
ENGROSSED SUBSTITUTE HOUSE BILL 1169

State of Washington

67th Legislature

2021 Regular Session

By House Public Safety (originally sponsored by Representatives Goodman, Davis, Dolan, Simmons, Bateman, Lekanoff, Springer, Gregerson, Senn, Fitzgibbon, Ramos, Frame, Ramel, Peterson, Lovick, Ryu, Callan, Slatter, Duerr, Ormsby, Macri, and Hackney)

READ FIRST TIME 02/02/21.

1 AN ACT Relating to sentencing enhancements; amending RCW
2 9.94A.030, 9.94A.599, 9.94A.729, 10.01.210, and 72.01.410; reenacting
3 and amending RCW 9.94A.030 and 9.94A.533; adding a new section to
4 chapter 9.94A RCW; creating new sections; repealing RCW 9.94A.833 and
5 69.50.435; prescribing penalties; providing an effective date; and
6 providing an expiration date.

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

8 **Sec. 1.** RCW 9.94A.030 and 2021 c 237 s 1 are each amended to
9 read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

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

14 (2) "Collect," or any derivative thereof, "collect and remit," or
15 "collect and deliver," when used with reference to the department,
16 means that the department, either directly or through a collection
17 agreement authorized by RCW 9.94A.760, is responsible for monitoring
18 and enforcing the offender's sentence with regard to the legal
19 financial obligation, receiving payment thereof from the offender,
20 and, consistent with current law, delivering daily the entire payment

1 to the superior court clerk without depositing it in a departmental
2 account.

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

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

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

13 (6) "Community protection zone" means the area within (~~eight~~
14 ~~hundred eighty~~) 880 feet of the facilities and grounds of a public
15 or private school.

16 (7) "Community restitution" means compulsory service, without
17 compensation, performed for the benefit of the community by the
18 offender.

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

20 (9) "Conviction" means an adjudication of guilt pursuant to Title
21 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
22 and acceptance of a plea of guilty.

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

31 (11) "Criminal history" means the list of a defendant's prior
32 convictions and juvenile adjudications, whether in this state, in
33 federal court, or elsewhere, and any issued certificates of
34 restoration of opportunity pursuant to RCW 9.97.020.

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

39 (b) A conviction may be removed from a defendant's criminal
40 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,

1 9.95.240, or a similar out-of-state statute, or if the conviction has
2 been vacated pursuant to a governor's pardon. However, when a
3 defendant is charged with a recidivist offense, "criminal history"
4 includes a vacated prior conviction for the sole purpose of
5 establishing that such vacated prior conviction constitutes an
6 element of the present recidivist offense as provided in RCW
7 9.94A.640(4)(b) and 9.96.060(7)(c).

8 (c) The determination of a defendant's criminal history is
9 distinct from the determination of an offender score. A prior
10 conviction that was not included in an offender score calculated
11 pursuant to a former version of the sentencing reform act remains
12 part of the defendant's criminal history.

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

23 (13) "Criminal street gang associate or member" means any person
24 who actively participates in any criminal street gang and who
25 intentionally promotes, furthers, or assists in any criminal act by
26 the criminal street gang.

27 (14) "Criminal street gang-related offense" means any felony or
28 misdemeanor offense, whether in this state or elsewhere, that is
29 committed for the benefit of, at the direction of, or in association
30 with any criminal street gang, or is committed with the intent to
31 promote, further, or assist in any criminal conduct by the gang, or
32 is committed for one or more of the following reasons:

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

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

36 (c) To exact revenge or retribution for the gang or any member of
37 the gang;

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

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

4 (f) To provide the gang with any advantage in, or any control or
5 dominance over any criminal market sector, including, but not limited
6 to, manufacturing, delivering, or selling any controlled substance
7 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
8 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
9 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
10 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
11 9.68 RCW).

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

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

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

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

30 (19) "Disposable earnings" means that part of the earnings of an
31 offender remaining after the deduction from those earnings of any
32 amount required by law to be withheld. For the purposes of this
33 definition, "earnings" means compensation paid or payable for
34 personal services, whether denominated as wages, salary, commission,
35 bonuses, or otherwise, and, notwithstanding any other provision of
36 law making the payments exempt from garnishment, attachment, or other
37 process to satisfy a court-ordered legal financial obligation,
38 specifically includes periodic payments pursuant to pension or
39 retirement programs, or insurance policies of any type, but does not

1 include payments made under Title 50 RCW, except as provided in RCW
2 50.40.020 and 50.40.050, or Title 74 RCW.

3 (20) "Domestic violence" has the same meaning as defined in RCW
4 10.99.020 and 26.50.010.

5 (21) "Drug offender sentencing alternative" is a sentencing
6 option available to persons convicted of a felony offense who are
7 eligible for the option under RCW 9.94A.660.

8 (22) "Drug offense" means:

9 (a) Any felony violation of chapter 69.50 RCW except possession
10 of a controlled substance (RCW 69.50.4013) or forged prescription for
11 a controlled substance (RCW 69.50.403);

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

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

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

20 (24) "Electronic monitoring" means tracking the location of an
21 individual through the use of technology that is capable of
22 determining or identifying the monitored individual's presence or
23 absence at a particular location including, but not limited to:

24 (a) Radio frequency signaling technology, which detects if the
25 monitored individual is or is not at an approved location and
26 notifies the monitoring agency of the time that the monitored
27 individual either leaves the approved location or tampers with or
28 removes the monitoring device; or

29 (b) Active or passive global positioning system technology, which
30 detects the location of the monitored individual and notifies the
31 monitoring agency of the monitored individual's location and which
32 may also include electronic monitoring with victim notification
33 technology that is capable of notifying a victim or protected party,
34 either directly or through a monitoring agency, if the monitored
35 individual enters within the restricted distance of a victim or
36 protected party, or within the restricted distance of a designated
37 location.

38 (25) "Escape" means:

39 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
40 the first degree (RCW 9A.76.110), escape in the second degree (RCW

1 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
2 willful failure to return from work release (RCW 72.65.070), or
3 willful failure to be available for supervision by the department
4 while in community custody (RCW 72.09.310); or

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

8 (26) "Felony traffic offense" means:

9 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
10 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
11 run injury-accident (RCW 46.52.020(4)), felony driving while under
12 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
13 or felony physical control of a vehicle while under the influence of
14 intoxicating liquor or any drug (RCW 46.61.504(6)); 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 felony
17 traffic offense under (a) of this subsection.

18 (27) "Fine" means a specific sum of money ordered by the
19 sentencing court to be paid by the offender to the court over a
20 specific period of time.

21 (28) "First-time offender" means any person who has no prior
22 convictions for a felony and is eligible for the first-time offender
23 waiver under RCW 9.94A.650.

24 (29) "Home detention" is a subset of electronic monitoring and
25 means a program of partial confinement available to offenders wherein
26 the offender is confined in a private residence (~~(twenty-four)~~) 24
27 hours a day, unless an absence from the residence is approved,
28 authorized, or otherwise permitted in the order by the court or other
29 supervising agency that ordered home detention, and the offender is
30 subject to electronic monitoring.

31 (30) "Homelessness" or "homeless" means a condition where an
32 individual lacks a fixed, regular, and adequate nighttime residence
33 and who has a primary nighttime residence that is:

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

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

38 (c) A private residence where the individual stays as a transient
39 invitee.

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

15 (32) "Most serious offense" means any of the following felonies
16 or a felony attempt to commit any of the following felonies:

17 (a) Any felony defined under any law as a class A felony or
18 criminal solicitation of or criminal conspiracy to commit a class A
19 felony;

20 (b) Assault in the second degree;

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

22 (d) Child molestation in the second degree;

23 (e) Controlled substance homicide;

24 (f) Extortion in the first degree;

25 (g) Incest when committed against a child under age (~~fourteen~~)

26 14;

27 (h) Indecent liberties;

28 (i) Kidnapping in the second degree;

29 (j) Leading organized crime;

30 (k) Manslaughter in the first degree;

31 (l) Manslaughter in the second degree;

32 (m) Promoting prostitution in the first degree;

33 (n) Rape in the third degree;

34 (o) Sexual exploitation;

35 (p) Vehicular assault, when caused by the operation or driving of
36 a vehicle by a person while under the influence of intoxicating
37 liquor or any drug or by the operation or driving of a vehicle in a
38 reckless manner;

39 (q) Vehicular homicide, when proximately caused by the driving of
40 any vehicle by any person while under the influence of intoxicating

1 liquor or any drug as defined by RCW 46.61.502, or by the operation
2 of any vehicle in a reckless manner;

3 (r) Any other class B felony offense with a finding of sexual
4 motivation;

5 (s) Any other felony with a deadly weapon verdict under RCW
6 9.94A.825;

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

12 (u)(i) A prior conviction for indecent liberties under RCW
13 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
14 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
15 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
16 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
17 until July 1, 1988;

18 (ii) A prior conviction for indecent liberties under RCW
19 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
20 if: (A) The crime was committed against a child under the age of
21 (~~fourteen~~) 14; or (B) the relationship between the victim and
22 perpetrator is included in the definition of indecent liberties under
23 RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
24 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
25 1993, through July 27, 1997;

26 (v) Any out-of-state conviction for a felony offense with a
27 finding of sexual motivation if the minimum sentence imposed was
28 (~~ten~~) 10 years or more; provided that the out-of-state felony
29 offense must be comparable to a felony offense under this title and
30 Title 9A RCW and the out-of-state definition of sexual motivation
31 must be comparable to the definition of sexual motivation contained
32 in this section.

33 (33) "Nonviolent offense" means an offense which is not a violent
34 offense.

35 (34) "Offender" means a person who has committed a felony
36 established by state law and is (~~eighteen~~) 18 years of age or older
37 or is less than (~~eighteen~~) 18 years of age but whose case is under
38 superior court jurisdiction under RCW 13.04.030 or has been
39 transferred by the appropriate juvenile court to a criminal court
40 pursuant to RCW 13.40.110. In addition, for the purpose of community

1 custody requirements under this chapter, "offender" also means a
2 misdemeanor or gross misdemeanor probationer ordered by a superior
3 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210
4 and supervised by the department pursuant to RCW 9.94A.501 and
5 9.94A.5011. Throughout this chapter, the terms "offender" and
6 "defendant" are used interchangeably.

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

17 (36) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

32 (vii) Hate Crime (RCW 9A.36.080);

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

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

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

39 ~~(xi))~~ Residential Burglary (RCW 9A.52.025);

40 ~~((xi))~~ (xi) Burglary 2 (RCW 9A.52.030);

1 (~~(xiii)~~) (xii) Malicious Mischief 1 (RCW 9A.48.070);
2 (~~(xiv)~~) (xiii) Malicious Mischief 2 (RCW 9A.48.080);
3 (~~(xv)~~) (xiv) Theft of a Motor Vehicle (RCW 9A.56.065);
4 (~~(xvi)~~) (xv) Possession of a Stolen Motor Vehicle (RCW
5 9A.56.068);
6 (~~(xvii)~~) (xvi) Taking a Motor Vehicle Without Permission 1 (RCW
7 9A.56.070);
8 (~~(xviii)~~) (xvii) Taking a Motor Vehicle Without Permission 2
9 (RCW 9A.56.075);
10 (~~(xix)~~) (xviii) Extortion 1 (RCW 9A.56.120);
11 (~~(xx)~~) (xix) Extortion 2 (RCW 9A.56.130);
12 (~~(xxi)~~) (xx) Intimidating a Witness (RCW 9A.72.110);
13 (~~(xxii)~~) (xxi) Tampering with a Witness (RCW 9A.72.120);
14 (~~(xxiii)~~) (xxii) Reckless Endangerment (RCW 9A.36.050);
15 (~~(xxiv)~~) (xxiii) Coercion (RCW 9A.36.070);
16 (~~(xxv)~~) (xxiv) Harassment (RCW 9A.46.020); or
17 (~~(xxvi)~~) (xxv) Malicious Mischief 3 (RCW 9A.48.090);

18 (b) That at least one of the offenses listed in (a) of this
19 subsection shall have occurred after July 1, 2008;

20 (c) That the most recent committed offense listed in (a) of this
21 subsection occurred within three years of a prior offense listed in
22 (a) of this subsection; and

23 (d) Of the offenses that were committed in (a) of this
24 subsection, the offenses occurred on separate occasions or were
25 committed by two or more persons.

26 (37) "Persistent offender" is an offender who:

27 (a) (i) Has been convicted in this state of any felony considered
28 a most serious offense; and

29 (ii) Has, before the commission of the offense under (a) of this
30 subsection, been convicted as an offender on at least two separate
31 occasions, whether in this state or elsewhere, of felonies that under
32 the laws of this state would be considered most serious offenses and
33 would be included in the offender score under RCW 9.94A.525; provided
34 that of the two or more previous convictions, at least one conviction
35 must have occurred before the commission of any of the other most
36 serious offenses for which the offender was previously convicted; or

37 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
38 of a child in the first degree, child molestation in the first
39 degree, rape in the second degree, rape of a child in the second
40 degree, or indecent liberties by forcible compulsion; (B) any of the

1 following offenses with a finding of sexual motivation: Murder in the
2 first degree, murder in the second degree, homicide by abuse,
3 kidnapping in the first degree, kidnapping in the second degree,
4 assault in the first degree, assault in the second degree, assault of
5 a child in the first degree, assault of a child in the second degree,
6 or burglary in the first degree; or (C) an attempt to commit any
7 crime listed in this subsection (37)(b)(i); and

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

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

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

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

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

7 (41) "Recidivist offense" means a felony offense where a prior
8 conviction of the same offense or other specified offense is an
9 element of the crime including, but not limited to:

10 (a) Assault in the fourth degree where domestic violence is
11 pleaded and proven, RCW 9A.36.041(3);

12 (b) Cyberstalking, RCW 9.61.260(3)(a);

13 (c) Harassment, RCW 9A.46.020(2)(b)(i);

14 (d) Indecent exposure, RCW 9A.88.010(2)(c);

15 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

16 (f) Telephone harassment, RCW 9.61.230(2)(a); and

17 (g) Violation of a no-contact or protection order, RCW
18 26.50.110(5).

19 (42) "Repetitive domestic violence offense" means any:

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

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

24 (iii) Domestic violence violation of a protection order under
25 chapter 26.09, 26.26A, 26.26B, or 26.50 RCW that is not a felony
26 offense;

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

29 (v) Domestic violence stalking offense under RCW 9A.46.110 that
30 is not a felony offense; or

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

35 (43) "Restitution" means a specific sum of money ordered by the
36 sentencing court to be paid by the offender to the court over a
37 specified period of time as payment of damages. The sum may include
38 both public and private costs.

39 (44) "Risk assessment" means the application of the risk
40 instrument recommended to the department by the Washington state

1 institute for public policy as having the highest degree of
2 predictive accuracy for assessing an offender's risk of reoffense.

3 (45) "Serious traffic offense" means:

4 (a) Nonfelony driving while under the influence of intoxicating
5 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
6 while under the influence of intoxicating liquor or any drug (RCW
7 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
8 attended vehicle (RCW 46.52.020(5)); or

9 (b) Any federal, out-of-state, county, or municipal conviction
10 for an offense that under the laws of this state would be classified
11 as a serious traffic offense under (a) of this subsection.

12 (46) "Serious violent offense" is a subcategory of violent
13 offense and means:

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

15 (ii) Homicide by abuse;

16 (iii) Murder in the second degree;

17 (iv) Manslaughter in the first degree;

18 (v) Assault in the first degree;

19 (vi) Kidnapping in the first degree;

20 (vii) Rape in the first degree;

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

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

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

27 (47) "Sex offense" means:

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

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

31 (iii) A felony that is a violation of chapter 9.68A RCW other
32 than RCW 9.68A.080;

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

36 (v) A felony violation of RCW 9A.44.132(1) (failure to register
37 as a sex offender) if the person has been convicted of violating RCW
38 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
39 prior to June 10, 2010, on at least one prior occasion;

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

4 (c) A felony with a finding of sexual motivation under RCW
5 9.94A.835 or 13.40.135; or

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

9 (48) "Sexual motivation" means that one of the purposes for which
10 the defendant committed the crime was for the purpose of his or her
11 sexual gratification.

12 (49) "Standard sentence range" means the sentencing court's
13 discretionary range in imposing a nonappealable sentence.

14 (50) "Statutory maximum sentence" means the maximum length of
15 time for which an offender may be confined as punishment for a crime
16 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute
17 defining the crime, or other statute defining the maximum penalty for
18 a crime.

19 (51) "Stranger" means that the victim did not know the offender
20 (~~(twenty-four)~~) 24 hours before the offense.

21 (52) "Total confinement" means confinement inside the physical
22 boundaries of a facility or institution operated or utilized under
23 contract by the state or any other unit of government for (~~(twenty-~~
24 ~~four)~~) 24 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

25 (53) "Transition training" means written and verbal instructions
26 and assistance provided by the department to the offender during the
27 two weeks prior to the offender's successful completion of the work
28 ethic camp program. The transition training shall include
29 instructions in the offender's requirements and obligations during
30 the offender's period of community custody.

31 (54) "Victim" means any person who has sustained emotional,
32 psychological, physical, or financial injury to person or property as
33 a direct result of the crime charged.

34 (55) "Victim of domestic violence" means an intimate partner or
35 household member who has been subjected to the infliction of physical
36 harm or sexual and psychological abuse by an intimate partner or
37 household member as part of a pattern of assaultive, coercive, and
38 controlling behaviors directed at achieving compliance from or
39 control over that intimate partner or household member. Domestic
40 violence includes, but is not limited to, the offenses listed in RCW

1 10.99.020 and 26.50.010 committed by an intimate partner or household
2 member against a victim who is an intimate partner or household
3 member.

4 (56) "Victim of sex trafficking, prostitution, or commercial
5 sexual abuse of a minor" means a person who has been forced or
6 coerced to perform a commercial sex act including, but not limited
7 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
8 9.68A.101, and the trafficking victims protection act of 2000, 22
9 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
10 commercial sex act when they were less than 18 years of age including
11 but not limited to the offenses defined in chapter 9.68A RCW.

12 (57) "Victim of sexual assault" means any person who is a victim
13 of a sexual assault offense, nonconsensual sexual conduct, or
14 nonconsensual sexual penetration and as a result suffers physical,
15 emotional, financial, or psychological impacts. Sexual assault
16 offenses include, but are not limited to, the offenses defined in
17 chapter 9A.44 RCW.

18 (58) "Violent offense" means:

19 (a) Any of the following felonies:

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

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

24 (iii) Manslaughter in the first degree;

25 (iv) Manslaughter in the second degree;

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

27 (vi) Kidnapping in the second degree;

28 (vii) Arson in the second degree;

29 (viii) Assault in the second degree;

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

31 (x) Extortion in the first degree;

32 (xi) Robbery in the second degree;

33 (xii) Drive-by shooting;

34 (xiii) Vehicular assault, when caused by the operation or driving
35 of a vehicle by a person while under the influence of intoxicating
36 liquor or any drug or by the operation or driving of a vehicle in a
37 reckless manner; and

38 (xiv) Vehicular homicide, when proximately caused by the driving
39 of any vehicle by any person while under the influence of

1 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
2 the operation of any vehicle in a reckless manner;

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

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

9 (59) "Work crew" means a program of partial confinement
10 consisting of civic improvement tasks for the benefit of the
11 community that complies with RCW 9.94A.725.

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

19 (61) "Work release" means a program of partial confinement
20 available to offenders who are employed or engaged as a student in a
21 regular course of study at school.

22 **Sec. 2.** RCW 9.94A.030 and 2021 c 237 s 1 and 2021 c 215 s 97 are
23 each reenacted and amended to read as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

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

28 (2) "Collect," or any derivative thereof, "collect and remit," or
29 "collect and deliver," when used with reference to the department,
30 means that the department, either directly or through a collection
31 agreement authorized by RCW 9.94A.760, is responsible for monitoring
32 and enforcing the offender's sentence with regard to the legal
33 financial obligation, receiving payment thereof from the offender,
34 and, consistent with current law, delivering daily the entire payment
35 to the superior court clerk without depositing it in a departmental
36 account.

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

38 (4) "Community corrections officer" means an employee of the
39 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

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

8 (6) "Community protection zone" means the area within (~~eight~~
9 ~~hundred-eighty~~) 880 feet of the facilities and grounds of a public
10 or private school.

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

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

15 (9) "Conviction" means an adjudication of guilt pursuant to Title
16 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
17 and acceptance of a plea of guilty.

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

26 (11) "Criminal history" means the list of a defendant's prior
27 convictions and juvenile adjudications, whether in this state, in
28 federal court, or elsewhere, and any issued certificates of
29 restoration of opportunity pursuant to RCW 9.97.020.

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

34 (b) A conviction may be removed from a defendant's criminal
35 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
36 9.95.240, or a similar out-of-state statute, or if the conviction has
37 been vacated pursuant to a governor's pardon. However, when a
38 defendant is charged with a recidivist offense, "criminal history"
39 includes a vacated prior conviction for the sole purpose of
40 establishing that such vacated prior conviction constitutes an

1 element of the present recidivist offense as provided in RCW
2 9.94A.640(4)(b) and 9.96.060(7)(c).

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

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

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

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

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

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

31 (c) To exact revenge or retribution for the gang or any member of
32 the gang;

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

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

38 (f) To provide the gang with any advantage in, or any control or
39 dominance over any criminal market sector, including, but not limited
40 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); promoting commercial sexual
4 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
5 9.68 RCW).

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

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

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

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

24 (19) "Disposable earnings" means that part of the earnings of an
25 offender remaining after the deduction from those earnings of any
26 amount required by law to be withheld. For the purposes of this
27 definition, "earnings" means compensation paid or payable for
28 personal services, whether denominated as wages, salary, commission,
29 bonuses, or otherwise, and, notwithstanding any other provision of
30 law making the payments exempt from garnishment, attachment, or other
31 process to satisfy a court-ordered legal financial obligation,
32 specifically includes periodic payments pursuant to pension or
33 retirement programs, or insurance policies of any type, but does not
34 include payments made under Title 50 RCW, except as provided in RCW
35 50.40.020 and 50.40.050, or Title 74 RCW.

36 (20)(a) "Domestic violence" has the same meaning as defined in
37 RCW 10.99.020.

38 (b) "Domestic violence" also means: (i) Physical harm, bodily
39 injury, assault, or the infliction of fear of imminent physical harm,
40 bodily injury, or assault, sexual assault, or stalking, as defined in

1 RCW 9A.46.110, of one intimate partner by another intimate partner as
2 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
3 assault, or the infliction of fear of imminent physical harm, bodily
4 injury, or assault, sexual assault, or stalking, as defined in RCW
5 9A.46.110, of one family or household member by another family or
6 household member as defined in RCW 10.99.020.

7 (21) "Drug offender sentencing alternative" is a sentencing
8 option available to persons convicted of a felony offense who are
9 eligible for the option under RCW 9.94A.660.

10 (22) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession
12 of a controlled substance (RCW 69.50.4013) or forged prescription for
13 a controlled substance (RCW 69.50.403);

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

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

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

22 (24) "Electronic monitoring" means tracking the location of an
23 individual through the use of technology that is capable of
24 determining or identifying the monitored individual's presence or
25 absence at a particular location including, but not limited to:

26 (a) Radio frequency signaling technology, which detects if the
27 monitored individual is or is not at an approved location and
28 notifies the monitoring agency of the time that the monitored
29 individual either leaves the approved location or tampers with or
30 removes the monitoring device; or

31 (b) Active or passive global positioning system technology, which
32 detects the location of the monitored individual and notifies the
33 monitoring agency of the monitored individual's location and which
34 may also include electronic monitoring with victim notification
35 technology that is capable of notifying a victim or protected party,
36 either directly or through a monitoring agency, if the monitored
37 individual enters within the restricted distance of a victim or
38 protected party, or within the restricted distance of a designated
39 location.

40 (25) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
2 the first degree (RCW 9A.76.110), escape in the second degree (RCW
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
4 willful failure to return from work release (RCW 72.65.070), or
5 willful failure to be available for supervision by the department
6 while in community custody (RCW 72.09.310); or

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

10 (26) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
12 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
13 run injury-accident (RCW 46.52.020(4)), felony driving while under
14 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
15 or felony physical control of a vehicle while under the influence of
16 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

20 (27) "Fine" means a specific sum of money ordered by the
21 sentencing court to be paid by the offender to the court over a
22 specific period of time.

23 (28) "First-time offender" means any person who has no prior
24 convictions for a felony and is eligible for the first-time offender
25 waiver under RCW 9.94A.650.

26 (29) "Home detention" is a subset of electronic monitoring and
27 means a program of partial confinement available to offenders wherein
28 the offender is confined in a private residence (~~(twenty-four)~~) 24
29 hours a day, unless an absence from the residence is approved,
30 authorized, or otherwise permitted in the order by the court or other
31 supervising agency that ordered home detention, and the offender is
32 subject to electronic monitoring.

33 (30) "Homelessness" or "homeless" means a condition where an
34 individual lacks a fixed, regular, and adequate nighttime residence
35 and who has a primary nighttime residence that is:

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

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

1 (c) A private residence where the individual stays as a transient
2 invitee.

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

17 (32) "Most serious offense" means any of the following felonies
18 or a felony attempt to commit any of the following felonies:

19 (a) Any felony defined under any law as a class A felony or
20 criminal solicitation of or criminal conspiracy to commit a class A
21 felony;

22 (b) Assault in the second degree;

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

24 (d) Child molestation in the second degree;

25 (e) Controlled substance homicide;

26 (f) Extortion in the first degree;

27 (g) Incest when committed against a child under age (~~fourteen~~)

28 14;

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Sexual exploitation;

37 (p) Vehicular assault, when caused by the operation or driving of
38 a vehicle by a person while under the influence of intoxicating
39 liquor or any drug or by the operation or driving of a vehicle in a
40 reckless manner;

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

5 (r) Any other class B felony offense with a finding of sexual
6 motivation;

7 (s) Any other felony with a deadly weapon verdict under RCW
8 9.94A.825;

9 (t) Any felony offense in effect at any time prior to December 2,
10 1993, that is comparable to a most serious offense under this
11 subsection, or any federal or out-of-state conviction for an offense
12 that under the laws of this state would be a felony classified as a
13 most serious offense under this subsection;

14 (u)(i) A prior conviction for indecent liberties under RCW
15 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
16 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
17 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
18 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
19 until July 1, 1988;

20 (ii) A prior conviction for indecent liberties under RCW
21 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
22 if: (A) The crime was committed against a child under the age of
23 (~~fourteen~~) 14; or (B) the relationship between the victim and
24 perpetrator is included in the definition of indecent liberties under
25 RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
26 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
27 1993, through July 27, 1997;

28 (v) Any out-of-state conviction for a felony offense with a
29 finding of sexual motivation if the minimum sentence imposed was
30 (~~ten~~) 10 years or more; provided that the out-of-state felony
31 offense must be comparable to a felony offense under this title and
32 Title 9A RCW and the out-of-state definition of sexual motivation
33 must be comparable to the definition of sexual motivation contained
34 in this section.

35 (33) "Nonviolent offense" means an offense which is not a violent
36 offense.

37 (34) "Offender" means a person who has committed a felony
38 established by state law and is (~~eighteen~~) 18 years of age or older
39 or is less than (~~eighteen~~) 18 years of age but whose case is under
40 superior court jurisdiction under RCW 13.04.030 or has been

1 transferred by the appropriate juvenile court to a criminal court
2 pursuant to RCW 13.40.110. In addition, for the purpose of community
3 custody requirements under this chapter, "offender" also means a
4 misdemeanor or gross misdemeanor probationer ordered by a superior
5 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210
6 and supervised by the department pursuant to RCW 9.94A.501 and
7 9.94A.5011. Throughout this chapter, the terms "offender" and
8 "defendant" are used interchangeably.

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

19 (36) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

34 (vii) Hate Crime (RCW 9A.36.080);

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

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

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

1 ~~(xi)~~) Residential Burglary (RCW 9A.52.025);
2 ~~((xii))~~ (xi) Burglary 2 (RCW 9A.52.030);
3 ~~((xiii))~~ (xii) Malicious Mischief 1 (RCW 9A.48.070);
4 ~~((xiv))~~ (xiii) Malicious Mischief 2 (RCW 9A.48.080);
5 ~~((xv))~~ (xiv) Theft of a Motor Vehicle (RCW 9A.56.065);
6 ~~((xvi))~~ (xv) Possession of a Stolen Motor Vehicle (RCW
7 9A.56.068);
8 ~~((xvii))~~ (xvi) Taking a Motor Vehicle Without Permission 1 (RCW
9 9A.56.070);
10 ~~((xviii))~~ (xvii) Taking a Motor Vehicle Without Permission 2
11 (RCW 9A.56.075);
12 ~~((xix))~~ (xviii) Extortion 1 (RCW 9A.56.120);
13 ~~((xx))~~ (xix) Extortion 2 (RCW 9A.56.130);
14 ~~((xxi))~~ (xx) Intimidating a Witness (RCW 9A.72.110);
15 ~~((xxii))~~ (xxi) Tampering with a Witness (RCW 9A.72.120);
16 ~~((xxiii))~~ (xxii) Reckless Endangerment (RCW 9A.36.050);
17 ~~((xxiv))~~ (xxiii) Coercion (RCW 9A.36.070);
18 ~~((xxv))~~ (xxiv) Harassment (RCW 9A.46.020); or
19 ~~((xxvi))~~ (xxv) Malicious Mischief 3 (RCW 9A.48.090);

20 (b) That at least one of the offenses listed in (a) of this
21 subsection shall have occurred after July 1, 2008;

22 (c) That the most recent committed offense listed in (a) of this
23 subsection occurred within three years of a prior offense listed in
24 (a) of this subsection; and

25 (d) Of the offenses that were committed in (a) of this
26 subsection, the offenses occurred on separate occasions or were
27 committed by two or more persons.

28 (37) "Persistent offender" is an offender who:

29 (a) (i) Has been convicted in this state of any felony considered
30 a most serious offense; and

31 (ii) Has, before the commission of the offense under (a) of this
32 subsection, been convicted as an offender on at least two separate
33 occasions, whether in this state or elsewhere, of felonies that under
34 the laws of this state would be considered most serious offenses and
35 would be included in the offender score under RCW 9.94A.525; provided
36 that of the two or more previous convictions, at least one conviction
37 must have occurred before the commission of any of the other most
38 serious offenses for which the offender was previously convicted; or

39 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
40 of a child in the first degree, child molestation in the first

1 degree, rape in the second degree, rape of a child in the second
2 degree, or indecent liberties by forcible compulsion; (B) any of the
3 following offenses with a finding of sexual motivation: Murder in the
4 first degree, murder in the second degree, homicide by abuse,
5 kidnapping in the first degree, kidnapping in the second degree,
6 assault in the first degree, assault in the second degree, assault of
7 a child in the first degree, assault of a child in the second degree,
8 or burglary in the first degree; or (C) an attempt to commit any
9 crime listed in this subsection (37)(b)(i); and

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

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

1 authority or supervision. For purposes of this subsection: (A) "Home-
2 based instruction" has the same meaning as defined in RCW
3 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
4 in authority" does not include the parent or legal guardian of the
5 victim.

6 (39) "Private school" means a school regulated under chapter
7 28A.195 or 28A.205 RCW.

8 (40) "Public school" has the same meaning as in RCW 28A.150.010.

9 (41) "Recidivist offense" means a felony offense where a prior
10 conviction of the same offense or other specified offense is an
11 element of the crime including, but not limited to:

12 (a) Assault in the fourth degree where domestic violence is
13 pleaded and proven, RCW 9A.36.041(3);

14 (b) Cyberstalking, RCW 9.61.260(3)(a);

15 (c) Harassment, RCW 9A.46.020(2)(b)(i);

16 (d) Indecent exposure, RCW 9A.88.010(2)(c);

17 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

18 (f) Telephone harassment, RCW 9.61.230(2)(a); and

19 (g) Violation of a no-contact or protection order, RCW 7.105.450
20 or former RCW 26.50.110(5).

21 (42) "Repetitive domestic violence offense" means any:

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

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

26 (iii) Domestic violence violation of a protection order under
27 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
28 violation of a domestic violence protection order under chapter 7.105
29 RCW, that is not a felony offense;

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

32 (v) Domestic violence stalking offense under RCW 9A.46.110 that
33 is not a felony offense; or

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

38 (43) "Restitution" means a specific sum of money ordered by the
39 sentencing court to be paid by the offender to the court over a

1 specified period of time as payment of damages. The sum may include
2 both public and private costs.

3 (44) "Risk assessment" means the application of the risk
4 instrument recommended to the department by the Washington state
5 institute for public policy as having the highest degree of
6 predictive accuracy for assessing an offender's risk of reoffense.

7 (45) "Serious traffic offense" means:

8 (a) Nonfelony driving while under the influence of intoxicating
9 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
10 while under the influence of intoxicating liquor or any drug (RCW
11 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
12 attended vehicle (RCW 46.52.020(5)); or

13 (b) Any federal, out-of-state, county, or municipal conviction
14 for an offense that under the laws of this state would be classified
15 as a serious traffic offense under (a) of this subsection.

16 (46) "Serious violent offense" is a subcategory of violent
17 offense and means:

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

19 (ii) Homicide by abuse;

20 (iii) Murder in the second degree;

21 (iv) Manslaughter in the first degree;

22 (v) Assault in the first degree;

23 (vi) Kidnapping in the first degree;

24 (vii) Rape in the first degree;

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

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

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

31 (47) "Sex offense" means:

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

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

35 (iii) A felony that is a violation of chapter 9.68A RCW other
36 than RCW 9.68A.080;

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

1 (v) A felony violation of RCW 9A.44.132(1) (failure to register
2 as a sex offender) if the person has been convicted of violating RCW
3 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
4 prior to June 10, 2010, on at least one prior occasion;

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

8 (c) A felony with a finding of sexual motivation under RCW
9 9.94A.835 or 13.40.135; or

10 (d) 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 sex
12 offense under (a) of this subsection.

13 (48) "Sexual motivation" means that one of the purposes for which
14 the defendant committed the crime was for the purpose of his or her
15 sexual gratification.

16 (49) "Standard sentence range" means the sentencing court's
17 discretionary range in imposing a nonappealable sentence.

18 (50) "Statutory maximum sentence" means the maximum length of
19 time for which an offender may be confined as punishment for a crime
20 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute
21 defining the crime, or other statute defining the maximum penalty for
22 a crime.

23 (51) "Stranger" means that the victim did not know the offender
24 (~~((twenty-four))~~) 24 hours before the offense.

25 (52) "Total confinement" means confinement inside the physical
26 boundaries of a facility or institution operated or utilized under
27 contract by the state or any other unit of government for (~~((twenty-~~
28 ~~four))~~) 24 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

29 (53) "Transition training" means written and verbal instructions
30 and assistance provided by the department to the offender during the
31 two weeks prior to the offender's successful completion of the work
32 ethic camp program. The transition training shall include
33 instructions in the offender's requirements and obligations during
34 the offender's period of community custody.

35 (54) "Victim" means any person who has sustained emotional,
36 psychological, physical, or financial injury to person or property as
37 a direct result of the crime charged.

38 (55) "Victim of domestic violence" means an intimate partner or
39 household member who has been subjected to the infliction of physical
40 harm or sexual and psychological abuse by an intimate partner or

1 household member as part of a pattern of assaultive, coercive, and
2 controlling behaviors directed at achieving compliance from or
3 control over that intimate partner or household member. Domestic
4 violence includes, but is not limited to, the offenses listed in RCW
5 10.99.020 and 26.50.010 committed by an intimate partner or household
6 member against a victim who is an intimate partner or household
7 member.

8 (56) "Victim of sex trafficking, prostitution, or commercial
9 sexual abuse of a minor" means a person who has been forced or
10 coerced to perform a commercial sex act including, but not limited
11 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
12 9.68A.101, and the trafficking victims protection act of 2000, 22
13 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
14 commercial sex act when they were less than 18 years of age including
15 but not limited to the offenses defined in chapter 9.68A RCW.

16 (57) "Victim of sexual assault" means any person who is a victim
17 of a sexual assault offense, nonconsensual sexual conduct, or
18 nonconsensual sexual penetration and as a result suffers physical,
19 emotional, financial, or psychological impacts. Sexual assault
20 offenses include, but are not limited to, the offenses defined in
21 chapter 9A.44 RCW.

22 (58) "Violent offense" means:

23 (a) Any of the following felonies:

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

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

28 (iii) Manslaughter in the first degree;

29 (iv) Manslaughter in the second degree;

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

31 (vi) Kidnapping in the second degree;

32 (vii) Arson in the second degree;

33 (viii) Assault in the second degree;

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

35 (x) Extortion in the first degree;

36 (xi) Robbery in the second degree;

37 (xii) Drive-by shooting;

38 (xiii) Vehicular assault, when caused by the operation or driving
39 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
4 of any vehicle by any person while under the influence of
5 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
6 the operation of any vehicle in a reckless manner;

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

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

16 (60) "Work ethic camp" means an alternative incarceration program
17 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
18 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 (61) "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. 3.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are
27 each reenacted and amended to read as follows:

28 (1) The provisions of this section apply to the standard sentence
29 ranges determined by RCW 9.94A.510 or 9.94A.517.

30 (2) For persons convicted of the anticipatory offenses of
31 criminal attempt, solicitation, or conspiracy under chapter 9A.28
32 RCW, the standard sentence range is determined by locating the
33 sentencing grid sentence range defined by the appropriate offender
34 score and the seriousness level of the completed crime, and
35 multiplying the range by (~~seventy-five~~) 75 percent.

36 (3) The following additional times shall be added to the standard
37 sentence range for felony crimes committed after July 23, 1995, if
38 the offender or an accomplice was armed with a firearm as defined in
39 RCW 9.41.010 and the offender is being sentenced for one of the

1 crimes listed in this subsection as eligible for any firearm
2 enhancements based on the classification of the completed felony
3 crime. If the offender is being sentenced for more than one offense,
4 the firearm enhancement or enhancements must be added to the total
5 period of confinement for all offenses, regardless of which
6 underlying offense is subject to a firearm enhancement. If the
7 offender or an accomplice was armed with a firearm as defined in RCW
8 9.41.010 and the offender is being sentenced for an anticipatory
9 offense under chapter 9A.28 RCW to commit one of the crimes listed in
10 this subsection as eligible for any firearm enhancements, the
11 following additional times shall be added to the standard sentence
12 range determined under subsection (2) of this section based on the
13 felony crime of conviction as classified under RCW 9A.28.020:

14 (a) Five years for any felony defined under any law as a class A
15 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
16 years, or both, and not covered under (f) of this subsection;

17 (b) Three years for any felony defined under any law as a class B
18 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
19 both, and not covered under (f) of this subsection;

20 (c) Eighteen months for any felony defined under any law as a
21 class C felony or with a statutory maximum sentence of five years, or
22 both, and not covered under (f) of this subsection;

23 (d) If the offender is being sentenced for any firearm
24 enhancements under (a), (b), and/or (c) of this subsection and the
25 offender has previously been sentenced for any deadly weapon
26 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
27 subsection or subsection (4)(a), (b), and/or (c) of this section, or
28 both, all firearm enhancements under this subsection shall be twice
29 the amount of the enhancement listed;

30 (e) (i) Notwithstanding any other provision of law, all firearm
31 enhancements under this section are mandatory (~~(, shall be served in~~
32 ~~total confinement, and shall run consecutively to all other~~
33 ~~sentencing provisions, including other firearm or deadly weapon~~
34 ~~enhancements, for all offenses sentenced under this chapter. However,~~
35 ~~whether)). For any person sentenced to multiple firearm enhancements
36 on or after the effective date of this section, the court may order
37 the enhancements to run consecutively.~~

38 (ii) Whether or not a mandatory minimum term has expired, an
39 offender serving a sentence under this subsection may be:

1 ~~((i))~~ (A) Granted an extraordinary medical placement when
2 authorized under RCW 9.94A.728(1)(c); or

3 ~~((ii))~~ (B) Released under the provisions of RCW 9.94A.730;

4 (f) The firearm enhancements in this section shall apply to all
5 felony crimes except the following: Possession of a machine gun or
6 bump-fire stock, possessing a stolen firearm, drive-by shooting,
7 theft of a firearm, unlawful possession of a firearm in the first and
8 second degree, and use of a machine gun or bump-fire stock in a
9 felony;

10 (g) If the standard sentence range under this section exceeds the
11 statutory maximum sentence for the offense, the statutory maximum
12 sentence shall be the presumptive sentence unless the offender is a
13 persistent offender. ~~((If the addition of a firearm enhancement
14 increases the sentence so that it would exceed the statutory maximum
15 for the offense, the portion of the sentence representing the
16 enhancement may not be reduced.))~~

17 (4) The following additional times shall be added to the standard
18 sentence range for felony crimes committed after July 23, 1995, if
19 the offender or an accomplice was armed with a deadly weapon other
20 than a firearm as defined in RCW 9.41.010 and the offender is being
21 sentenced for one of the crimes listed in this subsection as eligible
22 for any deadly weapon enhancements based on the classification of the
23 completed felony crime. If the offender is being sentenced for more
24 than one offense, the deadly weapon enhancement or enhancements must
25 be added to the total period of confinement for all offenses,
26 regardless of which underlying offense is subject to a deadly weapon
27 enhancement. If the offender or an accomplice was armed with a deadly
28 weapon other than a firearm as defined in RCW 9.41.010 and the
29 offender is being sentenced for an anticipatory offense under chapter
30 9A.28 RCW to commit one of the crimes listed in this subsection as
31 eligible for any deadly weapon enhancements, the following additional
32 times shall be added to the standard sentence range determined under
33 subsection (2) of this section based on the felony crime of
34 conviction as classified under RCW 9A.28.020:

35 (a) Two years for any felony defined under any law as a class A
36 felony or with a statutory maximum sentence of at least ~~((twenty))~~ 20
37 years, or both, and not covered under (f) of this subsection;

38 (b) One year for any felony defined under any law as a class B
39 felony or with a statutory maximum sentence of ~~((ten))~~ 10 years, or
40 both, and not covered under (f) of this subsection;

1 (c) Six months for any felony defined under any law as a class C
2 felony or with a statutory maximum sentence of five years, or both,
3 and not covered under (f) of this subsection;

4 (d) If the offender is being sentenced under (a), (b), and/or (c)
5 of this subsection for any deadly weapon enhancements and the
6 offender has previously been sentenced for any deadly weapon
7 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
8 subsection or subsection (3)(a), (b), and/or (c) of this section, or
9 both, all deadly weapon enhancements under this subsection shall be
10 twice the amount of the enhancement listed;

11 (e) (i) Notwithstanding any other provision of law, all deadly
12 weapon enhancements under this section are mandatory ~~((, shall be
13 served in total confinement, and shall run consecutively to all other
14 sentencing provisions, including other firearm or deadly weapon
15 enhancements, for all offenses sentenced under this chapter. However,
16 whether))~~. For any person sentenced to multiple deadly weapon
17 enhancements on or after the effective date of this section, the
18 court may order the enhancements to run consecutively.

19 (ii) Whether or not a mandatory minimum term has expired, an
20 offender serving a sentence under this subsection may be:

21 ~~((+i))~~ (A) Granted an extraordinary medical placement when
22 authorized under RCW 9.94A.728(1)(c); or

23 ~~((+ii))~~ (B) Released under the provisions of RCW 9.94A.730;

24 (f) The deadly weapon enhancements in this section shall apply to
25 all felony crimes except the following: Possession of a machine gun
26 or bump-fire stock, possessing a stolen firearm, drive-by shooting,
27 theft of a firearm, unlawful possession of a firearm in the first and
28 second degree, and use of a machine gun or bump-fire stock in a
29 felony;

30 (g) If the standard sentence range under this section exceeds the
31 statutory maximum sentence for the offense, the statutory maximum
32 sentence shall be the presumptive sentence unless the offender is a
33 persistent offender. ~~((If the addition of a deadly weapon enhancement
34 increases the sentence so that it would exceed the statutory maximum
35 for the offense, the portion of the sentence representing the
36 enhancement may not be reduced.))~~

37 (5) The following additional times shall be added to the standard
38 sentence range if the offender or an accomplice committed the offense
39 while in a county jail or state correctional facility and the
40 offender is being sentenced for one of the crimes listed in this

1 subsection. If the offender or an accomplice committed one of the
2 crimes listed in this subsection while in a county jail or state
3 correctional facility, and the offender is being sentenced for an
4 anticipatory offense under chapter 9A.28 RCW to commit one of the
5 crimes listed in this subsection, the following additional times
6 shall be added to the standard sentence range determined under
7 subsection (2) of this section:

8 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
9 (a) or (b) or 69.50.410;

10 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
11 (c), (d), or (e);

12 (c) Twelve months for offenses committed under RCW 69.50.4013.

13 For the purposes of this subsection, all of the real property of
14 a state correctional facility or county jail shall be deemed to be
15 part of that facility or county jail.

16 (6) An additional (~~twenty-four~~) 24 months shall be added to the
17 standard sentence range for any ranked offense involving a violation
18 of chapter 69.50 RCW if the offense was also a violation of RCW
19 (~~69.50.435 or~~) 9.94A.827. (~~All enhancements under this subsection
20 shall run consecutively to all other sentencing provisions, for all
21 offenses sentenced under this chapter.~~)

22 (7) An additional two years shall be added to the standard
23 sentence range for vehicular homicide committed while under the
24 influence of intoxicating liquor or any drug as defined by RCW
25 46.61.502 for each prior offense as defined in RCW 46.61.5055.

26 Notwithstanding any other provision of law, all impaired driving
27 enhancements under this subsection are mandatory(~~(, shall be served
28 in total confinement,)~~) and shall run consecutively to all other
29 sentencing provisions, including other impaired driving enhancements,
30 for all offenses sentenced under this chapter. If the offender has
31 three or more prior offenses as defined in RCW 46.61.5055, all
32 enhancements in this subsection must be served in total confinement.

33 An offender serving a sentence under this subsection may be
34 granted an extraordinary medical placement when authorized under RCW
35 9.94A.728(1)(c).

36 (8)(a) The following additional times shall be added to the
37 standard sentence range for felony crimes committed on or after July
38 1, 2006, if the offense was committed with sexual motivation, as that
39 term is defined in RCW 9.94A.030. If the offender is being sentenced
40 for more than one offense, the sexual motivation enhancement must be

1 added to the total period of (~~total~~) confinement for all offenses,
2 regardless of which underlying offense is subject to a sexual
3 motivation enhancement. If the offender committed the offense with
4 sexual motivation and the offender is being sentenced for an
5 anticipatory offense under chapter 9A.28 RCW, the following
6 additional times shall be added to the standard sentence range
7 determined under subsection (2) of this section based on the felony
8 crime of conviction as classified under RCW 9A.28.020:

9 (i) Two years for any felony defined under the law as a class A
10 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
11 years, or both;

12 (ii) Eighteen months for any felony defined under any law as a
13 class B felony or with a statutory maximum sentence of (~~ten~~) 10
14 years, or both;

15 (iii) One year for any felony defined under any law as a class C
16 felony or with a statutory maximum sentence of five years, or both;

17 (iv) If the offender is being sentenced for any sexual motivation
18 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
19 the offender has previously been sentenced for any sexual motivation
20 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
21 (iii) of this subsection, all sexual motivation enhancements under
22 this subsection shall be twice the amount of the enhancement listed;

23 (b) Notwithstanding any other provision of law, all sexual
24 motivation enhancements under this subsection are mandatory(~~(, shall~~
25 ~~be served in total confinement,)~~) and shall run consecutively to all
26 other sentencing provisions, including other sexual motivation
27 enhancements, for all offenses sentenced under this chapter. However,
28 whether or not a mandatory minimum term has expired, an offender
29 serving a sentence under this subsection may be:

30 (i) Granted an extraordinary medical placement when authorized
31 under RCW 9.94A.728(1)(c); or

32 (ii) Released under the provisions of RCW 9.94A.730;

33 (c) The sexual motivation enhancements in this subsection apply
34 to all felony crimes;

35 (d) If the standard sentence range under this subsection exceeds
36 the statutory maximum sentence for the offense, the statutory maximum
37 sentence shall be the presumptive sentence unless the offender is a
38 persistent offender(~~(. If the addition of a sexual motivation~~
39 ~~enhancement increases the sentence so that it would exceed the~~

1 ~~statutory maximum for the offense, the portion of the sentence~~
2 ~~representing the enhancement may not be reduced));~~

3 ~~(e) ((The portion of the total confinement sentence which the~~
4 ~~offender must serve under this subsection shall be calculated before~~
5 ~~any earned early release time is credited to the offender;~~

6 ~~(f))~~) Nothing in this subsection prevents a sentencing court from
7 imposing a sentence outside the standard sentence range pursuant to
8 RCW 9.94A.535.

9 (9) An additional one-year enhancement shall be added to the
10 standard sentence range for the felony crimes of RCW 9A.44.073,
11 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
12 or after July 22, 2007, if the offender engaged, agreed, or offered
13 to engage the victim in the sexual conduct in return for a fee. If
14 the offender is being sentenced for more than one offense, the
15 one-year enhancement must be added to the total period of ~~((total))~~
16 confinement for all offenses, regardless of which underlying offense
17 is subject to the enhancement. If the offender is being sentenced for
18 an anticipatory offense for the felony crimes of RCW 9A.44.073,
19 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
20 offender attempted, solicited another, or conspired to engage, agree,
21 or offer to engage the victim in the sexual conduct in return for a
22 fee, an additional one-year enhancement shall be added to the
23 standard sentence range determined under subsection (2) of this
24 section. For purposes of this subsection, "sexual conduct" means
25 sexual intercourse or sexual contact, both as defined in chapter
26 9A.44 RCW.

27 ~~(10) ((a) For a person age eighteen or older convicted of any~~
28 ~~criminal street gang-related felony offense for which the person~~
29 ~~compensated, threatened, or solicited a minor in order to involve the~~
30 ~~minor in the commission of the felony offense, the standard sentence~~
31 ~~range is determined by locating the sentencing grid sentence range~~
32 ~~defined by the appropriate offender score and the seriousness level~~
33 ~~of the completed crime, and multiplying the range by one hundred~~
34 ~~twenty-five percent. If the standard sentence range under this~~
35 ~~subsection exceeds the statutory maximum sentence for the offense,~~
36 ~~the statutory maximum sentence is the presumptive sentence unless the~~
37 ~~offender is a persistent offender.~~

38 ~~(b) This subsection does not apply to any criminal street gang-~~
39 ~~related felony offense for which involving a minor in the commission~~
40 ~~of the felony offense is an element of the offense.~~

1 ~~(c) The increased penalty specified in (a) of this subsection is~~
2 ~~unavailable in the event that the prosecution gives notice that it~~
3 ~~will seek an exceptional sentence based on an aggravating factor~~
4 ~~under RCW 9.94A.535.~~

5 ~~((11))~~ An additional ~~((twelve))~~ 12 months and one day shall be
6 added to the standard sentence range for a conviction of attempting
7 to elude a police vehicle as defined by RCW 46.61.024, if the
8 conviction included a finding by special allegation of endangering
9 one or more persons under RCW 9.94A.834.

10 ~~((12))~~ (11) An additional ~~((twelve))~~ 12 months shall be added
11 to the standard sentence range for an offense that is also a
12 violation of RCW 9.94A.831.

13 ~~((13))~~ (12) An additional ~~((twelve))~~ 12 months shall be added
14 to the standard sentence range for vehicular homicide committed while
15 under the influence of intoxicating liquor or any drug as defined by
16 RCW 46.61.520 or for vehicular assault committed while under the
17 influence of intoxicating liquor or any drug as defined by RCW
18 46.61.522, or for any felony driving under the influence (RCW
19 46.61.502(6)) or felony physical control under the influence (RCW
20 46.61.504(6)) for each child passenger under the age of ~~((sixteen))~~
21 16 who is an occupant in the defendant's vehicle. These enhancements
22 shall be mandatory ~~((, shall be served in total confinement,))~~ and
23 shall run consecutively to all other sentencing provisions, including
24 other minor child enhancements, for all offenses sentenced under this
25 chapter. ~~((If the addition of a minor child enhancement increases the~~
26 ~~sentence so that it would exceed the statutory maximum for the~~
27 ~~offense, the portion of the sentence representing the enhancement~~
28 ~~shall be mandatory, shall be served in total confinement, and shall~~
29 ~~run consecutively to all other sentencing provisions.))~~ If the
30 defendant has three or more prior offenses as defined in RCW
31 46.61.5055, all enhancements in this subsection must be served in
32 total confinement.

33 ~~((14))~~ (13) An additional ~~((twelve))~~ 12 months shall be added
34 to the standard sentence range for an offense that is also a
35 violation of RCW 9.94A.832.

36 ~~((15))~~ (14) Regardless of any provisions in this section, if a
37 person is being sentenced in adult court for a crime committed under
38 age ~~((eighteen))~~ 18, the court has full discretion to depart from
39 mandatory sentencing enhancements and to take the particular
40 circumstances surrounding the defendant's youth into account.

1 **Sec. 4.** RCW 9.94A.599 and 1998 c 235 s 3 are each amended to
2 read as follows:

3 If the presumptive sentence duration given in the sentencing grid
4 exceeds the statutory maximum sentence for the offense, the statutory
5 maximum sentence shall be the presumptive sentence. (~~If the addition
6 of a firearm or deadly weapon enhancement increases the sentence so
7 that it would exceed the statutory maximum for the offense, the
8 portion of the sentence representing the enhancement may not be
9 reduced.~~)

10 **Sec. 5.** RCW 9.94A.729 and 2020 c 330 s 2 are each amended to
11 read as follows:

12 (1)(a) The term of the sentence of an offender committed to a
13 correctional facility operated by the department may be reduced by
14 earned release time in accordance with procedures that shall be
15 developed and adopted by the correctional agency having jurisdiction
16 in which the offender is confined. The earned release time shall be
17 for good behavior and good performance, as determined by the
18 correctional agency having jurisdiction. The correctional agency
19 shall not credit the offender with earned release credits in advance
20 of the offender actually earning the credits.

21 (b) Any program established pursuant to this section shall allow
22 an offender to earn early release credits for presentence
23 incarceration. If an offender is transferred from a county jail to
24 the department, the administrator of a county jail facility shall
25 certify to the department the amount of time spent in custody at the
26 facility and the number of days of early release credits lost or not
27 earned. The department may approve a jail certification from a
28 correctional agency that calculates early release time based on the
29 actual amount of confinement time served by the offender before
30 sentencing when an erroneous calculation of confinement time served
31 by the offender before sentencing appears on the judgment and
32 sentence. The department must adjust an offender's rate of early
33 release listed on the jail certification to be consistent with the
34 rate applicable to offenders in the department's facilities. However,
35 the department is not authorized to adjust the number of presentence
36 early release days that the jail has certified as lost or not earned.

37 (2) (~~(a) An offender who has been convicted of a felony committed
38 after July 23, 1995, that involves any applicable deadly weapon
39 enhancements under RCW 9.94A.533 (3) or (4), or both, shall not~~

1 receive any good time credits or earned release time for that portion
2 of his or her sentence that results from any deadly weapon
3 enhancements.

4 ~~(b) An offender whose sentence includes any impaired driving~~
5 ~~enhancements under RCW 9.94A.533(7), minor child enhancements under~~
6 ~~RCW 9.94A.533(13), or both, shall not receive any good time credits~~
7 ~~or earned release time for any portion of his or her sentence that~~
8 ~~results from those enhancements.~~

9 ~~(3))~~ An offender may earn early release time as follows:

10 (a) In the case of an offender sentenced pursuant to RCW
11 10.95.030(3) or 10.95.035, the offender may not receive any earned
12 early release time during the minimum term of confinement imposed by
13 the court; for any remaining portion of the sentence served by the
14 offender, the aggregate earned release time may not exceed (~~ten~~) 10
15 percent of the sentence.

16 (b) In the case of an offender convicted of a serious violent
17 offense, or a sex offense that is a class A felony, committed on or
18 after July 1, 1990, and before July 1, 2003, the aggregate earned
19 release time may not exceed (~~fifteen~~) 15 percent of the sentence.

20 (c) In the case of an offender convicted of a serious violent
21 offense, or a sex offense that is a class A felony, committed on or
22 after July 1, 2003, the aggregate earned release time may not exceed
23 (~~ten~~) 10 percent of the sentence.

24 (d) An offender is qualified to earn up to (~~fifty~~) 50 percent
25 of aggregate earned release time if he or she:

26 (i) Is not classified as an offender who is at a high risk to
27 reoffend as provided in subsection (~~(4))~~ (3) of this section;

28 (ii) Is not confined pursuant to a sentence for:

29 (A) A sex offense;

30 (B) A violent offense;

31 (C) A crime against persons as defined in RCW 9.94A.411;

32 (D) A felony that is domestic violence as defined in RCW
33 10.99.020;

34 (E) A violation of RCW 9A.52.025 (residential burglary);

35 (F) A violation of, or an attempt, solicitation, or conspiracy to
36 violate, RCW 69.50.401 by manufacture or delivery or possession with
37 intent to deliver methamphetamine; or

38 (G) A violation of, or an attempt, solicitation, or conspiracy to
39 violate, RCW 69.50.406 (delivery of a controlled substance to a
40 minor);

1 (iii) Has no prior conviction for the offenses listed in (d)(ii)
2 of this subsection;

3 (iv) Participates in programming or activities as directed by the
4 offender's individual reentry plan as provided under RCW 72.09.270 to
5 the extent that such programming or activities are made available by
6 the department; and

7 (v) Has not committed a new felony after July 22, 2007, while
8 under community custody.

9 (e) In no other case shall the aggregate earned release time
10 exceed one-third of the total sentence.

11 ~~((4))~~ (3) The department shall perform a risk assessment of
12 each offender who may qualify for earned early release under
13 subsection ~~((3))~~ (2)(d) of this section utilizing the risk
14 assessment tool recommended by the Washington state institute for
15 public policy. Subsection ~~((3))~~ (2)(d) of this section does not
16 apply to offenders convicted after July 1, 2010.

17 ~~((5))~~ (4)(a) A person who is eligible for earned early release
18 as provided in this section and who will be supervised by the
19 department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be
20 transferred to community custody in lieu of earned release time;

21 (b) The department shall, as a part of its program for release to
22 the community in lieu of earned release, require the offender to
23 propose a release plan that includes an approved residence and living
24 arrangement. All offenders with community custody terms eligible for
25 release to community custody in lieu of earned release shall provide
26 an approved residence and living arrangement prior to release to the
27 community;

28 (c) The department may deny transfer to community custody in lieu
29 of earned release time if the department determines an offender's
30 release plan, including proposed residence location and living
31 arrangements, may violate the conditions of the sentence or
32 conditions of supervision, place the offender at risk to violate the
33 conditions of the sentence, place the offender at risk to reoffend,
34 or present a risk to victim safety or community safety. The
35 department's authority under this section is independent of any
36 court-ordered condition of sentence or statutory provision regarding
37 conditions for community custody;

38 (d) If the department is unable to approve the offender's release
39 plan, the department may do one or more of the following:

1 (i) Transfer an offender to partial confinement in lieu of earned
2 early release for a period not to exceed three months. The three
3 months in partial confinement is in addition to that portion of the
4 offender's term of confinement that may be served in partial
5 confinement as provided in RCW 9.94A.728(1)(e);

6 (ii) Provide rental vouchers to the offender for a period not to
7 exceed three months if rental assistance will result in an approved
8 release plan.

9 A voucher must be provided in conjunction with additional
10 transition support programming or services that enable an offender to
11 participate in services including, but not limited to, substance
12 abuse treatment, mental health treatment, sex offender treatment,
13 educational programming, or employment programming;

14 (e) The department shall maintain a list of housing providers
15 that meets the requirements of RCW 72.09.285. If more than two
16 voucher recipients will be residing per dwelling unit, as defined in
17 RCW 59.18.030, rental vouchers for those recipients may only be paid
18 to a housing provider on the department's list;

19 (f) For each offender who is the recipient of a rental voucher,
20 the department shall gather data as recommended by the Washington
21 state institute for public policy in order to best demonstrate
22 whether rental vouchers are effective in reducing recidivism.

23 ~~((+6))~~ (5) An offender serving a term of confinement imposed
24 under RCW 9.94A.670(5)(a) is not eligible for earned release credits
25 under this section.

26 **Sec. 6.** RCW 10.01.210 and 2002 c 290 s 23 are each amended to
27 read as follows:

28 Any and all law enforcement agencies and personnel, criminal
29 justice attorneys, sentencing judges, and state and local
30 correctional facilities and personnel may, but are not required to,
31 give any and all offenders either written or oral notice, or both, of
32 the sanctions imposed and criminal justice changes regarding armed
33 offenders, including but not limited to the subjects of:

34 (1) Felony crimes involving any deadly weapon special verdict
35 under ~~((RCW 9.94A.602))~~ 9.94A.825;

36 (2) Any and all deadly weapon enhancements under RCW 9.94A.533
37 (3) or (4), or both, as well as any federal firearm, ammunition, or
38 other deadly weapon enhancements;

1 (3) Any and all felony crimes requiring the possession, display,
2 or use of any deadly weapon as well as the many increased penalties
3 for these crimes including the creation of theft of a firearm and
4 possessing a stolen firearm;

5 (4) New prosecuting standards established for filing charges for
6 all crimes involving any deadly weapons;

7 (~~(5) ((Removal of good time for any and all deadly weapon
8 enhancements; and~~

9 ~~(6))~~) Providing the death penalty for those who commit first
10 degree murder: (a) To join, maintain, or advance membership in an
11 identifiable group; (b) as part of a drive-by shooting; or (c) to
12 avoid prosecution as a persistent offender as defined in RCW
13 9.94A.030.

14 **Sec. 7.** RCW 72.01.410 and 2019 c 322 s 2 are each amended to
15 read as follows:

16 (1) Whenever any person is convicted as an adult in the courts of
17 this state of a felony offense committed under the age of
18 (~~(eighteen))~~ 18, and is committed for a term of confinement, that
19 person shall be initially placed in a facility operated by the
20 department of children, youth, and families. The department of
21 corrections shall determine the person's earned release date.

22 (a) While in the custody of the department of children, youth,
23 and families, the person must have the same treatment, housing
24 options, transfer, and access to program resources as any other
25 person committed to that juvenile correctional facility or
26 institution pursuant to chapter 13.40 RCW. Except as provided under
27 (d) of this subsection, treatment, placement, and program decisions
28 shall be at the sole discretion of the department of children, youth,
29 and families. The person shall not be transferred to the custody of
30 the department of corrections without the approval of the department
31 of children, youth, and families until the person reaches the age of
32 (~~(twenty-five))~~ 25.

33 (b) If the person's sentence includes a term of community
34 custody, the department of children, youth, and families shall not
35 release the person to community custody until the department of
36 corrections has approved the person's release plan pursuant to RCW
37 9.94A.729(~~((+5))~~) (4)(b). If a person is held past his or her earned
38 release date pending release plan approval, the department of
39 children, youth, and families shall retain custody until a plan is

1 approved or the person completes the ordered term of confinement
2 prior to age (~~(twenty-five)~~) 25.

3 (c) If the department of children, youth, and families determines
4 that retaining custody of the person in a facility of the department
5 of children, youth, and families presents a significant safety risk,
6 the department of children, youth, and families may transfer the
7 person to the custody of the department of corrections.

8 (d) The department of corrections must retain authority over
9 custody decisions relating to a person whose earned release date is
10 on or after the person's (~~(twenty-fifth)~~) 25th birthday and who is
11 placed in a facility operated by the department of children, youth,
12 and families under this section, unless the person qualifies for
13 partial confinement under RCW 72.01.412, and must approve any leave
14 from the facility. When the person turns age (~~(twenty-five)~~) 25, he
15 or she must be transferred to the department of corrections, except
16 as described under RCW 72.01.412. The department of children, youth,
17 and families has all routine and day-to-day operations authority for
18 the person while the person is in its custody.

19 (2)(a) Except as provided in (b) and (c) of this subsection, a
20 person under the age of (~~(eighteen)~~) 18 who is transferred to the
21 custody of the department of corrections must be placed in a housing
22 unit, or a portion of a housing unit, that is separated from other
23 persons in custody who are (~~(eighteen)~~) 18 years of age or older,
24 until the person reaches the age of (~~(eighteen)~~) 18.

25 (b) A person who is transferred to the custody of the department
26 of corrections and reaches (~~(eighteen)~~) 18 years of age may remain in
27 a housing unit for persons under the age of (~~(eighteen)~~) 18 if the
28 secretary of corrections determines that: (i) The person's needs and
29 the rehabilitation goals for the person could continue to be better
30 met by the programs and housing environment that is separate from
31 other persons in custody who are (~~(eighteen)~~) 18 years of age and
32 older; and (ii) the programs or housing environment for persons under
33 the age of (~~(eighteen)~~) 18 will not be substantially affected by the
34 continued placement of the person in that environment. The person may
35 remain placed in a housing unit for persons under the age of
36 (~~(eighteen)~~) 18 until such time as the secretary of corrections
37 determines that the person's needs and goals are no longer better met
38 in that environment but in no case past the person's (~~(twenty-fifth)~~)
39 25th birthday.

1 (c) A person transferred to the custody of the department of
2 corrections who is under the age of (~~eighteen~~) 18 may be housed in
3 an intensive management unit or administrative segregation unit
4 containing offenders (~~eighteen~~) 18 years of age or older if it is
5 necessary for the safety or security of the offender or staff. In
6 these cases, the offender must be kept physically separate from other
7 offenders at all times.

8 (3) The department of children, youth, and families must review
9 the placement of a person over age (~~twenty-one~~) 21 in the custody
10 of the department of children, youth, and families under this section
11 to determine whether the person should be transferred to the custody
12 of the department of corrections. The department of children, youth,
13 and families may determine the frequency of the review required under
14 this subsection, but the review must occur at least once before the
15 person reaches age (~~twenty-three~~) 23 if the person's commitment
16 period in a juvenile institution extends beyond the person's
17 (~~twenty-third~~) 23rd birthday.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 9.94A
19 RCW to read as follows:

20 (1) For any offender who is currently serving a sentence imposed
21 prior to the effective date of this section involving multiple,
22 consecutive firearm or deadly weapon enhancements under RCW
23 9.94A.533, either the offender or the applicable county prosecuting
24 attorney may petition the sentencing court for resentencing on the
25 basis that the consecutive enhancements no longer advance the
26 interests of justice.

27 (2) The sentencing court may grant or deny a petition under this
28 section. If the court grants a petition, the court shall resentence
29 the offender in the same manner as if the offender had not previously
30 been sentenced, except: The court may, in its discretion, order the
31 firearm or deadly weapon enhancements to be served concurrently,
32 regardless of the date of the offense; and the new sentence, if any,
33 may not be greater than the initial sentence.

34 (3) If a resentencing hearing is scheduled pursuant to this
35 section, the prosecuting attorney shall make reasonable efforts to
36 notify victims and survivors of victims of the petition and the date
37 of hearing. The prosecuting attorney shall provide victims and
38 survivors of victims access to available victim advocates and other
39 related services. The court shall provide an opportunity for victims

1 and survivors of victims of any crimes for which the offender has
2 been convicted to present a statement personally or by
3 representation. The prosecuting attorney and the court shall comply
4 with the requirements set forth in chapter 7.69 RCW.

5 (4) A resentencing under this section does not reopen a
6 qualifying offender's conviction to challenges that would otherwise
7 be barred.

8 NEW SECTION. **Sec. 9.** The following acts or parts of acts are
9 each repealed:

10 (1) RCW 9.94A.833 (Special allegation—Involving minor in felony
11 offense—Procedures) and 2008 c 276 s 302; and

12 (2) RCW 69.50.435 (Violations committed in or on certain public
13 places or facilities—Additional penalty—Defenses—Construction—
14 Definitions) and 2015 c 265 s 37 & 2003 c 53 s 346.

15 NEW SECTION. **Sec. 10.** The changes to restrictions on partial
16 confinement and earned early release for sentencing enhancements
17 under sections 3 and 5 of this act apply retroactively to offenders
18 currently serving a sentence in any facility or institution either
19 operated by the state or utilized under contract. Pursuant to RCW
20 9.94A.729, the department of corrections shall recalculate the earned
21 release date for any qualifying offender, regardless of the date of
22 sentencing or date of offense. For offenders whose offense was
23 committed prior to the effective date of this section, the
24 recalculation shall not extend a term of incarceration beyond that to
25 which an offender is currently subject.

26 NEW SECTION. **Sec. 11.** The legislature declares that section 10
27 of this act does not create any liberty interest. The department of
28 corrections' recalculations of earned release time do not create any
29 expectation that the percentage of earned release time will be
30 revised before the effective date of this section, and offenders have
31 no reason to conclude that the maximum percentage of earned release
32 time is an entitlement. The department of corrections has discretion
33 to implement the retroactive changes to earned early release for
34 qualifying offenders over a period of time not to exceed 12 months
35 following the effective date of this section.

1 NEW SECTION. **Sec. 12.** Section 1 of this act expires July 1,
2 2022.

3 NEW SECTION. **Sec. 13.** Section 2 of this act takes effect July
4 1, 2022.

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