

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 2424

Chapter 227, Laws of 2010

61st Legislature
2010 Regular Session

SEX OFFENSES INVOLVING MINORS--DEPICTIONS--PREDATORY SEX OFFENSES

EFFECTIVE DATE: 06/10/10

Passed by the House March 10, 2010
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 10, 2010
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved March 26, 2010, 10:54 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2424** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 26, 2010

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2424

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives O'Brien, Pearson, Hurst, Takko, Herrera, Chandler, Ross, Rodne, Dammeier, Condotta, Shea, Klippert, Smith, Walsh, Parker, McCune, Campbell, Johnson, Eddy, Morrell, Kelley, Short, Sullivan, Conway, Kagi, Roach, Kristiansen, Bailey, Haler, Schmick, Ericks, Warnick, Ormsby, Moeller, and Hope; by request of Attorney General)

READ FIRST TIME 01/26/10.

1 AN ACT Relating to protecting children from sexual exploitation and
2 abuse; amending RCW 9.68A.001, 9.68A.011, 9.68A.050, 9.68A.060,
3 9.68A.070, 9.68A.110, and 9.94A.030; reenacting and amending RCW
4 9.94A.515 and 9.94A.535; adding new sections to chapter 9.68A RCW; and
5 prescribing penalties.

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

7 **Sec. 1.** RCW 9.68A.001 and 2007 c 368 s 1 are each amended to read
8 as follows:

9 The legislature finds that the prevention of sexual exploitation
10 and abuse of children constitutes a government objective of surpassing
11 importance. The care of children is a sacred trust and should not be
12 abused by those who seek commercial gain or personal gratification
13 based on the exploitation of children.

14 The legislature further finds that the protection of children from
15 sexual exploitation can be accomplished without infringing on a
16 constitutionally protected activity. The definition of "sexually
17 explicit conduct" and other operative definitions demarcate a line
18 between protected and prohibited conduct and should not inhibit
19 legitimate scientific, medical, or educational activities.

1 The legislature further finds that children engaged in sexual
2 conduct for financial compensation are frequently the victims of sexual
3 abuse. Approximately eighty to ninety percent of children engaged in
4 sexual activity for financial compensation have a history of sexual
5 abuse victimization. It is the intent of the legislature to encourage
6 these children to engage in prevention and intervention services and to
7 hold those who pay to engage in the sexual abuse of children
8 accountable for the trauma they inflict on children.

9 The legislature further finds that due to the changing nature of
10 technology, offenders are now able to access child pornography in
11 different ways and in increasing quantities. By amending current
12 statutes governing depictions of a minor engaged in sexually explicit
13 conduct, it is the intent of the legislature to ensure that intentional
14 viewing of and dealing in child pornography over the internet is
15 subject to a criminal penalty without limiting the scope of existing
16 prohibitions on the possession of or dealing in child pornography,
17 including the possession of electronic depictions of a minor engaged in
18 sexually explicit conduct. It is also the intent of the legislature to
19 clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the
20 unit of prosecution for the statutes governing possession of and
21 dealing in depictions of a minor engaged in sexually explicit conduct.
22 It is the intent of the legislature that the first degree offenses
23 under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or
24 image unit of prosecution, while the second degree offenses under RCW
25 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of
26 prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009).
27 Furthermore, it is the intent of the legislature to set a different
28 unit of prosecution for the new offense of viewing of depictions of a
29 minor engaged in sexually explicit conduct such that each separate
30 session of intentionally viewing over the internet of visual depictions
31 or images of a minor engaged in sexually explicit conduct constitutes
32 a separate offense.

33 NEW SECTION. Sec. 2. A new section is added to chapter 9.68A RCW
34 to read as follows:

35 This chapter does not apply to lawful conduct between spouses.

1 **Sec. 3.** RCW 9.68A.011 and 2002 c 70 s 1 are each amended to read
2 as follows:

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

5 (1) An "internet session" means a period of time during which an
6 internet user, using a specific internet protocol address, visits or is
7 logged into an internet site for an uninterrupted period of time.

8 (2) To "photograph" means to make a print, negative, slide, digital
9 image, motion picture, or videotape. A "photograph" means anything
10 tangible or intangible produced by photographing.

11 ~~((2))~~ (3) "Visual or printed matter" means any photograph or
12 other material that contains a reproduction of a photograph.

13 ~~((3))~~ (4) "Sexually explicit conduct" means actual or simulated:

14 (a) Sexual intercourse, including genital-genital, oral-genital,
15 anal-genital, or oral-anal, whether between persons of the same or
16 opposite sex or between humans and animals;

17 (b) Penetration of the vagina or rectum by any object;

18 (c) Masturbation;

19 (d) ~~Sadomasochistic abuse ((for the purpose of sexual stimulation~~
20 ~~of the viewer))~~;

21 (e) ~~((Exhibition of the genitals or unclothed pubic or rectal areas~~
22 ~~of any minor, or the unclothed breast of a female minor, for the~~
23 ~~purpose of sexual stimulation of the viewer~~;

24 ~~(f))~~ Defecation or urination for the purpose of sexual stimulation
25 of the viewer;

26 (f) Depiction of the genitals or unclothed pubic or rectal areas of
27 any minor, or the unclothed breast of a female minor, for the purpose
28 of sexual stimulation of the viewer. For the purposes of this
29 subsection (4)(f), it is not necessary that the minor know that he or
30 she is participating in the described conduct, or any aspect of it; and

31 (g) Touching of a person's clothed or unclothed genitals, pubic
32 area, buttocks, or breast area for the purpose of sexual stimulation of
33 the viewer.

34 ~~((4))~~ (5) "Minor" means any person under eighteen years of age.

35 ~~((5))~~ (6) "Live performance" means any play, show, skit, dance,
36 or other exhibition performed or presented to or before an audience of
37 one or more, with or without consideration.

1 **Sec. 4.** RCW 9.68A.050 and 1989 c 32 s 3 are each amended to read
2 as follows:

3 (~~A person who:~~)

4 (1)(a) A person commits the crime of dealing in depictions of a
5 minor engaged in sexually explicit conduct in the first degree when he
6 or she:

7 (i) Knowingly develops, duplicates, publishes, prints,
8 disseminates, exchanges, finances, attempts to finance, or sells
9 (~~any~~) a visual or printed matter that depicts a minor engaged in an
10 act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a)
11 through (e); or

12 (~~(2)~~) (ii) Possesses with intent to develop, duplicate, publish,
13 print, disseminate, exchange, or sell any visual or printed matter that
14 depicts a minor engaged in an act of sexually explicit conduct as
15 defined in RCW 9.68A.011(4) (a) through (e).

16 (b) Dealing in depictions of a minor engaged in sexually explicit
17 conduct in the first degree is (~~guilty of~~) a class (~~C~~) B felony
18 punishable under chapter 9A.20 RCW.

19 (c) For the purposes of determining the unit of prosecution under
20 this subsection, each depiction or image of visual or printed matter
21 constitutes a separate offense.

22 (2)(a) A person commits the crime of dealing in depictions of a
23 minor engaged in sexually explicit conduct in the second degree when he
24 or she:

25 (i) Knowingly develops, duplicates, publishes, prints,
26 disseminates, exchanges, finances, attempts to finance, or sells any
27 visual or printed matter that depicts a minor engaged in an act of
28 sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g); or

29 (ii) Possesses with intent to develop, duplicate, publish, print,
30 disseminate, exchange, or sell any visual or printed matter that
31 depicts a minor engaged in an act of sexually explicit conduct as
32 defined in RCW 9.68A.011(4) (f) or (g).

33 (b) Dealing in depictions of a minor engaged in sexually explicit
34 conduct in the second degree is a class C felony punishable under
35 chapter 9A.20 RCW.

36 (c) For the purposes of determining the unit of prosecution under
37 this subsection, each incident of dealing in one or more depictions or
38 images of visual or printed matter constitutes a separate offense.

1 **Sec. 5.** RCW 9.68A.060 and 1989 c 32 s 4 are each amended to read
2 as follows:

3 (1)(a) A person ((who)) commits the crime of sending or bringing
4 into the state depictions of a minor engaged in sexually explicit
5 conduct in the first degree when he or she knowingly sends or causes to
6 be sent, or brings or causes to be brought, into this state for sale or
7 distribution, ((any)) a visual or printed matter that depicts a minor
8 engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a)
9 through (e).

10 (b) Sending or bringing into the state depictions of a minor
11 engaged in sexually explicit conduct in the first degree is ((guilty
12 of)) a class ((C)) B felony punishable under chapter 9A.20 RCW.

13 (c) For the purposes of determining the unit of prosecution under
14 this subsection, each depiction or image of visual or printed matter
15 constitutes a separate offense.

16 (2)(a) A person commits the crime of sending or bringing into the
17 state depictions of a minor engaged in sexually explicit conduct in the
18 second degree when he or she knowingly sends or causes to be sent, or
19 brings or causes to be brought, into this state for sale or
20 distribution, any visual or printed matter that depicts a minor engaged
21 in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

22 (b) Sending or bringing into the state depictions of a minor
23 engaged in sexually explicit conduct in the second degree is a class C
24 felony punishable under chapter 9A.20 RCW.

25 (c) For the purposes of determining the unit of prosecution under
26 this subsection, each incident of sending or bringing into the state
27 one or more depictions or images of visual or printed matter
28 constitutes a separate offense.

29 **Sec. 6.** RCW 9.68A.070 and 2006 c 139 s 3 are each amended to read
30 as follows:

31 (1)(a) A person ((who)) commits the crime of possession of
32 depictions of a minor engaged in sexually explicit conduct in the first
33 degree when he or she knowingly possesses a visual or printed matter
34 depicting a minor engaged in sexually explicit conduct as defined in
35 RCW 9.68A.011(4) (a) through (e).

36 (b) Possession of depictions of a minor engaged in sexually

1 explicit conduct in the first degree is ((guilty of)) a class B felony
2 punishable under chapter 9A.20 RCW.

3 (c) For the purposes of determining the unit of prosecution under
4 this subsection, each depiction or image of visual or printed matter
5 constitutes a separate offense.

6 (2)(a) A person commits the crime of possession of depictions of a
7 minor engaged in sexually explicit conduct in the second degree when he
8 or she knowingly possesses any visual or printed matter depicting a
9 minor engaged in sexually explicit conduct as defined in RCW
10 9.68A.011(4) (f) or (g).

11 (b) Possession of depictions of a minor engaged in sexually
12 explicit conduct in the second degree is a class C felony punishable
13 under chapter 9A.20 RCW.

14 (c) For the purposes of determining the unit of prosecution under
15 this subsection, each incident of possession of one or more depictions
16 or images of visual or printed matter constitutes a separate offense.

17 NEW SECTION. Sec. 7. A new section is added to chapter 9.68A RCW
18 to read as follows:

19 (1) A person who intentionally views over the internet visual or
20 printed matter depicting a minor engaged in sexually explicit conduct
21 as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing
22 depictions of a minor engaged in sexually explicit conduct in the first
23 degree, a class B felony punishable under chapter 9A.20 RCW.

24 (2) A person who intentionally views over the internet visual or
25 printed matter depicting a minor engaged in sexually explicit conduct
26 as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing
27 depictions of a minor engaged in sexually explicit conduct in the
28 second degree, a class C felony punishable under chapter 9A.20 RCW.

29 (3) For the purposes of determining whether a person intentionally
30 viewed over the internet a visual or printed matter depicting a minor
31 engaged in sexually explicit conduct in subsection (1) or (2) of this
32 section, the trier of fact shall consider the title, text, and content
33 of the visual or printed matter, as well as the internet history,
34 search terms, thumbnail images, downloading activity, expert computer
35 forensic testimony, number of visual or printed matter depicting minors
36 engaged in sexually explicit conduct, defendant's access to and control
37 over the electronic device and its contents upon which the visual or

1 printed matter was found, or any other relevant evidence. The state
2 must prove beyond a reasonable doubt that the viewing was initiated by
3 the user of the computer where the viewing occurred.

4 (4) For the purposes of this section, each separate internet
5 session of intentionally viewing over the internet visual or printed
6 matter depicting a minor engaged in sexually explicit conduct
7 constitutes a separate offense.

8 **Sec. 8.** RCW 9.68A.110 and 2007 c 368 s 3 are each amended to read
9 as follows:

10 (1) In a prosecution under RCW 9.68A.040, it is not a defense that
11 the defendant was involved in activities of law enforcement and
12 prosecution agencies in the investigation and prosecution of criminal
13 offenses. Law enforcement and prosecution agencies shall not employ
14 minors to aid in the investigation of a violation of RCW 9.68A.090 or
15 9.68A.100. ~~((This chapter does not apply to lawful conduct between
16 spouses.))~~

17 (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or
18 9.68A.080, it is not a defense that the defendant did not know the age
19 of the child depicted in the visual or printed matter: PROVIDED, That
20 it is a defense, which the defendant must prove by a preponderance of
21 the evidence, that at the time of the offense the defendant was not in
22 possession of any facts on the basis of which he or she should
23 reasonably have known that the person depicted was a minor.

24 (3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.101, or
25 9.68A.102, it is not a defense that the defendant did not know the
26 alleged victim's age: PROVIDED, That it is a defense, which the
27 defendant must prove by a preponderance of the evidence, that at the
28 time of the offense, the defendant made a reasonable bona fide attempt
29 to ascertain the true age of the minor by requiring production of a
30 driver's license, marriage license, birth certificate, or other
31 governmental or educational identification card or paper and did not
32 rely solely on the oral allegations or apparent age of the minor.

33 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, ~~((or))~~
34 9.68A.070, or section 7 of this act, it shall be an affirmative defense
35 that the defendant was a law enforcement officer or a person
36 specifically authorized, in writing, to assist a law enforcement
37 officer and acting at the direction of a law enforcement officer in the

1 process of conducting an official investigation of a sex-related crime
2 against a minor, or that the defendant was providing individual case
3 treatment as a recognized medical facility or as a psychiatrist or
4 psychologist licensed under Title 18 RCW. Nothing in this act is
5 intended to in any way affect or diminish the immunity afforded an
6 electronic communication service provider, remote computing service
7 provider, or domain name registrar acting in the performance of its
8 reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a,
9 2258b, or 2258c.

10 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, ~~((or))~~
11 9.68A.070, or section 7 of this act, the state is not required to
12 establish the identity of the alleged victim.

13 (6) In a prosecution under RCW 9.68A.070 or section 7 of this act,
14 it shall be an affirmative defense that:

15 (a) The defendant was employed at or conducting research in
16 partnership or in cooperation with any institution of higher education
17 as defined in RCW 28B.07.020 or 28B.10.016, and:

18 (i) He or she was engaged in a research activity;

19 (ii) The research activity was specifically approved prior to the
20 possession or viewing activity being conducted in writing by a person,
21 or other such entity vested with the authority to grant such approval
22 by the institution of higher learning; and

23 (iii) Viewing or possessing the visual or printed matter is an
24 essential component of the authorized research; or

25 (b) The defendant was an employee of the Washington state
26 legislature engaged in research at the request of a member of the
27 legislature and:

28 (i) The request for research is made prior to the possession or
29 viewing activity being conducted in writing by a member of the
30 legislature;

31 (ii) The research is directly related to a legislative activity;
32 and

33 (iii) Viewing or possessing the visual or printed matter is an
34 essential component of the requested research and legislative activity.

35 (c) Nothing in this section authorizes otherwise unlawful viewing
36 or possession of visual or printed matter depicting a minor engaged in
37 sexually explicit conduct.

1 **Sec. 9.** RCW 9.94A.515 and 2008 c 108 s 23 and 2008 c 38 s 1 are
2 each reenacted and amended to read as follows:
3

	TABLE 2
	CRIMES INCLUDED WITHIN
	EACH SERIOUSNESS LEVEL
4	
5	
6	
7	XVI Aggravated Murder 1 (RCW
8	10.95.020)
9	XV Homicide by abuse (RCW 9A.32.055)
10	Malicious explosion 1 (RCW
11	70.74.280(1))
12	Murder 1 (RCW 9A.32.030)
13	XIV Murder 2 (RCW 9A.32.050)
14	Trafficking 1 (RCW 9A.40.100(1))
15	XIII Malicious explosion 2 (RCW
16	70.74.280(2))
17	Malicious placement of an explosive 1
18	(RCW 70.74.270(1))
19	XII Assault 1 (RCW 9A.36.011)
20	Assault of a Child 1 (RCW 9A.36.120)
21	Malicious placement of an imitation
22	device 1 (RCW 70.74.272(1)(a))
23	Rape 1 (RCW 9A.44.040)
24	Rape of a Child 1 (RCW 9A.44.073)
25	Trafficking 2 (RCW 9A.40.100(2))
26	XI Manslaughter 1 (RCW 9A.32.060)
27	Rape 2 (RCW 9A.44.050)
28	Rape of a Child 2 (RCW 9A.44.076)
29	X Child Molestation 1 (RCW 9A.44.083)
30	Criminal Mistreatment 1 (RCW
31	9A.42.020)
32	Indecent Liberties (with forcible
33	compulsion) (RCW
34	9A.44.100(1)(a))
35	Kidnapping 1 (RCW 9A.40.020)
36	Leading Organized Crime (RCW
37	9A.82.060(1)(a))

1 Malicious explosion 3 (RCW
2 70.74.280(3))
3 Sexually Violent Predator Escape
4 (RCW 9A.76.115)
5 IX Abandonment of Dependent Person 1
6 (RCW 9A.42.060)
7 Assault of a Child 2 (RCW 9A.36.130)
8 Explosive devices prohibited (RCW
9 70.74.180)
10 Hit and Run--Death (RCW
11 46.52.020(4)(a))
12 Homicide by Watercraft, by being
13 under the influence of intoxicating
14 liquor or any drug (RCW
15 79A.60.050)
16 Inciting Criminal Profiteering (RCW
17 9A.82.060(1)(b))
18 Malicious placement of an explosive 2
19 (RCW 70.74.270(2))
20 Robbery 1 (RCW 9A.56.200)
21 Sexual Exploitation (RCW 9.68A.040)
22 Vehicular Homicide, by being under
23 the influence of intoxicating liquor
24 or any drug (RCW 46.61.520)
25 VIII Arson 1 (RCW 9A.48.020)
26 Homicide by Watercraft, by the
27 operation of any vessel in a
28 reckless manner (RCW
29 79A.60.050)
30 Manslaughter 2 (RCW 9A.32.070)
31 Promoting Commercial Sexual Abuse
32 of a Minor (RCW 9.68A.101)
33 Promoting Prostitution 1 (RCW
34 9A.88.070)
35 Theft of Ammonia (RCW 69.55.010)

1 Vehicular Homicide, by the operation
2 of any vehicle in a reckless manner
3 (RCW 46.61.520)

4 VII Burglary 1 (RCW 9A.52.020)
5 Child Molestation 2 (RCW 9A.44.086)
6 Civil Disorder Training (RCW
7 9A.48.120)
8 Dealing in depictions of minor engaged
9 in sexually explicit conduct 1
10 (RCW 9.68A.050(1))
11 Drive-by Shooting (RCW 9A.36.045)
12 Homicide by Watercraft, by disregard
13 for the safety of others (RCW
14 79A.60.050)
15 Indecent Liberties (without forcible
16 compulsion) (RCW 9A.44.100(1)
17 (b) and (c))
18 Introducing Contraband 1 (RCW
19 9A.76.140)
20 Malicious placement of an explosive 3
21 (RCW 70.74.270(3))
22 Negligently Causing Death By Use of a
23 Signal Preemption Device (RCW
24 46.37.675)
25 Sending, bringing into state depictions
26 of minor engaged in sexually
27 explicit conduct 1 (RCW
28 9.68A.060(1))
29 Unlawful Possession of a Firearm in
30 the first degree (RCW 9.41.040(1))
31 Use of a Machine Gun in Commission
32 of a Felony (RCW 9.41.225)
33 Vehicular Homicide, by disregard for
34 the safety of others (RCW
35 46.61.520)

36 VI Bail Jumping with Murder 1 (RCW
37 9A.76.170(3)(a))

1 Bribery (RCW 9A.68.010)
2 Incest 1 (RCW 9A.64.020(1))
3 Intimidating a Judge (RCW 9A.72.160)
4 Intimidating a Juror/Witness (RCW
5 9A.72.110, 9A.72.130)
6 Malicious placement of an imitation
7 device 2 (RCW 70.74.272(1)(b))
8 Possession of Depictions of a Minor
9 Engaged in Sexually Explicit
10 Conduct 1 (RCW 9.68A.070(1))
11 Rape of a Child 3 (RCW 9A.44.079)
12 Theft of a Firearm (RCW 9A.56.300)
13 Unlawful Storage of Ammonia (RCW
14 69.55.020)
15 V Abandonment of Dependent Person 2
16 (RCW 9A.42.070)
17 Advancing money or property for
18 extortionate extension of credit
19 (RCW 9A.82.030)
20 Bail Jumping with class A Felony
21 (RCW 9A.76.170(3)(b))
22 Child Molestation 3 (RCW 9A.44.089)
23 Criminal Mistreatment 2 (RCW
24 9A.42.030)
25 Custodial Sexual Misconduct 1 (RCW
26 9A.44.160)
27 Dealing in Depictions of Minor
28 Engaged in Sexually Explicit
29 Conduct 2 (RCW 9.68A.050(2))
30 Domestic Violence Court Order
31 Violation (RCW 10.99.040,
32 10.99.050, 26.09.300, 26.10.220,
33 26.26.138, 26.50.110, 26.52.070,
34 or 74.34.145)
35 Driving While Under the Influence
36 (RCW 46.61.502(6))
37 Extortion 1 (RCW 9A.56.120)

1 Extortionate Extension of Credit (RCW
2 9A.82.020)
3 Extortionate Means to Collect
4 Extensions of Credit (RCW
5 9A.82.040)
6 Incest 2 (RCW 9A.64.020(2))
7 Kidnapping 2 (RCW 9A.40.030)
8 Perjury 1 (RCW 9A.72.020)
9 Persistent prison misbehavior (RCW
10 9.94.070)
11 Physical Control of a Vehicle While
12 Under the Influence (RCW
13 46.61.504(6))
14 Possession of a Stolen Firearm (RCW
15 9A.56.310)
16 Rape 3 (RCW 9A.44.060)
17 Rendering Criminal Assistance 1
18 (RCW 9A.76.070)
19 Sending, Bringing into State Depictions
20 of Minor Engaged in Sexually
21 Explicit Conduct 2 (RCW
22 9.68A.060(2))
23 Sexual Misconduct with a Minor 1
24 (RCW 9A.44.093)
25 Sexually Violating Human Remains
26 (RCW 9A.44.105)
27 Stalking (RCW 9A.46.110)
28 Taking Motor Vehicle Without
29 Permission 1 (RCW 9A.56.070)
30 IV Arson 2 (RCW 9A.48.030)
31 Assault 2 (RCW 9A.36.021)
32 Assault 3 (of a Peace Officer with a
33 Projectile Stun Gun) (RCW
34 9A.36.031(1)(h))
35 Assault by Watercraft (RCW
36 79A.60.060)

1 Bribing a Witness/Bribe Received by
2 Witness (RCW 9A.72.090,
3 9A.72.100)
4 Cheating 1 (RCW 9.46.1961)
5 Commercial Bribery (RCW 9A.68.060)
6 Counterfeiting (RCW 9.16.035(4))
7 Endangerment with a Controlled
8 Substance (RCW 9A.42.100)
9 Escape 1 (RCW 9A.76.110)
10 Hit and Run--Injury (RCW
11 46.52.020(4)(b))
12 Hit and Run with Vessel--Injury
13 Accident (RCW 79A.60.200(3))
14 Identity Theft 1 (RCW 9.35.020(2))
15 Indecent Exposure to Person Under
16 Age Fourteen (subsequent sex
17 offense) (RCW 9A.88.010)
18 Influencing Outcome of Sporting Event
19 (RCW 9A.82.070)
20 Malicious Harassment (RCW
21 9A.36.080)
22 Possession of Depictions of a Minor
23 Engaged in Sexually Explicit
24 Conduct 2 (RCW 9.68.070(2))
25 Residential Burglary (RCW
26 9A.52.025)
27 Robbery 2 (RCW 9A.56.210)
28 Theft of Livestock 1 (RCW 9A.56.080)
29 Threats to Bomb (RCW 9.61.160)
30 Trafficking in Stolen Property 1 (RCW
31 9A.82.050)
32 Unlawful factoring of a credit card or
33 payment card transaction (RCW
34 9A.56.290(4)(b))
35 Unlawful transaction of health
36 coverage as a health care service
37 contractor (RCW 48.44.016(3))

1 Unlawful transaction of health
2 coverage as a health maintenance
3 organization (RCW 48.46.033(3))
4 Unlawful transaction of insurance
5 business (RCW 48.15.023(3))
6 Unlicensed practice as an insurance
7 professional (RCW
8 48.17.063(~~(3)~~) (2))
9 Use of Proceeds of Criminal
10 Profiteering (RCW 9A.82.080(1)
11 and (2))
12 Vehicular Assault, by being under the
13 influence of intoxicating liquor or
14 any drug, or by the operation or
15 driving of a vehicle in a reckless
16 manner (RCW 46.61.522)
17 Viewing of Depictions of a Minor
18 Engaged in Sexually Explicit
19 Conduct 1 (section 7(1) of this act)
20 Willful Failure to Return from
21 Furlough (RCW 72.66.060)
22 III Animal Cruelty 1 (Sexual Conduct or
23 Contact) (RCW 16.52.205(3))
24 Assault 3 (Except Assault 3 of a Peace
25 Officer With a Projectile Stun
26 Gun) (RCW 9A.36.031 except
27 subsection (1)(h))
28 Assault of a Child 3 (RCW 9A.36.140)
29 Bail Jumping with class B or C Felony
30 (RCW 9A.76.170(3)(c))
31 Burglary 2 (RCW 9A.52.030)
32 Commercial Sexual Abuse of a Minor
33 (RCW 9.68A.100)
34 Communication with a Minor for
35 Immoral Purposes (RCW
36 9.68A.090)

1 Criminal Gang Intimidation (RCW
2 9A.46.120)
3 Custodial Assault (RCW 9A.36.100)
4 Cyberstalking (subsequent conviction
5 or threat of death) (RCW
6 9.61.260(3))
7 Escape 2 (RCW 9A.76.120)
8 Extortion 2 (RCW 9A.56.130)
9 Harassment (RCW 9A.46.020)
10 Intimidating a Public Servant (RCW
11 9A.76.180)
12 Introducing Contraband 2 (RCW
13 9A.76.150)
14 Malicious Injury to Railroad Property
15 (RCW 81.60.070)
16 Mortgage Fraud (RCW 19.144.080)
17 Negligently Causing Substantial Bodily
18 Harm By Use of a Signal
19 Preemption Device (RCW
20 46.37.674)
21 Organized Retail Theft 1 (RCW
22 9A.56.350(2))
23 Perjury 2 (RCW 9A.72.030)
24 Possession of Incendiary Device (RCW
25 9.40.120)
26 Possession of Machine Gun or Short-
27 Barreled Shotgun or Rifle (RCW
28 9.41.190)
29 Promoting Prostitution 2 (RCW
30 9A.88.080)
31 Retail Theft with Extenuating
32 Circumstances 1 (RCW
33 9A.56.360(2))
34 Securities Act violation (RCW
35 21.20.400)
36 Tampering with a Witness (RCW
37 9A.72.120)

1 Telephone Harassment (subsequent
2 conviction or threat of death)
3 (RCW 9.61.230(2))
4 Theft of Livestock 2 (RCW 9A.56.083)
5 Theft with the Intent to Resell 1 (RCW
6 9A.56.340(2))
7 Trafficking in Stolen Property 2 (RCW
8 9A.82.055)
9 Unlawful Imprisonment (RCW
10 9A.40.040)
11 Unlawful possession of firearm in the
12 second degree (RCW 9.41.040(2))
13 Vehicular Assault, by the operation or
14 driving of a vehicle with disregard
15 for the safety of others (RCW
16 46.61.522)
17 Willful Failure to Return from Work
18 Release (RCW 72.65.070)
19 II Computer Trespass 1 (RCW
20 9A.52.110)
21 Counterfeiting (RCW 9.16.035(3))
22 Escape from Community Custody
23 (RCW 72.09.310)
24 Failure to Register as a Sex Offender
25 (second or subsequent offense)
26 (RCW 9A.44.130(11)(a))
27 Health Care False Claims (RCW
28 48.80.030)
29 Identity Theft 2 (RCW 9.35.020(3))
30 Improperly Obtaining Financial
31 Information (RCW 9.35.010)
32 Malicious Mischief 1 (RCW
33 9A.48.070)
34 Organized Retail Theft 2 (RCW
35 9A.56.350(3))
36 Possession of Stolen Property 1 (RCW
37 9A.56.150)

1 Possession of a Stolen Vehicle (RCW
2 9A.56.068)
3 Retail Theft with Extenuating
4 Circumstances 2 (RCW
5 9A.56.360(3))
6 Theft 1 (RCW 9A.56.030)
7 Theft of a Motor Vehicle (RCW
8 9A.56.065)
9 Theft of Rental, Leased, or Lease-
10 purchased Property (valued at one
11 thousand five hundred dollars or
12 more) (RCW 9A.56.096(5)(a))
13 Theft with the Intent to Resell 2 (RCW
14 9A.56.340(3))
15 Trafficking in Insurance Claims (RCW
16 48.30A.015)
17 Unlawful factoring of a credit card or
18 payment card transaction (RCW
19 9A.56.290(4)(a))
20 Unlawful Practice of Law (RCW
21 2.48.180)
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Voyeurism (RCW 9A.44.115)
25 I Attempting to Elude a Pursuing Police
26 Vehicle (RCW 46.61.024)
27 False Verification for Welfare (RCW
28 74.08.055)
29 Forgery (RCW 9A.60.020)
30 Fraudulent Creation or Revocation of a
31 Mental Health Advance Directive
32 (RCW 9A.60.060)
33 Malicious Mischief 2 (RCW
34 9A.48.080)
35 Mineral Trespass (RCW 78.44.330)
36 Possession of Stolen Property 2 (RCW
37 9A.56.160)

1 Reckless Burning 1 (RCW 9A.48.040)
2 Taking Motor Vehicle Without
3 Permission 2 (RCW 9A.56.075)
4 Theft 2 (RCW 9A.56.040)
5 Theft of Rental, Leased, or Lease-
6 purchased Property (valued at two
7 hundred fifty dollars or more but
8 less than one thousand five
9 hundred dollars) (RCW
10 9A.56.096(5)(b))
11 Transaction of insurance business
12 beyond the scope of licensure
13 (RCW 48.17.063(((4))))
14 Unlawful Issuance of Checks or Drafts
15 (RCW 9A.56.060)
16 Unlawful Possession of Fictitious
17 Identification (RCW 9A.56.320)
18 Unlawful Possession of Instruments of
19 Financial Fraud (RCW 9A.56.320)
20 Unlawful Possession of Payment
21 Instruments (RCW 9A.56.320)
22 Unlawful Possession of a Personal
23 Identification Device (RCW
24 9A.56.320)
25 Unlawful Production of Payment
26 Instruments (RCW 9A.56.320)
27 Unlawful Trafficking in Food Stamps
28 (RCW 9.91.142)
29 Unlawful Use of Food Stamps (RCW
30 9.91.144)
31 Vehicle Prowl 1 (RCW 9A.52.095)

32 **Sec. 10.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
33 each reenacted and amended to read as follows:

34 The court may impose a sentence outside the standard sentence range
35 for an offense if it finds, considering the purpose of this chapter,
36 that there are substantial and compelling reasons justifying an

1 exceptional sentence. Facts supporting aggravated sentences, other
2 than the fact of a prior conviction, shall be determined pursuant to
3 the provisions of RCW 9.94A.537.

4 Whenever a sentence outside the standard sentence range is imposed,
5 the court shall set forth the reasons for its decision in written
6 findings of fact and conclusions of law. A sentence outside the
7 standard sentence range shall be a determinate sentence.

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

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

16 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

31 (e) The defendant's capacity to appreciate the wrongfulness of his
32 or her conduct, or to conform his or her conduct to the requirements of
33 the law, was significantly impaired. Voluntary use of drugs or alcohol
34 is excluded.

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

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

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

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

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

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

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

22 (d) The failure to consider the defendant's prior criminal history
23 which was omitted from the offender score calculation pursuant to RCW
24 9.94A.525 results in a presumptive sentence that is clearly too
25 lenient.

26 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
27 the Court

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

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

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

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

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

4 (i) The current offense involved multiple victims or multiple
5 incidents per victim;

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

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

10 (iv) The defendant used his or her position of trust, confidence,
11 or fiduciary responsibility to facilitate the commission of the current
12 offense.

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

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

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

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

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

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

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

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

37 (g) The offense was part of an ongoing pattern of sexual abuse of

1 the same victim under the age of eighteen years manifested by multiple
2 incidents over a prolonged period of time.

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

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

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

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

12 (i) The offense resulted in the pregnancy of a child victim of
13 rape.

14 (j) The defendant knew that the victim of the current offense was
15 a youth who was not residing with a legal custodian and the defendant
16 established or promoted the relationship for the primary purpose of
17 victimization.

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

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

24 (m) The offense involved a high degree of sophistication or
25 planning.

26 (n) The defendant used his or her position of trust, confidence, or
27 fiduciary responsibility to facilitate the commission of the current
28 offense.

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

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

32 (q) The defendant demonstrated or displayed an egregious lack of
33 remorse.

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

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

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

3 (u) The current offense is a burglary and the victim of the
4 burglary was present in the building or residence when the crime was
5 committed.

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

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

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

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

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

26 (ii) For purposes of this subsection, "metal property" means
27 commercial metal property, private metal property, or nonferrous metal
28 property, as defined in RCW 19.290.010.

29 (aa) The defendant committed the offense with the intent to
30 directly or indirectly cause any benefit, aggrandizement, gain, profit,
31 or other advantage to or for a criminal street gang as defined in RCW
32 9.94A.030, its reputation, influence, or membership.

33 (bb) The current offense involved paying to view, over the internet
34 in violation of section 7 of this act, depictions of a minor engaged in
35 an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a)
36 through (g).

1 **Sec. 11.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (21) "Drug offense" means:

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

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

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

27 (22) "Earned release" means earned release from confinement as
28 provided in RCW 9.94A.728.

29 (23) "Escape" means:

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

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

1 (24) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
4 run injury-accident (RCW 46.52.020(4)), felony driving while under the
5 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
6 felony physical control of a vehicle while under the influence of
7 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

11 (25) "Fine" means a specific sum of money ordered by the sentencing
12 court to be paid by the offender to the court over a specific period of
13 time.

14 (26) "First-time offender" means any person who has no prior
15 convictions for a felony and is eligible for the first-time offender
16 waiver under RCW 9.94A.650.

17 (27) "Home detention" means a program of partial confinement
18 available to offenders wherein the offender is confined in a private
19 residence subject to electronic surveillance.

20 (28) "Legal financial obligation" means a sum of money that is
21 ordered by a superior court of the state of Washington for legal
22 financial obligations which may include restitution to the victim,
23 statutorily imposed crime victims' compensation fees as assessed
24 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
25 court-appointed attorneys' fees, and costs of defense, fines, and any
26 other financial obligation that is assessed to the offender as a result
27 of a felony conviction. Upon conviction for vehicular assault while
28 under the influence of intoxicating liquor or any drug, RCW
29 46.61.522(1)(b), or vehicular homicide while under the influence of
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
31 obligations may also include payment to a public agency of the expense
32 of an emergency response to the incident resulting in the conviction,
33 subject to RCW 38.52.430.

34 (29) "Most serious offense" means any of the following felonies or
35 a felony attempt to commit any of the following felonies:

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

- 1 (b) Assault in the second degree;
- 2 (c) Assault of a child in the second degree;
- 3 (d) Child molestation in the second degree;
- 4 (e) Controlled substance homicide;
- 5 (f) Extortion in the first degree;
- 6 (g) Incest when committed against a child under age fourteen;
- 7 (h) Indecent liberties;
- 8 (i) Kidnapping in the second degree;
- 9 (j) Leading organized crime;
- 10 (k) Manslaughter in the first degree;
- 11 (l) Manslaughter in the second degree;
- 12 (m) Promoting prostitution in the first degree;
- 13 (n) Rape in the third degree;
- 14 (o) Robbery in the second degree;
- 15 (p) Sexual exploitation;
- 16 (q) Vehicular assault, when caused by the operation or driving of
- 17 a vehicle by a person while under the influence of intoxicating liquor
- 18 or any drug or by the operation or driving of a vehicle in a reckless
- 19 manner;
- 20 (r) Vehicular homicide, when proximately caused by the driving of
- 21 any vehicle by any person while under the influence of intoxicating
- 22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
- 23 any vehicle in a reckless manner;
- 24 (s) Any other class B felony offense with a finding of sexual
- 25 motivation;
- 26 (t) Any other felony with a deadly weapon verdict under RCW
- 27 9.94A.825;
- 28 (u) Any felony offense in effect at any time prior to December 2,
- 29 1993, that is comparable to a most serious offense under this
- 30 subsection, or any federal or out-of-state conviction for an offense
- 31 that under the laws of this state would be a felony classified as a
- 32 most serious offense under this subsection;
- 33 (v)(i) A prior conviction for indecent liberties under RCW
- 34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
- 35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
- 36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
- 37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997;

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

15 (30) "Nonviolent offense" means an offense which is not a violent
16 offense.

17 (31) "Offender" means a person who has committed a felony
18 established by state law and is eighteen years of age or older or is
19 less than eighteen years of age but whose case is under superior court
20 jurisdiction under RCW 13.04.030 or has been transferred by the
21 appropriate juvenile court to a criminal court pursuant to RCW
22 13.40.110. In addition, for the purpose of community custody
23 requirements under this chapter, "offender" also means a misdemeanor or
24 gross misdemeanor probationer convicted of an offense included in RCW
25 9.94A.501(1) and ordered by a superior court to probation under the
26 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
27 9.95.210. Throughout this chapter, the terms "offender" and
28 "defendant" are used interchangeably.

29 (32) "Partial confinement" means confinement for no more than one
30 year in a facility or institution operated or utilized under contract
31 by the state or any other unit of government, or, if home detention or
32 work crew has been ordered by the court, in an approved residence, for
33 a substantial portion of each day with the balance of the day spent in
34 the community. Partial confinement includes work release, home
35 detention, work crew, and a combination of work crew and home
36 detention.

37 (33) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

26 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

27 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

28 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

29 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
30 9A.56.075);

31 (xix) Extortion 1 (RCW 9A.56.120);

32 (xx) Extortion 2 (RCW 9A.56.130);

33 (xxi) Intimidating a Witness (RCW 9A.72.110);

34 (xxii) Tampering with a Witness (RCW 9A.72.120);

35 (xxiii) Reckless Endangerment (RCW 9A.36.050);

36 (xxiv) Coercion (RCW 9A.36.070);

37 (xxv) Harassment (RCW 9A.46.020); or

38 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

3 (c) That the most recent committed offense listed in (a) of this
4 subsection occurred within three years of a prior offense listed in (a)
5 of this subsection; and

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

9 (34) "Persistent offender" is an offender who:

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

12 (ii) Has, before the commission of the offense under (a) of this
13 subsection, been convicted as an offender on at least two separate
14 occasions, whether in this state or elsewhere, of felonies that under
15 the laws of this state would be considered most serious offenses and
16 would be included in the offender score under RCW 9.94A.525; provided
17 that of the two or more previous convictions, at least one conviction
18 must have occurred before the commission of any of the other most
19 serious offenses for which the offender was previously convicted; or

20 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
21 of a child in the first degree, child molestation in the first degree,
22 rape in the second degree, rape of a child in the second degree, or
23 indecent liberties by forcible compulsion; (B) any of the following
24 offenses with a finding of sexual motivation: Murder in the first
25 degree, murder in the second degree, homicide by abuse, kidnapping in
26 the first degree, kidnapping in the second degree, assault in the first
27 degree, assault in the second degree, assault of a child in the first
28 degree, assault of a child in the second degree, or burglary in the
29 first degree; or (C) an attempt to commit any crime listed in this
30 subsection (34)(b)(i); and

31 (ii) Has, before the commission of the offense under (b)(i) of this
32 subsection, been convicted as an offender on at least one occasion,
33 whether in this state or elsewhere, of an offense listed in (b)(i) of
34 this subsection or any federal or out-of-state offense or offense under
35 prior Washington law that is comparable to the offenses listed in
36 (b)(i) of this subsection. A conviction for rape of a child in the
37 first degree constitutes a conviction under (b)(i) of this subsection
38 only when the offender was sixteen years of age or older when the

1 offender committed the offense. A conviction for rape of a child in
2 the second degree constitutes a conviction under (b)(i) of this
3 subsection only when the offender was eighteen years of age or older
4 when the offender committed the offense.

5 (35) "Predatory" means: (a) The perpetrator of the crime was a
6 stranger to the victim, as defined in this section; (b) the perpetrator
7 established or promoted a relationship with the victim prior to the
8 offense and the victimization of the victim was a significant reason
9 the perpetrator established or promoted the relationship; or (c) the
10 perpetrator was: (i) A teacher, counselor, volunteer, or other person
11 in authority in any public or private school and the victim was a
12 student of the school under his or her authority or supervision. For
13 purposes of this subsection, "school" does not include home-based
14 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
15 volunteer, or other person in authority in any recreational activity
16 and the victim was a participant in the activity under his or her
17 authority or supervision; ~~((or))~~ (iii) a pastor, elder, volunteer, or
18 other person in authority in any church or religious organization, and
19 the victim was a member or participant of the organization under his or
20 her authority; or (iv) a teacher, counselor, volunteer, or other person
21 in authority providing home-based instruction and the victim was a
22 student receiving home-based instruction while under his or her
23 authority or supervision. For purposes of this subsection: (A) "Home-
24 based instruction" has the same meaning as defined in RCW 28A.225.010;
25 and (B) "teacher, counselor, volunteer, or other person in authority"
26 does not include the parent or legal guardian of the victim.

27 (36) "Private school" means a school regulated under chapter
28 28A.195 or 28A.205 RCW.

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

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

34 (39) "Risk assessment" means the application of the risk instrument
35 recommended to the department by the Washington state institute for
36 public policy as having the highest degree of predictive accuracy for
37 assessing an offender's risk of reoffense.

38 (40) "Serious traffic offense" means:

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

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

9 (41) "Serious violent offense" is a subcategory of violent offense
10 and means:

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

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

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

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

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

24 (42) "Sex offense" means:

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

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

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

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

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

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex
2 offense under (a) of this subsection.

3 (43) "Sexual motivation" means that one of the purposes for which
4 the defendant committed the crime was for the purpose of his or her
5 sexual gratification.

6 (44) "Standard sentence range" means the sentencing court's
7 discretionary range in imposing a nonappealable sentence.

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

12 (46) "Stranger" means that the victim did not know the offender
13 twenty-four hours before the offense.

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

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

24 (49) "Victim" means any person who has sustained emotional,
25 psychological, physical, or financial injury to person or property as
26 a direct result of the crime charged.

27 (50) "Violent offense" means:

28 (a) Any of the following felonies:

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

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

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

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

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;
2 (x) Extortion in the first degree;
3 (xi) Robbery in the second degree;
4 (xii) Drive-by shooting;
5 (xiii) Vehicular assault, when caused by the operation or driving
6 of a vehicle by a person while under the influence of intoxicating
7 liquor or any drug or by the operation or driving of a vehicle in a
8 reckless manner; and

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

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

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

19 (51) "Work crew" means a program of partial confinement consisting
20 of civic improvement tasks for the benefit of the community that
21 complies with RCW 9.94A.725.

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

29 (53) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school.

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