

CERTIFICATION OF ENROLLMENT

SENATE BILL 5011

62nd Legislature
2011 Regular Session

Passed by the Senate March 2, 2011
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 5, 2011
YEAS 92 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5011** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5011

Passed Legislature - 2011 Regular Session

State of Washington **62nd Legislature** **2011 Regular Session**

By Senators White, Kohl-Welles, Murray, Chase, Nelson, and McAuliffe

Read first time 01/10/11. Referred to Committee on Judiciary.

1 AN ACT Relating to victimization of homeless persons; and
2 reenacting and amending RCW 9.94A.535 and 9.94A.030.

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

4 **Sec. 1.** RCW 9.94A.535 and 2010 c 274 s 402, 2010 c 227 s 10, and
5 2010 c 9 s 4 are 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).

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

6 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

21 (e) The defendant's capacity to appreciate the wrongfulness of his
22 or her conduct, or to conform his or her conduct to the requirements of
23 the law, was significantly impaired. Voluntary use of drugs or alcohol
24 is excluded.

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

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

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

34 (i) The defendant was making a good faith effort to obtain or
35 provide medical assistance for someone who is experiencing a drug-
36 related overdose.

37 (j) The current offense involved domestic violence, as defined in

1 RCW 10.99.020, and the defendant suffered a continuing pattern of
2 coercion, control, or abuse by the victim of the offense and the
3 offense is a response to that coercion, control, or abuse.

4 (2) Aggravating Circumstances - Considered and Imposed by the Court

5 The trial court may impose an aggravated exceptional sentence
6 without a finding of fact by a jury under the following circumstances:

7 (a) The defendant and the state both stipulate that justice is best
8 served by the imposition of an exceptional sentence outside the
9 standard range, and the court finds the exceptional sentence to be
10 consistent with and in furtherance of the interests of justice and the
11 purposes of the sentencing reform act.

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

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

19 (d) The failure to consider the defendant's prior criminal history
20 which was omitted from the offender score calculation pursuant to RCW
21 9.94A.525 results in a presumptive sentence that is clearly too
22 lenient.

23 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
24 the Court

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

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

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

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

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

1 (i) The current offense involved multiple victims or multiple
2 incidents per victim;

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

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

7 (iv) The defendant used his or her position of trust, confidence,
8 or fiduciary responsibility to facilitate the commission of the current
9 offense.

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

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

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

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

23 (iv) The circumstances of the current offense reveal the offender
24 to have occupied a high position in the drug distribution hierarchy;

25 (v) The current offense involved a high degree of sophistication or
26 planning, occurred over a lengthy period of time, or involved a broad
27 geographic area of disbursement; or

28 (vi) The offender used his or her position or status to facilitate
29 the commission of the current offense, including positions of trust,
30 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
31 other medical professional).

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

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

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

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

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

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

8 (i) The offense resulted in the pregnancy of a child victim of
9 rape.

10 (j) The defendant knew that the victim of the current offense was
11 a youth who was not residing with a legal custodian and the defendant
12 established or promoted the relationship for the primary purpose of
13 victimization.

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

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

20 (m) The offense involved a high degree of sophistication or
21 planning.

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

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

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

28 (q) The defendant demonstrated or displayed an egregious lack of
29 remorse.

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

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

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

37 (u) The current offense is a burglary and the victim of the

1 burglary was present in the building or residence when the crime was
2 committed.

3 (v) The offense was committed against a law enforcement officer who
4 was performing his or her official duties at the time of the offense,
5 the offender knew that the victim was a law enforcement officer, and
6 the victim's status as a law enforcement officer is not an element of
7 the offense.

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

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

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

16 (z)(i)(A) The current offense is theft in the first degree, theft
17 in the second degree, possession of stolen property in the first
18 degree, or possession of stolen property in the second degree; (B) the
19 stolen property involved is metal property; and (C) the property damage
20 to the victim caused in the course of the theft of metal property is
21 more than three times the value of the stolen metal property, or the
22 theft of the metal property creates a public hazard.

23 (ii) For purposes of this subsection, "metal property" means
24 commercial metal property, private metal property, or nonferrous metal
25 property, as defined in RCW 19.290.010.

26 (aa) The defendant committed the offense with the intent to
27 directly or indirectly cause any benefit, aggrandizement, gain, profit,
28 or other advantage to or for a criminal street gang as defined in RCW
29 9.94A.030, its reputation, influence, or membership.

30 (bb) The current offense involved paying to view, over the internet
31 in violation of RCW 9.68A.075, depictions of a minor engaged in an act
32 of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
33 (g).

34 (cc) The offense was intentionally committed because the defendant
35 perceived the victim to be homeless, as defined in RCW 9.94A.030.

36 **Sec. 2.** RCW 9.94A.030 and 2010 c 274 s 401, 2010 c 267 s 9, 2010

1 c 227 s 11, and 2010 c 224 s 1 are each reenacted and amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

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

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

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

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

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

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

28 (7) "Community restitution" means compulsory service, without
29 compensation, performed for the benefit of the community by the
30 offender.

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

32 (9) "Conviction" means an adjudication of guilt pursuant to Title
33 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
34 acceptance of a plea of guilty.

35 (10) "Crime-related prohibition" means an order of a court
36 prohibiting conduct that directly relates to the circumstances of the
37 crime for which the offender has been convicted, and shall not be
38 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct. However, affirmative acts necessary to monitor
3 compliance with the order of a court may be required by the department.

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

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

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

15 (c) The determination of a defendant's criminal history is distinct
16 from the determination of an offender score. A prior conviction that
17 was not included in an offender score calculated pursuant to a former
18 version of the sentencing reform act remains part of the defendant's
19 criminal history.

20 (12) "Criminal street gang" means any ongoing organization,
21 association, or group of three or more persons, whether formal or
22 informal, having a common name or common identifying sign or symbol,
23 having as one of its primary activities the commission of criminal
24 acts, and whose members or associates individually or collectively
25 engage in or have engaged in a pattern of criminal street gang
26 activity. This definition does not apply to employees engaged in
27 concerted activities for their mutual aid and protection, or to the
28 activities of labor and bona fide nonprofit organizations or their
29 members or agents.

30 (13) "Criminal street gang associate or member" means any person
31 who actively participates in any criminal street gang and who
32 intentionally promotes, furthers, or assists in any criminal act by the
33 criminal street gang.

34 (14) "Criminal street gang-related offense" means any felony or
35 misdemeanor offense, whether in this state or elsewhere, that is
36 committed for the benefit of, at the direction of, or in association
37 with any criminal street gang, or is committed with the intent to

1 promote, further, or assist in any criminal conduct by the gang, or is
2 committed for one or more of the following reasons:

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

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

6 (c) To exact revenge or retribution for the gang or any member of
7 the gang;

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

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

13 (f) To provide the gang with any advantage in, or any control or
14 dominance over any criminal market sector, including, but not limited
15 to, manufacturing, delivering, or selling any controlled substance
16 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
17 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
18 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
19 (chapter 9.68 RCW).

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

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

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

30 (18) "Determinate sentence" means a sentence that states with
31 exactitude the number of actual years, months, or days of total
32 confinement, of partial confinement, of community custody, the number
33 of actual hours or days of community restitution work, or dollars or
34 terms of a legal financial obligation. The fact that an offender
35 through earned release can reduce the actual period of confinement
36 shall not affect the classification of the sentence as a determinate
37 sentence.

1 (19) "Disposable earnings" means that part of the earnings of an
2 offender remaining after the deduction from those earnings of any
3 amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (20) "Domestic violence" has the same meaning as defined in RCW
14 10.99.020 and 26.50.010.

15 (21) "Drug offender sentencing alternative" is a sentencing option
16 available to persons convicted of a felony offense other than a violent
17 offense or a sex offense and who are eligible for the option under RCW
18 9.94A.660.

19 (22) "Drug offense" means:

20 (a) Any felony violation of chapter 69.50 RCW except possession of
21 a controlled substance (RCW 69.50.4013) or forged prescription for a
22 controlled substance (RCW 69.50.403);

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

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

29 (23) "Earned release" means earned release from confinement as
30 provided in RCW 9.94A.728.

31 (24) "Escape" means:

32 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
33 first degree (RCW 9A.76.110), escape in the second degree (RCW
34 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
35 willful failure to return from work release (RCW 72.65.070), or willful
36 failure to be available for supervision by the department while in
37 community custody (RCW 72.09.310); or

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

4 (25) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
6 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
7 run injury-accident (RCW 46.52.020(4)), felony driving while under the
8 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
9 felony physical control of a vehicle while under the influence of
10 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

14 (26) "Fine" means a specific sum of money ordered by the sentencing
15 court to be paid by the offender to the court over a specific period of
16 time.

17 (27) "First-time offender" means any person who has no prior
18 convictions for a felony and is eligible for the first-time offender
19 waiver under RCW 9.94A.650.

20 (28) "Home detention" means a program of partial confinement
21 available to offenders wherein the offender is confined in a private
22 residence subject to electronic surveillance.

23 (29) "Homelessness" or "homeless" means a condition where an
24 individual lacks a fixed, regular, and adequate nighttime residence and
25 who has a primary nighttime residence that is:

26 (a) A supervised, publicly or privately operated shelter designed
27 to provide temporary living accommodations;

28 (b) A public or private place not designed for, or ordinarily used
29 as, a regular sleeping accommodation for human beings; or

30 (c) A private residence where the individual stays as a transient
31 invitee.

32 (30) "Legal financial obligation" means a sum of money that is
33 ordered by a superior court of the state of Washington for legal
34 financial obligations which may include restitution to the victim,
35 statutorily imposed crime victims' compensation fees as assessed
36 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
37 court-appointed attorneys' fees, and costs of defense, fines, and any
38 other financial obligation that is assessed to the offender as a result

1 of a felony conviction. Upon conviction for vehicular assault while
2 under the influence of intoxicating liquor or any drug, RCW
3 46.61.522(1)(b), or vehicular homicide while under the influence of
4 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
5 obligations may also include payment to a public agency of the expense
6 of an emergency response to the incident resulting in the conviction,
7 subject to RCW 38.52.430.

8 ~~((+30+))~~ (31) "Minor child" means a biological or adopted child of
9 the offender who is under age eighteen at the time of the offender's
10 current offense.

11 ~~((+31+))~~ (32) "Most serious offense" means any of the following
12 felonies or a felony attempt to commit any of the following felonies:

13 (a) Any felony defined under any law as a class A felony or
14 criminal solicitation of or criminal conspiracy to commit a class A
15 felony;

16 (b) Assault in the second degree;

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

18 (d) Child molestation in the second degree;

19 (e) Controlled substance homicide;

20 (f) Extortion in the first degree;

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

22 (h) Indecent liberties;

23 (i) Kidnapping in the second degree;

24 (j) Leading organized crime;

25 (k) Manslaughter in the first degree;

26 (l) Manslaughter in the second degree;

27 (m) Promoting prostitution in the first degree;

28 (n) Rape in the third degree;

29 (o) Robbery in the second degree;

30 (p) Sexual exploitation;

31 (q) Vehicular assault, when caused by the operation or driving of
32 a vehicle by a person while under the influence of intoxicating liquor
33 or any drug or by the operation or driving of a vehicle in a reckless
34 manner;

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

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

3 (t) Any other felony with a deadly weapon verdict under RCW
4 9.94A.825;

5 (u) Any felony offense in effect at any time prior to December 2,
6 1993, that is comparable to a most serious offense under this
7 subsection, or any federal or out-of-state conviction for an offense
8 that under the laws of this state would be a felony classified as a
9 most serious offense under this subsection;

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

15 (ii) A prior conviction for indecent liberties under RCW
16 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
17 if: (A) The crime was committed against a child under the age of
18 fourteen; or (B) the relationship between the victim and perpetrator is
19 included in the definition of indecent liberties under RCW
20 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
21 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
22 through July 27, 1997;

23 (w) Any out-of-state conviction for a felony offense with a finding
24 of sexual motivation if the minimum sentence imposed was ten years or
25 more; provided that the out-of-state felony offense must be comparable
26 to a felony offense under Title 9 or 9A RCW and the out-of-state
27 definition of sexual motivation must be comparable to the definition of
28 sexual motivation contained in this section.

29 ~~((+32+))~~ (33) "Nonviolent offense" means an offense which is not a
30 violent offense.

31 ~~((+33+))~~ (34) "Offender" means a person who has committed a felony
32 established by state law and is eighteen years of age or older or is
33 less than eighteen years of age but whose case is under superior court
34 jurisdiction under RCW 13.04.030 or has been transferred by the
35 appropriate juvenile court to a criminal court pursuant to RCW
36 13.40.110. In addition, for the purpose of community custody
37 requirements under this chapter, "offender" also means a misdemeanor or
38 gross misdemeanor probationer convicted of an offense included in RCW

1 9.94A.501(1) and ordered by a superior court to probation under the
2 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
3 9.95.210. Throughout this chapter, the terms "offender" and
4 "defendant" are used interchangeably.

5 ~~((+34+))~~ (35) "Partial confinement" means confinement for no more
6 than one year in a facility or institution operated or utilized under
7 contract by the state or any other unit of government, or, if home
8 detention or work crew has been ordered by the court or home detention
9 has been ordered by the department as part of the parenting program, in
10 an approved residence, for a substantial portion of each day with the
11 balance of the day spent in the community. Partial confinement
12 includes work release, home detention, work crew, and a combination of
13 work crew and home detention.

14 ~~((+35+))~~ (36) "Pattern of criminal street gang activity" means:

15 (a) The commission, attempt, conspiracy, or solicitation of, or any
16 prior juvenile adjudication of or adult conviction of, two or more of
17 the following criminal street gang-related offenses:

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

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

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

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

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

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

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

30 (viii) Harassment where a subsequent violation or deadly threat is
31 made (RCW 9A.46.020(2)(b));

32 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

33 (x) Any felony conviction by a person eighteen years of age or
34 older with a special finding of involving a juvenile in a felony
35 offense under RCW 9.94A.833;

36 (xi) Residential Burglary (RCW 9A.52.025);

37 (xii) Burglary 2 (RCW 9A.52.030);

38 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

1 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
2 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
3 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
4 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
5 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
6 9A.56.075);
7 (xix) Extortion 1 (RCW 9A.56.120);
8 (xx) Extortion 2 (RCW 9A.56.130);
9 (xxi) Intimidating a Witness (RCW 9A.72.110);
10 (xxii) Tampering with a Witness (RCW 9A.72.120);
11 (xxiii) Reckless Endangerment (RCW 9A.36.050);
12 (xxiv) Coercion (RCW 9A.36.070);
13 (xxv) Harassment (RCW 9A.46.020); or
14 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
15 (b) That at least one of the offenses listed in (a) of this
16 subsection shall have occurred after July 1, 2008;
17 (c) That the most recent committed offense listed in (a) of this
18 subsection occurred within three years of a prior offense listed in (a)
19 of this subsection; and
20 (d) Of the offenses that were committed in (a) of this subsection,
21 the offenses occurred on separate occasions or were committed by two or
22 more persons.
23 (~~(+36+)~~) (37) "Persistent offender" is an offender who:
24 (a)(i) Has been convicted in this state of any felony considered a
25 most serious offense; and
26 (ii) Has, before the commission of the offense under (a) of this
27 subsection, been convicted as an offender on at least two separate
28 occasions, whether in this state or elsewhere, of felonies that under
29 the laws of this state would be considered most serious offenses and
30 would be included in the offender score under RCW 9.94A.525; provided
31 that of the two or more previous convictions, at least one conviction
32 must have occurred before the commission of any of the other most
33 serious offenses for which the offender was previously convicted; or
34 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
35 of a child in the first degree, child molestation in the first degree,
36 rape in the second degree, rape of a child in the second degree, or
37 indecent liberties by forcible compulsion; (B) any of the following
38 offenses with a finding of sexual motivation: Murder in the first

1 degree, murder in the second degree, homicide by abuse, kidnapping in
2 the first degree, kidnapping in the second degree, assault in the first
3 degree, assault in the second degree, assault of a child in the first
4 degree, assault of a child in the second degree, or burglary in the
5 first degree; or (C) an attempt to commit any crime listed in this
6 subsection (~~(+36+)~~) (37)(b)(i); and

7 (ii) Has, before the commission of the offense under (b)(i) of this
8 subsection, been convicted as an offender on at least one occasion,
9 whether in this state or elsewhere, of an offense listed in (b)(i) of
10 this subsection or any federal or out-of-state offense or offense under
11 prior Washington law that is comparable to the offenses listed in
12 (b)(i) of this subsection. A conviction for rape of a child in the
13 first degree constitutes a conviction under (b)(i) of this subsection
14 only when the offender was sixteen years of age or older when the
15 offender committed the offense. A conviction for rape of a child in
16 the second degree constitutes a conviction under (b)(i) of this
17 subsection only when the offender was eighteen years of age or older
18 when the offender committed the offense.

19 (~~(+37+)~~) (38) "Predatory" means: (a) The perpetrator of the crime
20 was a stranger to the victim, as defined in this section; (b) the
21 perpetrator established or promoted a relationship with the victim
22 prior to the offense and the victimization of the victim was a
23 significant reason the perpetrator established or promoted the
24 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
25 volunteer, or other person in authority in any public or private school
26 and the victim was a student of the school under his or her authority
27 or supervision. For purposes of this subsection, "school" does not
28 include home-based instruction as defined in RCW 28A.225.010; (ii) a
29 coach, trainer, volunteer, or other person in authority in any
30 recreational activity and the victim was a participant in the activity
31 under his or her authority or supervision; (iii) a pastor, elder,
32 volunteer, or other person in authority in any church or religious
33 organization, and the victim was a member or participant of the
34 organization under his or her authority; or (iv) a teacher, counselor,
35 volunteer, or other person in authority providing home-based
36 instruction and the victim was a student receiving home-based
37 instruction while under his or her authority or supervision. For
38 purposes of this subsection: (A) "Home-based instruction" has the same

1 meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor,
2 volunteer, or other person in authority" does not include the parent or
3 legal guardian of the victim.

4 ~~((+38+))~~ (39) "Private school" means a school regulated under
5 chapter 28A.195 or 28A.205 RCW.

6 ~~((+39+))~~ (40) "Public school" has the same meaning as in RCW
7 28A.150.010.

8 ~~((+40+))~~ (41) "Repetitive domestic violence offense" means any:

9 (a)(i) Domestic violence assault that is not a felony offense under
10 RCW 9A.36.041;

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

13 (iii) Domestic violence violation of a protection order under
14 chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

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

17 (v) Domestic violence stalking offense under RCW 9A.46.110 that is
18 not 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 ~~((+41+))~~ (42) "Restitution" means a specific sum of money ordered
24 by the 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 ~~((+42+))~~ (43) "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 ~~((+43+))~~ (44) "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 ~~((44))~~ (45) "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 ~~((45))~~ (46) "Sex offense" means:

19 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
20 RCW 9A.44.132;

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;

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

26 (v) A felony violation of RCW 9A.44.132(1) (failure to register) if
27 the person has been convicted of violating RCW 9A.44.132(1) (failure to
28 register) on at least one prior occasion;

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

32 (c) A felony with a finding of sexual motivation under RCW
33 9.94A.835 or 13.40.135; or

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

37 ~~((46))~~ (47) "Sexual motivation" means that one of the purposes

1 for which the defendant committed the crime was for the purpose of his
2 or her sexual gratification.

3 ~~((47))~~ (48) "Standard sentence range" means the sentencing
4 court's discretionary range in imposing a nonappealable sentence.

5 ~~((48))~~ (49) "Statutory maximum sentence" means the maximum length
6 of time for which an offender may be confined as punishment for a crime
7 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
8 the crime, or other statute defining the maximum penalty for a crime.

9 ~~((49))~~ (50) "Stranger" means that the victim did not know the
10 offender twenty-four hours before the offense.

11 ~~((50))~~ (51) "Total confinement" means confinement inside the
12 physical boundaries of a facility or institution operated or utilized
13 under contract by the state or any other unit of government for twenty-
14 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 ~~((51))~~ (52) "Transition training" means written and verbal
16 instructions and assistance provided by the department to the offender
17 during the two weeks prior to the offender's successful completion of
18 the work ethic camp program. The transition training shall include
19 instructions in the offender's requirements and obligations during the
20 offender's period of community custody.

21 ~~((52))~~ (53) "Victim" means any person who has sustained
22 emotional, psychological, physical, or financial injury to person or
23 property as a direct result of the crime charged.

24 ~~((53))~~ (54) "Violent offense" means:

25 (a) Any of the following felonies:

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

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

30 (iii) Manslaughter in the first degree;

31 (iv) Manslaughter in the second degree;

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

33 (vi) Kidnapping in the second degree;

34 (vii) Arson in the second degree;

35 (viii) Assault in the second degree;

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

37 (x) Extortion in the first degree;

38 (xi) Robbery in the second degree;

1 (xii) Drive-by shooting;

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

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

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

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

16 (~~(+54+)~~) (55) "Work crew" means a program of partial confinement
17 consisting of civic improvement tasks for the benefit of the community
18 that complies with RCW 9.94A.725.

19 (~~(+55+)~~) (56) "Work ethic camp" means an alternative incarceration
20 program as provided in RCW 9.94A.690 designed to reduce recidivism and
21 lower the cost of corrections by requiring offenders to complete a
22 comprehensive array of real-world job and vocational experiences,
23 character-building work ethics training, life management skills
24 development, substance abuse rehabilitation, counseling, literacy
25 training, and basic adult education.

26 (~~(+56+)~~) (57) "Work release" means a program of partial confinement
27 available to offenders who are employed or engaged as a student in a
28 regular course of study at school.

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