the commission of criminal
10 acts, and whose members or associates individually or collectively
11 engage in or have engaged in a pattern of criminal street gang
12 activity. This definition does not apply to employees engaged in
13 concerted activities for their mutual aid and protection, or to the
14 activities of labor and bona fide nonprofit organizations or their
15 members or agents.

16 (13) "Criminal street gang associate or member" means any person
17 who actively participates in any criminal street gang and who
18 intentionally promotes, furthers, or assists in any criminal act by the
19 criminal street gang.

20 (14) "Criminal street gang-related offense" means any felony or
21 misdemeanor offense, whether in this state or elsewhere, that is
22 committed for the benefit of, at the direction of, or in association
23 with any criminal street gang, or is committed with the intent to
24 promote, further, or assist in any criminal conduct by the gang, or is
25 committed for one or more of the following reasons:

26 (a) To gain admission, prestige, or promotion within the gang;

27 (b) To increase or maintain the gang's size, membership, prestige,
28 dominance, or control in any geographical area;

29 (c) To exact revenge or retribution for the gang or any member of
30 the gang;

31 (d) To obstruct justice, or intimidate or eliminate any witness
32 against the gang or any member of the gang;

33 (e) To directly or indirectly cause any benefit, aggrandizement,
34 gain, profit, or other advantage for the gang, its reputation,
35 influence, or membership; or

36 (f) To provide the gang with any advantage in, or any control or
37 dominance over any criminal market sector, including, but not limited
38 to, manufacturing, delivering, or selling any controlled substance

1 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
2 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
3 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
4 (chapter 9.68 RCW).

5 (15) "Day fine" means a fine imposed by the sentencing court that
6 equals the difference between the offender's net daily income and the
7 reasonable obligations that the offender has for the support of the
8 offender and any dependents.

9 (16) "Day reporting" means a program of enhanced supervision
10 designed to monitor the offender's daily activities and compliance with
11 sentence conditions, and in which the offender is required to report
12 daily to a specific location designated by the department or the
13 sentencing court.

14 (17) "Department" means the department of corrections.

15 (18) "Determinate sentence" means a sentence that states with
16 exactitude the number of actual years, months, or days of total
17 confinement, of partial confinement, of community custody, the number
18 of actual hours or days of community restitution work, or dollars or
19 terms of a legal financial obligation. The fact that an offender
20 through earned release can reduce the actual period of confinement
21 shall not affect the classification of the sentence as a determinate
22 sentence.

23 (19) "Disposable earnings" means that part of the earnings of an
24 offender remaining after the deduction from those earnings of any
25 amount required by law to be withheld. For the purposes of this
26 definition, "earnings" means compensation paid or payable for personal
27 services, whether denominated as wages, salary, commission, bonuses, or
28 otherwise, and, notwithstanding any other provision of law making the
29 payments exempt from garnishment, attachment, or other process to
30 satisfy a court-ordered legal financial obligation, specifically
31 includes periodic payments pursuant to pension or retirement programs,
32 or insurance policies of any type, but does not include payments made
33 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
34 or Title 74 RCW.

35 (20) "Domestic violence" has the same meaning as defined in RCW
36 10.99.020 and 26.50.010.

37 (21) "Drug offender sentencing alternative" is a sentencing option

1 available to persons convicted of a felony offense other than a violent
2 offense or a sex offense and who are eligible for the option under RCW
3 9.94A.660.

4 ~~((+21+))~~ (22) "Drug offense" means:

5 (a) Any felony violation of chapter 69.50 RCW except possession of
6 a controlled substance (RCW 69.50.4013) or forged prescription for a
7 controlled substance (RCW 69.50.403);

8 (b) Any offense defined as a felony under federal law that relates
9 to the possession, manufacture, distribution, or transportation of a
10 controlled substance; or

11 (c) Any out-of-state conviction for an offense that under the laws
12 of this state would be a felony classified as a drug offense under (a)
13 of this subsection.

14 ~~((+22+))~~ (23) "Earned release" means earned release from
15 confinement as provided in RCW 9.94A.728.

16 ~~((+23+))~~ (24) "Escape" means:

17 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
18 first degree (RCW 9A.76.110), escape in the second degree (RCW
19 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
20 willful failure to return from work release (RCW 72.65.070), or willful
21 failure to be available for supervision by the department while in
22 community custody (RCW 72.09.310); or

23 (b) Any federal or out-of-state conviction for an offense that
24 under the laws of this state would be a felony classified as an escape
25 under (a) of this subsection.

26 ~~((+24+))~~ (25) "Felony traffic offense" means:

27 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
28 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
29 run injury-accident (RCW 46.52.020(4)), felony driving while under the
30 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
31 felony physical control of a vehicle while under the influence of
32 intoxicating liquor or any drug (RCW 46.61.504(6)); or

33 (b) Any federal or out-of-state conviction for an offense that
34 under the laws of this state would be a felony classified as a felony
35 traffic offense under (a) of this subsection.

36 ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the
37 sentencing court to be paid by the offender to the court over a
38 specific period of time.

1 ~~((26))~~ (27) "First-time offender" means any person who has no
2 prior convictions for a felony and is eligible for the first-time
3 offender waiver under RCW 9.94A.650.

4 ~~((27))~~ (28) "Home detention" means a program of partial
5 confinement available to offenders wherein the offender is confined in
6 a private residence subject to electronic surveillance.

7 ~~((28))~~ (29) "Legal financial obligation" means a sum of money
8 that is ordered by a superior court of the state of Washington for
9 legal financial obligations which may include restitution to the
10 victim, statutorily imposed crime victims' compensation fees as
11 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
12 drug funds, court-appointed attorneys' fees, and costs of defense,
13 fines, and any other financial obligation that is assessed to the
14 offender as a result of a felony conviction. Upon conviction for
15 vehicular assault while under the influence of intoxicating liquor or
16 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
17 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
18 legal financial obligations may also include payment to a public agency
19 of the expense of an emergency response to the incident resulting in
20 the conviction, subject to RCW 38.52.430.

21 ~~((29))~~ (30) "Most serious offense" means any of the following
22 felonies or a felony attempt to commit any of the following felonies:

23 (a) Any felony defined under any law as a class A felony or
24 criminal solicitation of or criminal conspiracy to commit a class A
25 felony;

26 (b) Assault in the second degree;

27 (c) Assault of a child in the second degree;

28 (d) Child molestation in the second degree;

29 (e) Controlled substance homicide;

30 (f) Extortion in the first degree;

31 (g) Incest when committed against a child under age fourteen;

32 (h) Indecent liberties;

33 (i) Kidnapping in the second degree;

34 (j) Leading organized crime;

35 (k) Manslaughter in the first degree;

36 (l) Manslaughter in the second degree;

37 (m) Promoting prostitution in the first degree;

38 (n) Rape in the third degree;

1 (o) Robbery in the second degree;

2 (p) Sexual exploitation;

3 (q) Vehicular assault, when caused by the operation or driving of
4 a vehicle by a person while under the influence of intoxicating liquor
5 or any drug or by the operation or driving of a vehicle in a reckless
6 manner;

7 (r) Vehicular homicide, when proximately caused by the driving of
8 any vehicle by any person while under the influence of intoxicating
9 liquor or any drug as defined by RCW 46.61.502, or by the operation of
10 any vehicle in a reckless manner;

11 (s) Any other class B felony offense with a finding of sexual
12 motivation;

13 (t) Any other felony with a deadly weapon verdict under RCW
14 9.94A.825;

15 (u) Any felony offense in effect at any time prior to December 2,
16 1993, that is comparable to a most serious offense under this
17 subsection, or any federal or out-of-state conviction for an offense
18 that under the laws of this state would be a felony classified as a
19 most serious offense under this subsection;

20 (v)(i) A prior conviction for indecent liberties under RCW
21 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
22 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
23 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
24 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

25 (ii) A prior conviction for indecent liberties under RCW
26 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
27 if: (A) The crime was committed against a child under the age of
28 fourteen; or (B) the relationship between the victim and perpetrator is
29 included in the definition of indecent liberties under RCW
30 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
31 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
32 through July 27, 1997;

33 (w) Any out-of-state conviction for a felony offense with a finding
34 of sexual motivation if the minimum sentence imposed was ten years or
35 more; provided that the out-of-state felony offense must be comparable
36 to a felony offense under Title 9 or 9A RCW and the out-of-state
37 definition of sexual motivation must be comparable to the definition of
38 sexual motivation contained in this section.

1 ~~((+30+))~~ (31) "Nonviolent offense" means an offense which is not a
2 violent offense.

3 ~~((+31+))~~ (32) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case is under superior court
6 jurisdiction under RCW 13.04.030 or has been transferred by the
7 appropriate juvenile court to a criminal court pursuant to RCW
8 13.40.110. In addition, for the purpose of community custody
9 requirements under this chapter, "offender" also means a misdemeanor or
10 gross misdemeanor probationer convicted of an offense included in RCW
11 9.94A.501(1) and ordered by a superior court to probation under the
12 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
13 9.95.210. Throughout this chapter, the terms "offender" and
14 "defendant" are used interchangeably.

15 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more
16 than one year in a facility or institution operated or utilized under
17 contract by the state or any other unit of government, or, if home
18 detention or work crew has been ordered by the court, in an approved
19 residence, for a substantial portion of each day with the balance of
20 the day spent in the community. Partial confinement includes work
21 release, home detention, work crew, and a combination of work crew and
22 home detention.

23 ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:
24 (a) The commission, attempt, conspiracy, or solicitation of, or any
25 prior juvenile adjudication of or adult conviction of, two or more of
26 the following criminal street gang-related offenses:

27 (i) Any "serious violent" felony offense as defined in this
28 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
29 Child 1 (RCW 9A.36.120);

30 (ii) Any "violent" offense as defined by this section, excluding
31 Assault of a Child 2 (RCW 9A.36.130);

32 (iii) Deliver or Possession with Intent to Deliver a Controlled
33 Substance (chapter 69.50 RCW);

34 (iv) Any violation of the firearms and dangerous weapon act
35 (chapter 9.41 RCW);

36 (v) Theft of a Firearm (RCW 9A.56.300);

37 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

38 (vii) Malicious Harassment (RCW 9A.36.080);

1 (viii) Harassment where a subsequent violation or deadly threat is
2 made (RCW 9A.46.020(2)(b));
3 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
4 (x) Any felony conviction by a person eighteen years of age or
5 older with a special finding of involving a juvenile in a felony
6 offense under RCW 9.94A.833;
7 (xi) Residential Burglary (RCW 9A.52.025);
8 (xii) Burglary 2 (RCW 9A.52.030);
9 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
10 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
11 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
12 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
13 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
14 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
15 9A.56.075);
16 (xix) Extortion 1 (RCW 9A.56.120);
17 (xx) Extortion 2 (RCW 9A.56.130);
18 (xxi) Intimidating a Witness (RCW 9A.72.110);
19 (xxii) Tampering with a Witness (RCW 9A.72.120);
20 (xxiii) Reckless Endangerment (RCW 9A.36.050);
21 (xxiv) Coercion (RCW 9A.36.070);
22 (xxv) Harassment (RCW 9A.46.020); or
23 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
24 (b) That at least one of the offenses listed in (a) of this
25 subsection shall have occurred after July 1, 2008;
26 (c) That the most recent committed offense listed in (a) of this
27 subsection occurred within three years of a prior offense listed in (a)
28 of this subsection; and
29 (d) Of the offenses that were committed in (a) of this subsection,
30 the offenses occurred on separate occasions or were committed by two or
31 more persons.
32 ((~~34~~)) (35) "Persistent offender" is an offender who:
33 (a)(i) Has been convicted in this state of any felony considered a
34 most serious offense; and
35 (ii) Has, before the commission of the offense under (a) of this
36 subsection, been convicted as an offender on at least two separate
37 occasions, whether in this state or elsewhere, of felonies that under
38 the laws of this state would be considered most serious offenses and

1 would be included in the offender score under RCW 9.94A.525; provided
2 that of the two or more previous convictions, at least one conviction
3 must have occurred before the commission of any of the other most
4 serious offenses for which the offender was previously convicted; or

5 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
6 of a child in the first degree, child molestation in the first degree,
7 rape in the second degree, rape of a child in the second degree, or
8 indecent liberties by forcible compulsion; (B) any of the following
9 offenses with a finding of sexual motivation: Murder in the first
10 degree, murder in the second degree, homicide by abuse, kidnapping in
11 the first degree, kidnapping in the second degree, assault in the first
12 degree, assault in the second degree, assault of a child in the first
13 degree, assault of a child in the second degree, or burglary in the
14 first degree; or (C) an attempt to commit any crime listed in this
15 subsection (~~((+34+))~~) (35)(b)(i); and

16 (ii) Has, before the commission of the offense under (b)(i) of this
17 subsection, been convicted as an offender on at least one occasion,
18 whether in this state or elsewhere, of an offense listed in (b)(i) of
19 this subsection or any federal or out-of-state offense or offense under
20 prior Washington law that is comparable to the offenses listed in
21 (b)(i) of this subsection. A conviction for rape of a child in the
22 first degree constitutes a conviction under (b)(i) of this subsection
23 only when the offender was sixteen years of age or older when the
24 offender committed the offense. A conviction for rape of a child in
25 the second degree constitutes a conviction under (b)(i) of this
26 subsection only when the offender was eighteen years of age or older
27 when the offender committed the offense.

28 (~~((+35+))~~) (36) "Predatory" means: (a) The perpetrator of the crime
29 was a stranger to the victim, as defined in this section; (b) the
30 perpetrator established or promoted a relationship with the victim
31 prior to the offense and the victimization of the victim was a
32 significant reason the perpetrator established or promoted the
33 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
34 volunteer, or other person in authority in any public or private school
35 and the victim was a student of the school under his or her authority
36 or supervision. For purposes of this subsection, "school" does not
37 include home-based instruction as defined in RCW 28A.225.010; (ii) a
38 coach, trainer, volunteer, or other person in authority in any

1 recreational activity and the victim was a participant in the activity
2 under his or her authority or supervision; or (iii) a pastor, elder,
3 volunteer, or other person in authority in any church or religious
4 organization, and the victim was a member or participant of the
5 organization under his or her authority.

6 ~~((+36+))~~ (37) "Private school" means a school regulated under
7 chapter 28A.195 or 28A.205 RCW.

8 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW
9 28A.150.010.

10 ~~((+38+))~~ (39) "Repetitive domestic violence offense" means any:
11 (a)(i) Domestic violence assault that is not a felony offense under
12 RCW 9A.36.041;

13 (ii) Domestic violence violation of a no contact order under
14 chapter 10.99 RCW that is not a felony offense;

15 (iii) Domestic violence harassment offense under RCW 9A.46.020 that
16 is not a felony offense; or

17 (iv) Domestic violence stalking offense under 9A.46.110 that is not
18 a felony offense; or

19 (b) Any federal, out-of-state, tribal court, military, county, or
20 municipal conviction for an offense that under the laws of this state
21 would be classified as a repetitive domestic violence offense under (a)
22 of this subsection.

23 (40) "Restitution" means a specific sum of money ordered by the
24 sentencing court to be paid by the offender to the court over a
25 specified period of time as payment of damages. The sum may include
26 both public and private costs.

27 ~~((+39+))~~ (41) "Risk assessment" means the application of the risk
28 instrument recommended to the department by the Washington state
29 institute for public policy as having the highest degree of predictive
30 accuracy for assessing an offender's risk of reoffense.

31 ~~((+40+))~~ (42) "Serious traffic offense" means:

32 (a) Nonfelony driving while under the influence of intoxicating
33 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
34 while under the influence of intoxicating liquor or any drug (RCW
35 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
36 attended vehicle (RCW 46.52.020(5)); or

37 (b) Any federal, out-of-state, county, or municipal conviction for

1 an offense that under the laws of this state would be classified as a
2 serious traffic offense under (a) of this subsection.

3 ~~((41))~~ (43) "Serious violent offense" is a subcategory of violent
4 offense and means:

5 (a)(i) Murder in the first degree;

6 (ii) Homicide by abuse;

7 (iii) Murder in the second degree;

8 (iv) Manslaughter in the first degree;

9 (v) Assault in the first degree;

10 (vi) Kidnapping in the first degree;

11 (vii) Rape in the first degree;

12 (viii) Assault of a child in the first degree; or

13 (ix) An attempt, criminal solicitation, or criminal conspiracy to
14 commit one of these felonies; or

15 (b) Any federal or out-of-state conviction for an offense that
16 under the laws of this state would be a felony classified as a serious
17 violent offense under (a) of this subsection.

18 ~~((42))~~ (44) "Sex offense" means:

19 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
20 RCW 9A.44.130(12);

21 (ii) A violation of RCW 9A.64.020;

22 (iii) A felony that is a violation of chapter 9.68A RCW other than
23 RCW 9.68A.080; or

24 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
25 criminal solicitation, or criminal conspiracy to commit such crimes;

26 (b) Any conviction for a felony offense in effect at any time prior
27 to July 1, 1976, that is comparable to a felony classified as a sex
28 offense in (a) of this subsection;

29 (c) A felony with a finding of sexual motivation under RCW
30 9.94A.835 or 13.40.135; or

31 (d) Any federal or out-of-state conviction for an offense that
32 under the laws of this state would be a felony classified as a sex
33 offense under (a) of this subsection.

34 ~~((43))~~ (45) "Sexual motivation" means that one of the purposes
35 for which the defendant committed the crime was for the purpose of his
36 or her sexual gratification.

37 ~~((44))~~ (46) "Standard sentence range" means the sentencing
38 court's discretionary range in imposing a nonappealable sentence.

1 (~~(45)~~) (47) "Statutory maximum sentence" means the maximum length
2 of time for which an offender may be confined as punishment for a crime
3 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
4 the crime, or other statute defining the maximum penalty for a crime.

5 (~~(46)~~) (48) "Stranger" means that the victim did not know the
6 offender twenty-four hours before the offense.

7 (~~(47)~~) (49) "Total confinement" means confinement inside the
8 physical boundaries of a facility or institution operated or utilized
9 under contract by the state or any other unit of government for twenty-
10 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (~~(48)~~) (50) "Transition training" means written and verbal
12 instructions and assistance provided by the department to the offender
13 during the two weeks prior to the offender's successful completion of
14 the work ethic camp program. The transition training shall include
15 instructions in the offender's requirements and obligations during the
16 offender's period of community custody.

17 (~~(49)~~) (51) "Victim" means any person who has sustained
18 emotional, psychological, physical, or financial injury to person or
19 property as a direct result of the crime charged.

20 (~~(50)~~) (52) "Violent offense" means:

21 (a) Any of the following felonies:

22 (i) Any felony defined under any law as a class A felony or an
23 attempt to commit a class A felony;

24 (ii) Criminal solicitation of or criminal conspiracy to commit a
25 class A felony;

26 (iii) Manslaughter in the first degree;

27 (iv) Manslaughter in the second degree;

28 (v) Indecent liberties if committed by forcible compulsion;

29 (vi) Kidnapping in the second degree;

30 (vii) Arson in the second degree;

31 (viii) Assault in the second degree;

32 (ix) Assault of a child in the second degree;

33 (x) Extortion in the first degree;

34 (xi) Robbery in the second degree;

35 (xii) Drive-by shooting;

36 (xiii) Vehicular assault, when caused by the operation or driving
37 of a vehicle by a person while under the influence of intoxicating

1 liquor or any drug or by the operation or driving of a vehicle in a
2 reckless manner; and

3 (xiv) Vehicular homicide, when proximately caused by the driving of
4 any vehicle by any person while under the influence of intoxicating
5 liquor or any drug as defined by RCW 46.61.502, or by the operation of
6 any vehicle in a reckless manner;

7 (b) Any conviction for a felony offense in effect at any time prior
8 to July 1, 1976, that is comparable to a felony classified as a violent
9 offense in (a) of this subsection; and

10 (c) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as a violent
12 offense under (a) or (b) of this subsection.

13 ~~((+51+))~~ (53) "Work crew" means a program of partial confinement
14 consisting of civic improvement tasks for the benefit of the community
15 that complies with RCW 9.94A.725.

16 ~~((+52+))~~ (54) "Work ethic camp" means an alternative incarceration
17 program as provided in RCW 9.94A.690 designed to reduce recidivism and
18 lower the cost of corrections by requiring offenders to complete a
19 comprehensive array of real-world job and vocational experiences,
20 character-building work ethics training, life management skills
21 development, substance abuse rehabilitation, counseling, literacy
22 training, and basic adult education.

23 ~~((+53+))~~ (55) "Work release" means a program of partial confinement
24 available to offenders who are employed or engaged as a student in a
25 regular course of study at school.

26 **Sec. 2.** RCW 9.94A.525 and 2008 c 231 s 3 are each amended to read
27 as follows:

28 The offender score is measured on the horizontal axis of the
29 sentencing grid. The offender score rules are as follows:

30 The offender score is the sum of points accrued under this section
31 rounded down to the nearest whole number.

32 (1) A prior conviction is a conviction which exists before the date
33 of sentencing for the offense for which the offender score is being
34 computed. Convictions entered or sentenced on the same date as the
35 conviction for which the offender score is being computed shall be
36 deemed "other current offenses" within the meaning of RCW 9.94A.589.

1 (2)(a) Class A and sex prior felony convictions shall always be
2 included in the offender score.

3 (b) Class B prior felony convictions other than sex offenses shall
4 not be included in the offender score, if since the last date of
5 release from confinement (including full-time residential treatment)
6 pursuant to a felony conviction, if any, or entry of judgment and
7 sentence, the offender had spent ten consecutive years in the community
8 without committing any crime that subsequently results in a conviction.

9 (c) Except as provided in (e) of this subsection, class C prior
10 felony convictions other than sex offenses shall not be included in the
11 offender score if, since the last date of release from confinement
12 (including full-time residential treatment) pursuant to a felony
13 conviction, if any, or entry of judgment and sentence, the offender had
14 spent five consecutive years in the community without committing any
15 crime that subsequently results in a conviction.

16 (d) Except as provided in (e) of this subsection, serious traffic
17 convictions shall not be included in the offender score if, since the
18 last date of release from confinement (including full-time residential
19 treatment) pursuant to a felony conviction, if any, or entry of
20 judgment and sentence, the offender spent five years in the community
21 without committing any crime that subsequently results in a conviction.

22 (e) If the present conviction is felony driving while under the
23 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
24 felony physical control of a vehicle while under the influence of
25 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
26 of felony driving while under the influence of intoxicating liquor or
27 any drug, felony physical control of a vehicle while under the
28 influence of intoxicating liquor or any drug, and serious traffic
29 offenses shall be included in the offender score if: (i) The prior
30 convictions were committed within five years since the last date of
31 release from confinement (including full-time residential treatment) or
32 entry of judgment and sentence; or (ii) the prior convictions would be
33 considered "prior offenses within ten years" as defined in RCW
34 46.61.5055.

35 (f) This subsection applies to both adult and juvenile prior
36 convictions.

37 (3) Out-of-state convictions for offenses shall be classified
38 according to the comparable offense definitions and sentences provided

1 by Washington law. Federal convictions for offenses shall be
2 classified according to the comparable offense definitions and
3 sentences provided by Washington law. If there is no clearly
4 comparable offense under Washington law or the offense is one that is
5 usually considered subject to exclusive federal jurisdiction, the
6 offense shall be scored as a class C felony equivalent if it was a
7 felony under the relevant federal statute.

8 (4) Score prior convictions for felony anticipatory offenses
9 (attempts, criminal solicitations, and criminal conspiracies) the same
10 as if they were convictions for completed offenses.

11 (5)(a) In the case of multiple prior convictions, for the purpose
12 of computing the offender score, count all convictions separately,
13 except:

14 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
15 encompass the same criminal conduct, shall be counted as one offense,
16 the offense that yields the highest offender score. The current
17 sentencing court shall determine with respect to other prior adult
18 offenses for which sentences were served concurrently or prior juvenile
19 offenses for which sentences were served consecutively, whether those
20 offenses shall be counted as one offense or as separate offenses using
21 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
22 if the court finds that they shall be counted as one offense, then the
23 offense that yields the highest offender score shall be used. The
24 current sentencing court may presume that such other prior offenses
25 were not the same criminal conduct from sentences imposed on separate
26 dates, or in separate counties or jurisdictions, or in separate
27 complaints, indictments, or informations;

28 (ii) In the case of multiple prior convictions for offenses
29 committed before July 1, 1986, for the purpose of computing the
30 offender score, count all adult convictions served concurrently as one
31 offense, and count all juvenile convictions entered on the same date as
32 one offense. Use the conviction for the offense that yields the
33 highest offender score.

34 (b) As used in this subsection (5), "served concurrently" means
35 that: (i) The latter sentence was imposed with specific reference to
36 the former; (ii) the concurrent relationship of the sentences was
37 judicially imposed; and (iii) the concurrent timing of the sentences

1 was not the result of a probation or parole revocation on the former
2 offense.

3 (6) If the present conviction is one of the anticipatory offenses
4 of criminal attempt, solicitation, or conspiracy, count each prior
5 conviction as if the present conviction were for a completed offense.
6 When these convictions are used as criminal history, score them the
7 same as a completed crime.

8 (7) If the present conviction is for a nonviolent offense and not
9 covered by subsection (11), (12), or (13) of this section, count one
10 point for each adult prior felony conviction and one point for each
11 juvenile prior violent felony conviction and 1/2 point for each
12 juvenile prior nonviolent felony conviction.

13 (8) If the present conviction is for a violent offense and not
14 covered in subsection (9), (10), (11), (12), or (13) of this section,
15 count two points for each prior adult and juvenile violent felony
16 conviction, one point for each prior adult nonviolent felony
17 conviction, and 1/2 point for each prior juvenile nonviolent felony
18 conviction.

19 (9) If the present conviction is for a serious violent offense,
20 count three points for prior adult and juvenile convictions for crimes
21 in this category, two points for each prior adult and juvenile violent
22 conviction (not already counted), one point for each prior adult
23 nonviolent felony conviction, and 1/2 point for each prior juvenile
24 nonviolent felony conviction.

25 (10) If the present conviction is for Burglary 1, count prior
26 convictions as in subsection (8) of this section; however count two
27 points for each prior adult Burglary 2 or residential burglary
28 conviction, and one point for each prior juvenile Burglary 2 or
29 residential burglary conviction.

30 (11) If the present conviction is for a felony traffic offense
31 count two points for each adult or juvenile prior conviction for
32 Vehicular Homicide or Vehicular Assault; for each felony offense count
33 one point for each adult and 1/2 point for each juvenile prior
34 conviction; for each serious traffic offense, other than those used for
35 an enhancement pursuant to RCW 46.61.520(2), count one point for each
36 adult and 1/2 point for each juvenile prior conviction; count one point
37 for each adult and 1/2 point for each juvenile prior conviction for

1 operation of a vessel while under the influence of intoxicating liquor
2 or any drug.

3 (12) If the present conviction is for homicide by watercraft or
4 assault by watercraft count two points for each adult or juvenile prior
5 conviction for homicide by watercraft or assault by watercraft; for
6 each felony offense count one point for each adult and 1/2 point for
7 each juvenile prior conviction; count one point for each adult and 1/2
8 point for each juvenile prior conviction for driving under the
9 influence of intoxicating liquor or any drug, actual physical control
10 of a motor vehicle while under the influence of intoxicating liquor or
11 any drug, or operation of a vessel while under the influence of
12 intoxicating liquor or any drug.

13 (13) If the present conviction is for manufacture of
14 methamphetamine count three points for each adult prior manufacture of
15 methamphetamine conviction and two points for each juvenile manufacture
16 of methamphetamine offense. If the present conviction is for a drug
17 offense and the offender has a criminal history that includes a sex
18 offense or serious violent offense, count three points for each adult
19 prior felony drug offense conviction and two points for each juvenile
20 drug offense. All other adult and juvenile felonies are scored as in
21 subsection (8) of this section if the current drug offense is violent,
22 or as in subsection (7) of this section if the current drug offense is
23 nonviolent.

24 (14) If the present conviction is for Escape from Community
25 Custody, RCW 72.09.310, count only prior escape convictions in the
26 offender score. Count adult prior escape convictions as one point and
27 juvenile prior escape convictions as 1/2 point.

28 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
29 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
30 juvenile prior convictions as 1/2 point.

31 (16) If the present conviction is for Burglary 2 or residential
32 burglary, count priors as in subsection (7) of this section; however,
33 count two points for each adult and juvenile prior Burglary 1
34 conviction, two points for each adult prior Burglary 2 or residential
35 burglary conviction, and one point for each juvenile prior Burglary 2
36 or residential burglary conviction.

37 (17) If the present conviction is for a sex offense, count priors

1 as in subsections (7) through (11) and (13) through (16) of this
2 section; however count three points for each adult and juvenile prior
3 sex offense conviction.

4 (18) If the present conviction is for failure to register as a sex
5 offender under RCW 9A.44.130(11), count priors as in subsections (7)
6 through (11) and (13) through (16) of this section; however count three
7 points for each adult and juvenile prior sex offense conviction,
8 excluding prior convictions for failure to register as a sex offender
9 under RCW 9A.44.130(11), which shall count as one point.

10 (19) If the present conviction is for an offense committed while
11 the offender was under community custody, add one point. For purposes
12 of this subsection, community custody includes community placement or
13 postrelease supervision, as defined in chapter 9.94B RCW.

14 (20) If the present conviction is for Theft of a Motor Vehicle,
15 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
16 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
17 priors as in subsections (7) through (18) of this section; however
18 count one point for prior convictions of Vehicle Prowling 2, and three
19 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
20 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
21 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
22 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
23 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
24 Permission 2 conviction.

25 (21) If the present conviction is for a felony domestic violence
26 offense where domestic violence as defined in RCW 9.94A.030 was plead
27 and proven, count priors as in subsections (7) through (18) of this
28 section; however count one point for repetitive domestic violence
29 offense as defined in RCW 9.94A.030.

30 (22) The fact that a prior conviction was not included in an
31 offender's offender score or criminal history at a previous sentencing
32 shall have no bearing on whether it is included in the criminal history
33 or offender score for the current offense. Prior convictions that were
34 not counted in the offender score or included in criminal history under
35 repealed or previous versions of the sentencing reform act shall be
36 included in criminal history and shall count in the offender score if
37 the current version of the sentencing reform act requires including or

1 counting those convictions. Prior convictions that were not included
2 in criminal history or in the offender score shall be included upon any
3 resentencing to ensure imposition of an accurate sentence.

4 **Sec. 3.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
5 each reenacted and amended to read as follows:

6 The court may impose a sentence outside the standard sentence range
7 for an offense if it finds, considering the purpose of this chapter,
8 that there are substantial and compelling reasons justifying an
9 exceptional sentence. Facts supporting aggravated sentences, other
10 than the fact of a prior conviction, shall be determined pursuant to
11 the provisions of RCW 9.94A.537.

12 Whenever a sentence outside the standard sentence range is imposed,
13 the court shall set forth the reasons for its decision in written
14 findings of fact and conclusions of law. A sentence outside the
15 standard sentence range shall be a determinate sentence.

16 If the sentencing court finds that an exceptional sentence outside
17 the standard sentence range should be imposed, the sentence is subject
18 to review only as provided for in RCW 9.94A.585(4).

19 A departure from the standards in RCW 9.94A.589 (1) and (2)
20 governing whether sentences are to be served consecutively or
21 concurrently is an exceptional sentence subject to the limitations in
22 this section, and may be appealed by the offender or the state as set
23 forth in RCW 9.94A.585 (2) through (6).

24 (1) Mitigating Circumstances - Court to Consider

25 The court may impose an exceptional sentence below the standard
26 range if it finds that mitigating circumstances are established by a
27 preponderance of the evidence. The following are illustrative only and
28 are not intended to be exclusive reasons for exceptional sentences.

29 (a) To a significant degree, the victim was an initiator, willing
30 participant, aggressor, or provoker of the incident.

31 (b) Before detection, the defendant compensated, or made a good
32 faith effort to compensate, the victim of the criminal conduct for any
33 damage or injury sustained.

34 (c) The defendant committed the crime under duress, coercion,
35 threat, or compulsion insufficient to constitute a complete defense but
36 which significantly affected his or her conduct.

1 (d) The defendant, with no apparent predisposition to do so, was
2 induced by others to participate in the crime.

3 (e) The defendant's capacity to appreciate the wrongfulness of his
4 or her conduct, or to conform his or her conduct to the requirements of
5 the law, was significantly impaired. Voluntary use of drugs or alcohol
6 is excluded.

7 (f) The offense was principally accomplished by another person and
8 the defendant manifested extreme caution or sincere concern for the
9 safety or well-being of the victim.

10 (g) The operation of the multiple offense policy of RCW 9.94A.589
11 results in a presumptive sentence that is clearly excessive in light of
12 the purpose of this chapter, as expressed in RCW 9.94A.010.

13 (h) The defendant or the defendant's children suffered a continuing
14 pattern of physical or sexual abuse by the victim of the offense and
15 the offense is a response to that abuse.

16 (i) The current offense involved domestic violence, as defined in
17 RCW 10.99.020, and the defendant suffered a continuing pattern of
18 coercion, control, or abuse by the victim of the offense and the
19 offense is a response to that coercion, control, or abuse.

20 (2) Aggravating Circumstances - Considered and Imposed by the Court
21 The trial court may impose an aggravated exceptional sentence
22 without a finding of fact by a jury under the following circumstances:

23 (a) The defendant and the state both stipulate that justice is best
24 served by the imposition of an exceptional sentence outside the
25 standard range, and the court finds the exceptional sentence to be
26 consistent with and in furtherance of the interests of justice and the
27 purposes of the sentencing reform act.

28 (b) The defendant's prior unscored misdemeanor or prior unscored
29 foreign criminal history results in a presumptive sentence that is
30 clearly too lenient in light of the purpose of this chapter, as
31 expressed in RCW 9.94A.010.

32 (c) The defendant has committed multiple current offenses and the
33 defendant's high offender score results in some of the current offenses
34 going unpunished.

35 (d) The failure to consider the defendant's prior criminal history
36 which was omitted from the offender score calculation pursuant to RCW
37 9.94A.525 results in a presumptive sentence that is clearly too
38 lenient.

1 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
2 the Court

3 Except for circumstances listed in subsection (2) of this section,
4 the following circumstances are an exclusive list of factors that can
5 support a sentence above the standard range. Such facts should be
6 determined by procedures specified in RCW 9.94A.537.

7 (a) The defendant's conduct during the commission of the current
8 offense manifested deliberate cruelty to the victim.

9 (b) The defendant knew or should have known that the victim of the
10 current offense was particularly vulnerable or incapable of resistance.

11 (c) The current offense was a violent offense, and the defendant
12 knew that the victim of the current offense was pregnant.

13 (d) The current offense was a major economic offense or series of
14 offenses, so identified by a consideration of any of the following
15 factors:

16 (i) The current offense involved multiple victims or multiple
17 incidents per victim;

18 (ii) The current offense involved attempted or actual monetary loss
19 substantially greater than typical for the offense;

20 (iii) The current offense involved a high degree of sophistication
21 or planning or occurred over a lengthy period of time; or

22 (iv) The defendant used his or her position of trust, confidence,
23 or fiduciary responsibility to facilitate the commission of the current
24 offense.

25 (e) The current offense was a major violation of the Uniform
26 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
27 trafficking in controlled substances, which was more onerous than the
28 typical offense of its statutory definition: The presence of ANY of
29 the following may identify a current offense as a major VUCSA:

30 (i) The current offense involved at least three separate
31 transactions in which controlled substances were sold, transferred, or
32 possessed with intent to do so;

33 (ii) The current offense involved an attempted or actual sale or
34 transfer of controlled substances in quantities substantially larger
35 than for personal use;

36 (iii) The current offense involved the manufacture of controlled
37 substances for use by other parties;

1 (iv) The circumstances of the current offense reveal the offender
2 to have occupied a high position in the drug distribution hierarchy;
3 (v) The current offense involved a high degree of sophistication or
4 planning, occurred over a lengthy period of time, or involved a broad
5 geographic area of disbursement; or
6 (vi) The offender used his or her position or status to facilitate
7 the commission of the current offense, including positions of trust,
8 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
9 other medical professional).

10 (f) The current offense included a finding of sexual motivation
11 pursuant to RCW 9.94A.835.

12 (g) The offense was part of an ongoing pattern of sexual abuse of
13 the same victim under the age of eighteen years manifested by multiple
14 incidents over a prolonged period of time.

15 (h) The current offense involved domestic violence, as defined in
16 RCW 10.99.020, and one or more of the following was present:

17 (i) The offense was part of an ongoing pattern of psychological,
18 physical, or sexual abuse of ((the)) a victim or multiple victims
19 manifested by multiple incidents over a prolonged period of time;

20 (ii) The offense occurred within sight or sound of the victim's or
21 the offender's minor children under the age of eighteen years; or

22 (iii) The offender's conduct during the commission of the current
23 offense manifested deliberate cruelty or intimidation of the victim.

24 (i) The offense resulted in the pregnancy of a child victim of
25 rape.

26 (j) The defendant knew that the victim of the current offense was
27 a youth who was not residing with a legal custodian and the defendant
28 established or promoted the relationship for the primary purpose of
29 victimization.

30 (k) The offense was committed with the intent to obstruct or impair
31 human or animal health care or agricultural or forestry research or
32 commercial production.

33 (l) The current offense is trafficking in the first degree or
34 trafficking in the second degree and any victim was a minor at the time
35 of the offense.

36 (m) The offense involved a high degree of sophistication or
37 planning.

1 (n) The defendant used his or her position of trust, confidence, or
2 fiduciary responsibility to facilitate the commission of the current
3 offense.

4 (o) The defendant committed a current sex offense, has a history of
5 sex offenses, and is not amenable to treatment.

6 (p) The offense involved an invasion of the victim's privacy.

7 (q) The defendant demonstrated or displayed an egregious lack of
8 remorse.

9 (r) The offense involved a destructive and foreseeable impact on
10 persons other than the victim.

11 (s) The defendant committed the offense to obtain or maintain his
12 or her membership or to advance his or her position in the hierarchy of
13 an organization, association, or identifiable group.

14 (t) The defendant committed the current offense shortly after being
15 released from incarceration.

16 (u) The current offense is a burglary and the victim of the
17 burglary was present in the building or residence when the crime was
18 committed.

19 (v) The offense was committed against a law enforcement officer who
20 was performing his or her official duties at the time of the offense,
21 the offender knew that the victim was a law enforcement officer, and
22 the victim's status as a law enforcement officer is not an element of
23 the offense.

24 (w) The defendant committed the offense against a victim who was
25 acting as a good samaritan.

26 (x) The defendant committed the offense against a public official
27 or officer of the court in retaliation of the public official's
28 performance of his or her duty to the criminal justice system.

29 (y) The victim's injuries substantially exceed the level of bodily
30 harm necessary to satisfy the elements of the offense. This aggravator
31 is not an exception to RCW 9.94A.530(2).

32 (z)(i)(A) The current offense is theft in the first degree, theft
33 in the second degree, possession of stolen property in the first
34 degree, or possession of stolen property in the second degree; (B) the
35 stolen property involved is metal property; and (C) the property damage
36 to the victim caused in the course of the theft of metal property is
37 more than three times the value of the stolen metal property, or the
38 theft of the metal property creates a public hazard.

1 (ii) For purposes of this subsection, "metal property" means
2 commercial metal property, private metal property, or nonferrous metal
3 property, as defined in RCW 19.290.010.

4 (aa) The defendant committed the offense with the intent to
5 directly or indirectly cause any benefit, aggrandizement, gain, profit,
6 or other advantage to or for a criminal street gang as defined in RCW
7 9.94A.030, its reputation, influence, or membership.

8 **Sec. 4.** RCW 3.66.068 and 2001 c 94 s 2 are each amended to read as
9 follows:

10 For a period not to exceed five years after imposition of sentence
11 for a defendant sentenced for a domestic violence offense or under RCW
12 46.61.5055 and two years after imposition of sentence for all other
13 offenses, the court has continuing jurisdiction and authority to
14 suspend or defer the execution of all or any part of its sentence upon
15 stated terms, including installment payment of fines. A defendant who
16 has been sentenced, or whose sentence has been deferred, and who then
17 fails to appear for any hearing to address the defendant's compliance
18 with the terms of probation when ordered to do so by the court, shall
19 have the term of probation tolled until such time as the defendant
20 makes his or her presence known to the court on the record. However,
21 the jurisdiction period in this section does not apply to the
22 enforcement of orders issued under RCW 46.20.720. For the purposes of
23 this section, "domestic violence offense" means a crime listed in RCW
24 10.99.020(5) that is not a felony offense.

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