

ESSB 5307 - H COMM AMD
By Committee on Public Safety

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 9.94A.030 and 2016 c 81 s 16 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

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

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

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

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

1 (7) "Community restitution" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender.

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

5 (9) "Conviction" means an adjudication of guilt pursuant to Title
6 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
7 and acceptance of a plea of guilty.

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

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

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

24 (b) A conviction may be removed from a defendant's criminal
25 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
26 9.95.240, or a similar out-of-state statute, or if the conviction has
27 been vacated pursuant to a governor's pardon.

28 (c) The determination of a defendant's criminal history is
29 distinct from the determination of an offender score. A prior
30 conviction that was not included in an offender score calculated
31 pursuant to a former version of the sentencing reform act remains
32 part of the defendant's criminal history.

33 (12) "Criminal street gang" means any ongoing organization,
34 association, or group of three or more persons, whether formal or
35 informal, having a common name or common identifying sign or symbol,
36 having as one of its primary activities the commission of criminal
37 acts, and whose members or associates individually or collectively
38 engage in or have engaged in a pattern of criminal street gang
39 activity. This definition does not apply to employees engaged in
40 concerted activities for their mutual aid and protection, or to the

1 activities of labor and bona fide nonprofit organizations or their
2 members or agents.

3 (13) "Criminal street gang associate or member" means any person
4 who actively participates in any criminal street gang and who
5 intentionally promotes, furthers, or assists in any criminal act by
6 the criminal street gang.

7 (14) "Criminal street gang-related offense" means any felony or
8 misdemeanor offense, whether in this state or elsewhere, that is
9 committed for the benefit of, at the direction of, or in association
10 with any criminal street gang, or is committed with the intent to
11 promote, further, or assist in any criminal conduct by the gang, or
12 is committed for one or more of the following reasons:

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

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

16 (c) To exact revenge or retribution for the gang or any member of
17 the gang;

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

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

23 (f) To provide the gang with any advantage in, or any control or
24 dominance over any criminal market sector, including, but not limited
25 to, manufacturing, delivering, or selling any controlled substance
26 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
27 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
28 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
29 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
30 9.68 RCW).

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

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

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

1 (18) "Determinate sentence" means a sentence that states with
2 exactitude the number of actual years, months, or days of total
3 confinement, of partial confinement, of community custody, the number
4 of actual hours or days of community restitution work, or dollars or
5 terms of a legal financial obligation. The fact that an offender
6 through earned release can reduce the actual period of confinement
7 shall not affect the classification of the sentence as a determinate
8 sentence.

9 (19) "Disposable earnings" means that part of the earnings of an
10 offender remaining after the deduction from those earnings of any
11 amount required by law to be withheld. For the purposes of this
12 definition, "earnings" means compensation paid or payable for
13 personal services, whether denominated as wages, salary, commission,
14 bonuses, or otherwise, and, notwithstanding any other provision of
15 law making the payments exempt from garnishment, attachment, or other
16 process to satisfy a court-ordered legal financial obligation,
17 specifically includes periodic payments pursuant to pension or
18 retirement programs, or insurance policies of any type, but does not
19 include payments made under Title 50 RCW, except as provided in RCW
20 50.40.020 and 50.40.050, or Title 74 RCW.

21 (20) "Domestic violence" has the same meaning as defined in RCW
22 10.99.020 and 26.50.010.

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

27 (22) "Drug offense" means:

28 (a) Any felony violation of chapter 69.50 RCW except possession
29 of a controlled substance (RCW 69.50.4013) or forged prescription for
30 a controlled substance (RCW 69.50.403);

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

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

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

39 (24) "Electronic monitoring" means tracking the location of an
40 individual, whether pretrial or posttrial, through the use of

1 technology that is capable of determining or identifying the
2 monitored individual's presence or absence at a particular location
3 including, but not limited to:

4 (a) Radio frequency signaling technology, which detects if the
5 monitored individual is or is not at an approved location and
6 notifies the monitoring agency of the time that the monitored
7 individual either leaves the approved location or tampers with or
8 removes the monitoring device; or

9 (b) Active or passive global positioning system technology, which
10 detects the location of the monitored individual and notifies the
11 monitoring agency of the monitored individual's location.

12 (25) "Escape" means:

13 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
14 the first degree (RCW 9A.76.110), escape in the second degree (RCW
15 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
16 willful failure to return from work release (RCW 72.65.070), or
17 willful failure to be available for supervision by the department
18 while in community custody (RCW 72.09.310); or

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

22 (26) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
24 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
25 run injury-accident (RCW 46.52.020(4)), felony driving while under
26 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
27 or felony physical control of a vehicle while under the influence of
28 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

38 (29) "Home detention" is a subset of electronic monitoring and
39 means a program of partial confinement available to offenders wherein
40 the offender is confined in a private residence twenty-four hours a

1 day, unless an absence from the residence is approved, authorized, or
2 otherwise permitted in the order by the court or other supervising
3 agency that ordered home detention, and the offender is subject to
4 electronic monitoring.

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

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

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

12 (c) A private residence where the individual stays as a transient
13 invitee.

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

28 (32) (("Minor child" means a biological or adopted child of the
29 offender who is under age eighteen at the time of the offender's
30 current offense.)

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

33 (a) Any felony defined under any law as a class A felony or
34 criminal solicitation of or criminal conspiracy to commit a class A
35 felony;

36 (b) Assault in the second degree;

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

38 (d) Child molestation in the second degree;

39 (e) Controlled substance homicide;

40 (f) Extortion in the first degree;

- (g) Incest when committed against a child under age fourteen;
- (h) Indecent liberties;
- (i) Kidnapping in the second degree;
- (j) Leading organized crime;
- (k) Manslaughter in the first degree;
- (l) Manslaughter in the second degree;
- (m) Promoting prostitution in the first degree;
- (n) Rape in the third degree;
- (o) Robbery in the second degree;
- (p) Sexual exploitation;
- (q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- (r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
- (s) Any other class B felony offense with a finding of sexual motivation;
- (t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;
- (u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
- (v)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- (ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,

1 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
2 1993, through July 27, 1997;

3 (w) Any out-of-state conviction for a felony offense with a
4 finding of sexual motivation if the minimum sentence imposed was ten
5 years or more; provided that the out-of-state felony offense must be
6 comparable to a felony offense under this title and Title 9A RCW and
7 the out-of-state definition of sexual motivation must be comparable
8 to the definition of sexual motivation contained in this section.

9 ((+34))) (33) "Nonviolent offense" means an offense which is not
10 a violent offense.

11 ((+35))) (34) "Offender" means a person who has committed a
12 felony established by state law and is eighteen years of age or older
13 or is less than eighteen years of age but whose case is under
14 superior court jurisdiction under RCW 13.04.030 or has been
15 transferred by the appropriate juvenile court to a criminal court
16 pursuant to RCW 13.40.110. In addition, for the purpose of community
17 custody requirements under this chapter, "offender" also means a
18 misdemeanor or gross misdemeanor probationer ordered by a superior
19 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210
20 and supervised by the department pursuant to RCW 9.94A.501 and
21 9.94A.5011. Throughout this chapter, the terms "offender" and
22 "defendant" are used interchangeably.

23 ((+36))) (35) "Partial confinement" means confinement for no more
24 than one year in a facility or institution operated or utilized under
25 contract by the state or any other unit of government, or, if home
26 detention, electronic monitoring, or work crew has been ordered by
27 the court or home detention has been ordered by the department as
28 part of the parenting program, in an approved residence, for a
29 substantial portion of each day with the balance of the day spent in
30 the community. Partial confinement includes work release, home
31 detention, work crew, electronic monitoring, and a combination of
32 work crew, electronic monitoring, and home detention.

33 ((+37))) (36) "Pattern of criminal street gang activity" means:

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

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

1 (ii) Any "violent" offense as defined by this section, excluding
2 Assault of a Child 2 (RCW 9A.36.130);
3 (iii) Deliver or Possession with Intent to Deliver a Controlled
4 Substance (chapter 69.50 RCW);
5 (iv) Any violation of the firearms and dangerous weapon act
6 (chapter 9.41 RCW);
7 (v) Theft of a Firearm (RCW 9A.56.300);
8 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
9 (vii) Malicious Harassment (RCW 9A.36.080);
10 (viii) Harassment where a subsequent violation or deadly threat
11 is made (RCW 9A.46.020(2)(b));
12 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
13 (x) Any felony conviction by a person eighteen years of age or
14 older with a special finding of involving a juvenile in a felony
15 offense under RCW 9.94A.833;
16 (xi) Residential Burglary (RCW 9A.52.025);
17 (xii) Burglary 2 (RCW 9A.52.030);
18 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
19 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
20 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
21 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
22 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
23 9A.56.070);
24 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
25 9A.56.075);
26 (xix) Extortion 1 (RCW 9A.56.120);
27 (xx) Extortion 2 (RCW 9A.56.130);
28 (XXI) Intimidating a Witness (RCW 9A.72.110);
29 (XXII) Tampering with a Witness (RCW 9A.72.120);
30 (XXIII) Reckless Endangerment (RCW 9A.36.050);
31 (XXIV) Coercion (RCW 9A.36.070);
32 (XXV) Harassment (RCW 9A.46.020); or
33 (XXVI) Malicious Mischief 3 (RCW 9A.48.090);
34 (b) That at least one of the offenses listed in (a) of this
35 subsection shall have occurred after July 1, 2008;
36 (c) That the most recent committed offense listed in (a) of this
37 subsection occurred within three years of a prior offense listed in
38 (a) of this subsection; and

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

4 ((+38))) (37) "Persistent offender" is an offender who:

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

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

15 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
16 of a child in the first degree, child molestation in the first
17 degree, rape in the second degree, rape of a child in the second
18 degree, or indecent liberties by forcible compulsion; (B) any of the
19 following offenses with a finding of sexual motivation: Murder in the
20 first degree, murder in the second degree, homicide by abuse,
21 kidnapping in the first degree, kidnapping in the second degree,
22 assault in the first degree, assault in the second degree, assault of
23 a child in the first degree, assault of a child in the second degree,
24 or burglary in the first degree; or (C) an attempt to commit any
25 crime listed in this subsection ((+38))) (37)(b)(i); and

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

38 ((+39))) (38) "Predatory" means: (a) The perpetrator of the crime
39 was a stranger to the victim, as defined in this section; (b) the
40 perpetrator established or promoted a relationship with the victim

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

22 ((+40)) (39) "Private school" means a school regulated under
23 chapter 28A.195 or 28A.205 RCW.

24 ((+41)) (40) "Public school" has the same meaning as in RCW
25 28A.150.010.

26 ((+42)) (41) "Repetitive domestic violence offense" means any:
27 (a)(i) Domestic violence assault that is not a felony offense
28 under RCW 9A.36.041;
29 (ii) Domestic violence violation of a no-contact order under
30 chapter 10.99 RCW that is not a felony offense;
31 (iii) Domestic violence violation of a protection order under
32 chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony
33 offense;
34 (iv) Domestic violence harassment offense under RCW 9A.46.020
35 that is not a felony offense; or
36 (v) Domestic violence stalking offense under RCW 9A.46.110 that
37 is not a felony offense; or
38 (b) Any federal, out-of-state, tribal court, military, county, or
39 municipal conviction for an offense that under the laws of this state

1 would be classified as a repetitive domestic violence offense under
2 (a) of this subsection.

3 ((+43))) (42) "Restitution" means a specific sum of money ordered
4 by the sentencing court to be paid by the offender to the court over
5 a specified period of time as payment of damages. The sum may include
6 both public and private costs.

7 ((+44))) (43) "Risk assessment" means the application of the risk
8 instrument recommended to the department by the Washington state
9 institute for public policy as having the highest degree of
10 predictive accuracy for assessing an offender's risk of reoffense.

11 ((+45))) (44) "Serious traffic offense" means:

12 (a) Nonfelony driving while under the influence of intoxicating
13 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
14 while under the influence of intoxicating liquor or any drug (RCW
15 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
16 attended vehicle (RCW 46.52.020(5)); or

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

20 ((+46))) (45) "Serious violent offense" is a subcategory of
21 violent offense and means:

22 (a)(i) Murder in the first degree;
23 (ii) Homicide by abuse;
24 (iii) Murder in the second degree;
25 (iv) Manslaughter in the first degree;
26 (v) Assault in the first degree;
27 (vi) Kidnapping in the first degree;
28 (vii) Rape in the first degree;
29 (viii) Assault of a child in the first degree; or
30 (ix) An attempt, criminal solicitation, or criminal conspiracy to
31 commit one of these felonies; or

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

35 ((+47))) (46) "Sex offense" means:

36 (a)(i) A felony that is a violation of chapter 9A.44 RCW other
37 than RCW 9A.44.132;
38 (ii) A violation of RCW 9A.64.020;
39 (iii) A felony that is a violation of chapter 9.68A RCW other
40 than RCW 9.68A.080;

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

4 (v) A felony violation of RCW 9A.44.132(1) (failure to register
5 as a sex offender) if the person has been convicted of violating RCW
6 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
7 prior to June 10, 2010, on at least one prior occasion;

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

11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.835 or 13.40.135; or

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

16 ((+48))) (47) "Sexual motivation" means that one of the purposes
17 for which the defendant committed the crime was for the purpose of
18 his or her sexual gratification.

19 ((+49))) (48) "Standard sentence range" means the sentencing
20 court's discretionary range in imposing a nonappealable sentence.

21 ((+50))) (49) "Statutory maximum sentence" means the maximum
22 length of time for which an offender may be confined as punishment
23 for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the
24 statute defining the crime, or other statute defining the maximum
25 penalty for a crime.

26 ((+51))) (50) "Stranger" means that the victim did not know the
27 offender twenty-four hours before the offense.

28 ((+52))) (51) "Total confinement" means confinement inside the
29 physical boundaries of a facility or institution operated or utilized
30 under contract by the state or any other unit of government for
31 twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

32 ((+53))) (52) "Transition training" means written and verbal
33 instructions and assistance provided by the department to the
34 offender during the two weeks prior to the offender's successful
35 completion of the work ethic camp program. The transition training
36 shall include instructions in the offender's requirements and
37 obligations during the offender's period of community custody.

38 ((+54))) (53) "Victim" means any person who has sustained
39 emotional, psychological, physical, or financial injury to person or
40 property as a direct result of the crime charged.

1 ((+55))) (54) "Violent offense" means:

2 (a) Any of the following felonies:

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

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

7 (iii) Manslaughter in the first degree;

8 (iv) Manslaughter in the second degree;

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

10 (vi) Kidnapping in the second degree;

11 (vii) Arson in the second degree;

12 (viii) Assault in the second degree;

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

14 (x) Extortion in the first degree;

15 (xi) Robbery in the second degree;

16 (xii) Drive-by shooting;

17 (xiii) Vehicular assault, when caused by the operation or driving
18 of a vehicle by a person while under the influence of intoxicating
19 liquor or any drug or by the operation or driving of a vehicle in a
20 reckless manner; and

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

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

28 (c) 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 violent offense under (a) or (b) of this subsection.

31 ((+56))) (55) "Work crew" means a program of partial confinement
32 consisting of civic improvement tasks for the benefit of the
33 community that complies with RCW 9.94A.725.

34 ((+57))) (56) "Work ethic camp" means an alternative
35 incarceration program as provided in RCW 9.94A.690 designed to reduce
36 recidivism and lower the cost of corrections by requiring offenders
37 to complete a comprehensive array of real-world job and vocational
38 experiences, character-building work ethics training, life management
39 skills development, substance abuse rehabilitation, counseling,
40 literacy training, and basic adult education.

1 ((+58+)) (57) "Work release" means a program of partial
2 confinement available to offenders who are employed or engaged as a
3 student in a regular course of study at school.

4 **Sec. 2.** RCW 9.94A.655 and 2010 c 224 s 2 are each amended to
5 read as follows:

6 (1) An offender is eligible for the parenting sentencing
7 alternative if:

8 (a) The high end of the standard sentence range for the current
9 offense is greater than one year;

10 (b)(i) The current conviction is not a violent offense, and the
11 offender has no prior or current conviction for a felony that is a
12 sex offense; or

13 (ii) Where the current conviction is a violent offense, the
14 current offense is not a class A felony, the offender is assessed at
15 a low risk to reoffend, and the offender has no prior or current
16 conviction of a felony that is a sex offense;

17 (c) The offender is a lawful resident of the United States and
18 has not been found by the United States attorney general to be
19 subject to a deportation detainer or order ((and does not become
20 subject to a deportation order during the period of the sentence));

21 (d) The offender signs any release of information waivers
22 required to allow information regarding current or prior child
23 welfare cases to be shared with the department and the court; and

24 (e) The offender:

25 (i) Has physical or legal custody of his or her biological or
26 adopted minor child ((or));

27 (ii) Is a legal guardian or custodian ((with physical custody of
28 a child under the age of eighteen)) of a minor child;

29 (iii) Is an expectant parent; or

30 (iv) Is a biological parent, adoptive parent, or stepparent, who
31 has a proven, established, ongoing, and substantial relationship with
32 the minor child that existed at the time of the current offense.

33 (2) To assist the court in making its determination, the court
34 may order the department to complete ((either)) a risk assessment
35 report, family impact statement, or a chemical dependency screening
36 report as provided in RCW 9.94A.500, ((or both reports)) prior to
37 sentencing.

38 (3) If the court is considering this alternative, the court shall
39 request that the department contact the ((children's administration

1 ~~of the Washington state~~) department of ((social and health
2 services)) children, youth, and families to determine if the agency
3 has an open child welfare case or prior substantiated referral of
4 abuse or neglect involving the offender or if the agency is aware of
5 any substantiated case of abuse or neglect with a tribal child
6 welfare agency involving the offender.

7 (a) If the offender has an open child welfare case, the
8 department will provide the release of information waiver and request
9 that the ((children's administration)) department of children, youth,
10 and families or the tribal child welfare agency provide a report to
11 the court. The ((children's administration)) department of children,
12 youth, and families shall provide a report within seven business days
13 of the request that includes, at the minimum, the following:

14 (i) Legal status of the child welfare case;

15 (ii) Length of time the ((children's administration)) department
16 of children, youth, and families has been involved with the offender;

17 (iii) Legal status of the case and permanent plan;

18 (iv) Any special needs of the child;

19 (v) Whether or not the offender has been cooperative with
20 services ordered by a juvenile court under a child welfare case; and

21 (vi) If the offender has been convicted of a crime against a
22 child.

23 (b) If a report is required from a tribal child welfare agency,
24 the department shall attempt to obtain information that is similar to
25 what is required for the report provided by the ((children's
26 administration)) department of children, youth, and families in a
27 timely manner.

28 (c) If the offender does not have an open child welfare case with
29 the ((children's administration)) department of children, youth, and
30 families or with a tribal child welfare agency but has prior
31 involvement, the department will obtain information from the
32 children's administration on the number and type of past
33 substantiated referrals of abuse or neglect and report that
34 information to the court. If the ((children's administration))
35 department of children, youth, and families has never had any
36 substantiated referrals or an open case with the offender, the
37 department will inform the court.

38 (d) The existence of pending dependency proceedings or other
39 evidence of involvement with a child welfare agency does not, in and

1 of itself, disqualify the offender from applying or participating in
2 the parenting alternative program.

3 (4) If the sentencing court determines that the offender is
4 eligible for a sentencing alternative under this section and that the
5 sentencing alternative is appropriate and should be imposed, the
6 court shall waive imposition of a sentence within the standard
7 sentence range and impose a sentence consisting of twelve months of
8 community custody. The court shall consider the offender's criminal
9 history when determining if the alternative is appropriate.

10 (5) When a court imposes a sentence of community custody under
11 this section:

12 (a) The court may impose conditions as provided in RCW 9.94A.703
13 and may impose other affirmative conditions as the court considers
14 appropriate.

15 (b) The department may impose conditions as authorized in RCW
16 9.94A.704 that may include, but are not limited to:

- 17 (i) Parenting classes;
- 18 (ii) Chemical dependency treatment;
- 19 (iii) Mental health treatment;
- 20 (iv) Vocational training;
- 21 (v) Offender change programs;
- 22 (vi) Life skills classes.

23 (c) The department shall report to the court if the offender
24 commits any violations of his or her sentence conditions.

25 (6) The department shall provide the court with quarterly
26 progress reports regarding the offender's progress in required
27 programming, treatment, and other supervision conditions. When an
28 offender has an open child welfare case, the department will seek to
29 coordinate services with the ~~((children's administration))~~ department
30 of children, youth, and families.

31 (7)(a) The court may bring any offender sentenced under this
32 section back into court at any time during the period of community
33 custody on its own initiative to evaluate the offender's progress in
34 treatment, or to determine if any violations of the conditions of the
35 sentence have occurred.

36 (b) If the offender is brought back to court, the court may
37 modify the conditions of community custody or impose sanctions under
38 (c) of this subsection.

39 (c) The court may order the offender to serve a term of total
40 confinement within the standard range of the offender's current

1 offense at any time during the period of community custody, if the
2 offender violates the conditions or requirements of the sentence or
3 if the offender is failing to make satisfactory progress in
4 treatment.

5 (d) An offender ordered to serve a term of total confinement
6 under (c) of this subsection shall receive credit for any time
7 previously served in confinement under this section.

8 (8) For the purposes of this section, the following definitions
9 apply:

10 (a) "Expectant parent" means a pregnant or other biological
11 parent awaiting the birth of his or her child or an adoptive parent
12 in the process of a final adoption.

13 (b) "Minor child" means a child under the age of eighteen at the
14 time of the offender's current offense.

15 **Sec. 3.** RCW 9.94A.6551 and 2010 c 224 s 8 are each amended to
16 read as follows:

17 For offenders not sentenced under RCW 9.94A.655, but otherwise
18 eligible under this section, no more than the final twelve months of
19 the offender's term of confinement may be served in partial
20 confinement as home detention as part of the parenting program
21 developed by the department.

22 (1) The secretary may transfer an offender from a correctional
23 facility to home detention in the community if it is determined that
24 the parenting program is an appropriate placement and when all of the
25 following conditions exist:

26 (a) The offender is serving a sentence in which the high end of
27 the range is greater than one year;

28 (b)(i) The offender has no current conviction for a felony that
29 is a sex offense or a violent offense; or

30 (ii) Where the current conviction is a violent offense, the
31 current offense is not a class A felony or a sex offense, and the
32 offender is assessed at a low risk to reoffend;

33 (c) The offender is a lawful resident of the United States and
34 has not been found by the United States attorney general to be
35 subject to a deportation detainer or order ((and does not become
36 subject to a deportation order during the period of the sentence));

37 (d) The offender signs any release of information waivers
38 required to allow information regarding current or prior child
39 welfare cases to be shared with the department and the court;

1 (e) The offender:

2 (i) Has physical or legal custody of ((a)) his or her biological
3 or adopted minor child;

4 (ii) Is a biological or adoptive parent or stepparent, who has a
5 proven, established, ongoing, and substantial relationship with ((his
6 or her)) the minor child that existed ((prior to the commission)) at
7 the time of the current offense; ((or))

8 (iii) Is a legal guardian or custodian of a minor child ((that
9 was under the age of eighteen at the time of the current offense));
10 or

11 (iv) Is an expectant parent; and

12 (f) The department determines that such a placement is in the
13 best interests of the child.

14 (2) When the department is considering partial confinement as
15 part of the parenting program for an offender, the department shall
16 inquire of the individual and the ((children's administration with
17 the Washington state department of social and health services))
18 department of children, youth, and families whether the agency has an
19 open child welfare case or prior substantiated referral for abuse or
20 neglect involving the offender. If the ((children's administration))
21 department of children, youth, and families or a tribal jurisdiction
22 has an open child welfare case, the department will seek input from
23 the ((children's administration)) department of children, youth, and
24 families or the involved tribal jurisdiction as to: (a) The status of
25 the child welfare case; and (b) recommendations regarding placement
26 of the offender and services required of the department and the court
27 governing the individual's child welfare case. The department and its
28 officers, agents, and employees are not liable for the acts of
29 offenders participating in the parenting program unless the
30 department or its officers, agents, and employees acted with willful
31 and wanton disregard.

32 (3) All offenders placed on home detention as part of the
33 parenting program shall provide an approved residence and living
34 arrangement prior to transfer to home detention.

35 (4) While in the community on home detention as part of the
36 parenting program, the department shall:

37 (a) Require the offender to be placed on electronic home
38 monitoring;

39 (b) Require the offender to participate in programming and
40 treatment that the department determines is needed;

1 (c) Assign a community corrections officer who will monitor the
2 offender's compliance with conditions of partial confinement and
3 programming requirements; and

4 (d) If the offender has an open child welfare case with the
5 ~~((children's administration))~~ department of children, youth, and
6 families, collaborate and communicate with the identified social
7 worker in the provision of services.

8 (5) The department has the authority to return any offender
9 serving partial confinement in the parenting program to total
10 confinement if the offender is not complying with sentence
11 requirements.

12 (6) For the purposes of this section, the following definitions
13 apply:

14 (a) "Expectant parent" means a pregnant or other biological
15 parent awaiting the birth of his or her child or an adoptive parent
16 in the process of a final adoption.

17 (b) "Minor child" means a child under the age of eighteen at the
18 time of the offender's current offense.

19 NEW SECTION. **Sec. 4.** The department of corrections must assist
20 courts in determining whether an offender applying for the parenting
21 sentencing alternative under RCW 9.94A.655 who has a current
22 conviction for a felony that is a sex offense or a violent offense
23 may be assessed at low risk to offend using the most current
24 instrument available capable of yielding this determination, which
25 may include a risk instrument in use prior to December 15, 2017."

26 Correct the title.

EFFECT: (1) Modifies the eligibility criteria for the court-based parenting sentencing alternative (PSA) by: Restoring the current prohibition against allowing any offender with a current or prior sex offense conviction to participate in the program; and narrowing the expanded eligibility of violent offenders in the underlying bill by excluding any offender with a present conviction of a class A felony that is a violent offense.

(2) Modifies the eligibility criteria for the community parenting alternative partial confinement program (CPA) by: Restoring the current prohibition against allowing any offender with a current sex offense conviction to participate in the program; and narrowing the expanded eligibility of violent offenders in the underlying bill by excluding any offender with a present conviction of a class A felony that is a violent offense.

(3) Modifies qualifying relationships for the PSA and CPA by: Removing a nonparental custodian and a person acknowledged as a

parent figure as qualifying relationships from the underlying bill; removing changes to certain eligibility criteria for biological and adoptive parents requiring legal or physical custody of the minor child to be had at the time of the offense; limiting eligibility of a stepparent for either program to only when he or she had a proven, established, and ongoing and substantial relationship with the minor at the time of the offense, unless he or she qualifies based on other status; and modifying the eligibility of an expectant parent by allowing participation in either program so long as he or she is pregnant or a biological parent awaiting the birth of his or her child or an adoptive parent in the process of a final adoption. Moves the definition of "minor child" to the sections pertaining to the PSA and CPA.

(4) Modifies the eligibility criteria for the PSA and CPA with respect to immigration status by requiring an offender to be a lawful resident of the United States and not be subject to a deportation detainer or order (rather than requiring an offender to not be subject to a deportation detainer or order and not become subject to a deportation order during the period of his or her sentence as provided in current law).

(5) Modifies provisions in the underlying bill by specifying that the existence of pending dependency proceedings does not, in and of itself, disqualify an offender from applying to or participating in the PSA (rather than specifying that the existence of an open child welfare case does not disqualify an offender). Removes language from the underlying bill specifying that an open child welfare case or prior involvement with a child welfare agency may be supportive of an offender's application for the PSA. Removes language from the underlying bill specifying that legal termination of a child-parent relationship does not preclude an application for the CPA.

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