
HOUSE BILL 1235

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By Representatives Griffey, MacEwen, Klippert, Kraft, Irwin, Eslick, Stokesbary, Van Werven, and Dent

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1 AN ACT Relating to the crime of providing harmful material to a
2 minor; amending RCW 7.90.150, 9.94A.501, 9.95.062, 9A.44.128,
3 9A.44.140, 10.64.025, 43.43.754, and 43.43.830; reenacting and
4 amending RCW 9.94A.411 and 9.94A.515; adding a new section to chapter
5 9.68A RCW; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.68A
8 RCW to read as follows:

9 (1) A person commits the crime of providing harmful material to a
10 minor if:

11 (a) The person is eighteen years of age or older; and

12 (b) With knowledge of its character, the person:

13 (i) Knowingly sells, furnishes, presents, distributes, or
14 otherwise disseminates to someone the person knows or should know is
15 a minor, with or without consideration, any matter that is harmful to
16 minors; or

17 (ii) Knowingly presents or participates in presenting to someone
18 the person knows or should know is a minor, with or without
19 consideration, any live performance that is harmful to minors.

1 (2) (a) Except as provided in (b) of this subsection, a person who
2 provides harmful material to a minor is guilty of a gross
3 misdemeanor.

4 (b) A person who provides harmful material to a minor is guilty
5 of a class C felony if the person has previously been convicted under
6 this section or of a felony sexual offense under chapter 9.68A,
7 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or
8 any other state.

9 (3) The definitions in this subsection apply throughout this
10 section unless the context clearly requires otherwise.

11 (a) "Harmful to minors" means any matter or live performance:

12 (i) That the average adult person, applying contemporary
13 community standards, would find, when considered as a whole, appeals
14 to the prurient interest of minors; and

15 (ii) That explicitly depicts or contains, by prevailing standards
16 in the adult community with respect to what is suitable for minors,
17 patently offensive representations or descriptions of any of the
18 following:

19 (A) Ultimate sexual acts or sexual contact;

20 (B) Masturbation, lewd exhibition of the genitals or genital
21 area, sexual excitement, or sexually explicit nudity; or

22 (C) Bestiality, excretory functions, or sexual acts that are
23 violent or destructive, including but not limited to human or animal
24 mutilation, dismemberment, rape, or torture; and

25 (iii) That, when considered as a whole, and in the context in
26 which it is used, lacks serious literary, artistic, political, or
27 scientific value for minors.

28 (b) "Knowingly" has the same meaning as in RCW 9A.08.010(1)(b).

29 (c) "Knowledge of its character" means that the person has
30 knowledge that the matter or performance contains, depicts, or
31 describes activity or conduct that may be found to be patently
32 offensive under (a) of this subsection. Such knowledge may be proved
33 by direct or circumstantial evidence, or both.

34 (d) "Live performance" means any play, show, skit, dance, or
35 other exhibition performed or presented to or before an audience of
36 one or more, in person or by electronic transmission, or by
37 telephonic communication, with or without consideration.

38 (e) "Matter" includes, but is not limited to:

39 (i) Books, magazines, articles, pamphlets, and other printed or
40 written material, however produced or reproduced;

1 (ii) Illustrations, pictures, images, motion picture films,
2 videos, and other visual representations;

3 (iii) Sound recordings; and

4 (iv) Sexual devices.

5 (f) "Sexual contact" means physical contact with a person's
6 clothed or unclothed genitals, pubic area, buttocks, perineum, or, if
7 such person is a female, breast.

8 (g) "Sexual device" means any artificial device primarily
9 designed, promoted, or marketed to physically stimulate or manipulate
10 the human genitals.

11 (h) "Sexual excitement" means the condition of human male or
12 female genitals when in a state of sexual stimulation or arousal, or
13 the depiction of covered male genitals in a discernibly turgid state.

14 (i) "Sexually explicit nudity" means the showing of the human
15 male or female genitals, pubic area, buttocks, or perineum with less
16 than a fully opaque covering; or the showing of the female breast
17 with less than a fully opaque covering of any portion thereof below
18 the top of the nipple.

19 (4) In any prosecution under this section, it is an affirmative
20 defense that:

21 (a) The matter or performance involved was displayed or otherwise
22 disseminated to a minor by the minor's parent or legal guardian, for
23 a legitimate purpose; or

24 (b) The matter or performance involved was displayed or otherwise
25 disseminated to a minor with the written permission of the minor's
26 parent or legal guardian, for a legitimate purpose; or

27 (c) The person made a reasonable good faith attempt to ascertain
28 the true age of the minor by requiring production of a driver's
29 license, marriage license, birth certificate, or other governmental
30 or educational identification card or paper, or copy thereof, and not
31 relying solely on the allegations or apparent age of the minor.

32 **Sec. 2.** RCW 7.90.150 and 2006 c 138 s 16 are each amended to
33 read as follows:

34 (1)(a) When any person charged with or arrested for a sex offense
35 as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a
36 violation of RCW 9.68A.090, a violation of section 1 of this act, or
37 a gross misdemeanor that is, under chapter 9A.28 RCW, a criminal
38 attempt, criminal solicitation, or criminal conspiracy to commit an
39 offense that is classified as a sex offense under RCW 9.94A.030, is

1 released from custody before arraignment or trial on bail or personal
2 recognizance, the court authorizing the release may prohibit that
3 person from having any contact with the victim. The jurisdiction
4 authorizing the release shall determine whether that person should be
5 prohibited from having any contact with the victim. If there is no
6 outstanding restraining or protective order prohibiting that person
7 from having contact with the victim, the court authorizing release
8 may issue, by telephone, a sexual assault protection order
9 prohibiting the person charged or arrested from having contact with
10 the victim or from knowingly coming within, or knowingly remaining
11 within, a specified distance of a location.

12 (b) In issuing the order, the court shall consider the provisions
13 of RCW 9.41.800.

14 (c) The sexual assault protection order shall also be issued in
15 writing as soon as possible.

16 (2) (a) At the time of arraignment or whenever a motion is brought
17 to modify the conditions of the defendant's release, the court shall
18 determine whether a sexual assault protection order shall be issued
19 or extended. If a sexual assault protection order is issued or
20 extended, the court may also include in the conditions of release a
21 requirement that the defendant submit to electronic monitoring. If
22 electronic monitoring is ordered, the court shall specify who shall
23 provide the monitoring services, and the terms under which the
24 monitoring shall be performed. Upon conviction, the court may require
25 as a condition of the sentence that the defendant reimburse the
26 providing agency for the costs of the electronic monitoring.

27 (b) A sexual assault protection order issued by the court in
28 conjunction with criminal charges shall terminate if the defendant is
29 acquitted or the charges are dismissed, unless the victim files an
30 independent action for a sexual assault protection order. If the
31 victim files an independent action for a sexual assault protection
32 order, the order may be continued by the court until a full hearing
33 is conducted pursuant to RCW 7.90.050.

34 (3) (a) The written order releasing the person charged or arrested
35 shall contain the court's directives and shall bear the legend:
36 "Violation of this order is a criminal offense under chapter 26.50
37 RCW and will subject a violator to arrest. You can be arrested even
38 if any person protected by the order invites or allows you to violate
39 the order's prohibitions. You have the sole responsibility to avoid

1 or refrain from violating the order's provisions. Only the court can
2 change the order."

3 (b) A certified copy of the order shall be provided to the victim
4 at no charge.

5 (4) If a sexual assault protection order has been issued prior to
6 charging, that order shall expire at arraignment or within seventy-
7 two hours if charges are not filed. Such orders need not be entered
8 into the computer-based criminal intelligence information system in
9 this state which is used by law enforcement agencies to list
10 outstanding warrants.

11 (5) Whenever an order prohibiting contact is issued pursuant to
12 subsection (2) of this section, the clerk of the court shall forward
13 a copy of the order on or before the next judicial day to the
14 appropriate law enforcement agency specified in the order. Upon
15 receipt of the copy of the order, the law enforcement agency shall
16 enter the order for one year or until the expiration date specified
17 on the order into any computer-based criminal intelligence
18 information system available in this state used by law enforcement
19 agencies to list outstanding warrants. Entry into the computer-based
20 criminal intelligence information system constitutes notice to all
21 law enforcement agencies of the existence of the order. The order is
22 fully enforceable in any jurisdiction in the state.

23 (6)(a) When a defendant is found guilty of a sex offense as
24 defined in RCW 9.94A.030, any violation of RCW 9A.44.096, (~~(or)~~) any
25 violation of RCW 9.68A.090, or any violation of section 1 of this
26 act, or any gross misdemeanor that is, under chapter 9A.28 RCW, a
27 criminal attempt, criminal solicitation, or criminal conspiracy to
28 commit an offense that is classified as a sex offense under RCW
29 9.94A.030, and a condition of the sentence restricts the defendant's
30 ability to have contact with the victim, the condition shall be
31 recorded as a sexual assault protection order.

32 (b) The written order entered as a condition of sentencing shall
33 contain the court's directives and shall bear the legend: "Violation
34 of this order is a criminal offense under chapter 26.50 RCW and will
35 subject a violator to arrest. You can be arrested even if any person
36 protected by the order invites or allows you to violate the order's
37 prohibitions. You have the sole responsibility to avoid or refrain
38 from violating the order's provisions. Only the court can change the
39 order."

1 (c) A final sexual assault protection order entered in
2 conjunction with a criminal prosecution shall remain in effect for a
3 period of two years following the expiration of any sentence of
4 imprisonment and subsequent period of community supervision,
5 conditional release, probation, or parole.

6 (d) A certified copy of the order shall be provided to the victim
7 at no charge.

8 (7) A knowing violation of a court order issued under subsection
9 (1), (2), or (6) of this section is punishable under RCW 26.50.110.

10 (8) Whenever a sexual assault protection order is issued,
11 modified, or terminated under subsection (1), (2), or (6) of this
12 section, the clerk of the court shall forward a copy of the order on
13 or before the next judicial day to the appropriate law enforcement
14 agency specified in the order. Upon receipt of the copy of the order,
15 the law enforcement agency shall enter the order for one year or
16 until the expiration date specified on the order into any computer-
17 based criminal intelligence information system available in this
18 state used by law enforcement agencies to list outstanding warrants.
19 Entry into the computer-based criminal intelligence information
20 system constitutes notice to all law enforcement agencies of the
21 existence of the order. The order is fully enforceable in any
22 jurisdiction in the state. Upon receipt of notice that an order has
23 been terminated under subsection (2) of this section, the law
24 enforcement agency shall remove the order from the computer-based
25 criminal intelligence information system.

26 **Sec. 3.** RCW 9.94A.411 and 2017 c 272 s 2 and 2017 c 266 s 5 are
27 each reenacted and amended to read as follows:

28 (1) Decision not to prosecute.

29 STANDARD: A prosecuting attorney may decline to prosecute, even
30 though technically sufficient evidence to prosecute exists, in
31 situations where prosecution would serve no public purpose, would
32 defeat the underlying purpose of the law in question or would result
33 in decreased respect for the law.

34 GUIDELINE/COMMENTARY:

35 Examples

36 The following are examples of reasons not to prosecute which
37 could satisfy the standard.

38 (a) Contrary to Legislative Intent - It may be proper to decline
39 to charge where the application of criminal sanctions would be

1 clearly contrary to the intent of the legislature in enacting the
2 particular statute.

3 (b) Antiquated Statute - It may be proper to decline to charge
4 where the statute in question is antiquated in that:

5 (i) It has not been enforced for many years; and

6 (ii) Most members of society act as if it were no longer in
7 existence; and

8 (iii) It serves no deterrent or protective purpose in today's
9 society; and

10 (iv) The statute has not been recently reconsidered by the
11 legislature.

12 This reason is not to be construed as the basis for declining
13 cases because the law in question is unpopular or because it is
14 difficult to enforce.

15 (c) De Minimis Violation - It may be proper to decline to charge
16 where the violation of law is only technical or insubstantial and
17 where no public interest or deterrent purpose would be served by
18 prosecution.

19 (d) Confinement on Other Charges - It may be proper to decline to
20 charge because the accused has been sentenced on another charge to a
21 lengthy period of confinement; and

22 (i) Conviction of the new offense would not merit any additional
23 direct or collateral punishment;

24 (ii) The new offense is either a misdemeanor or a felony which is
25 not particularly aggravated; and

26 (iii) Conviction of the new offense would not serve any
27 significant deterrent purpose.

28 (e) Pending Conviction on Another Charge - It may be proper to
29 decline to charge because the accused is facing a pending prosecution
30 in the same or another county; and

31 (i) Conviction of the new offense would not merit any additional
32 direct or collateral punishment;

33 (ii) Conviction in the pending prosecution is imminent;

34 (iii) The new offense is either a misdemeanor or a felony which
35 is not particularly aggravated; and

36 (iv) Conviction of the new offense would not serve any
37 significant deterrent purpose.

38 (f) High Disproportionate Cost of Prosecution - It may be proper
39 to decline to charge where the cost of locating or transporting, or
40 the burden on, prosecution witnesses is highly disproportionate to

1 the importance of prosecuting the offense in question. This reason
2 should be limited to minor cases and should not be relied upon in
3 serious cases.

4 (g) Improper Motives of Complainant - It may be proper to decline
5 charges because the motives of the complainant are improper and
6 prosecution would serve no public purpose, would defeat the
7 underlying purpose of the law in question or would result in
8 decreased respect for the law.

9 (h) Immunity - It may be proper to decline to charge where
10 immunity is to be given to an accused in order to prosecute another
11 where the accused's information or testimony will reasonably lead to
12 the conviction of others who are responsible for more serious
13 criminal conduct or who represent a greater danger to the public
14 interest.

15 (i) Victim Request - It may be proper to decline to charge
16 because the victim requests that no criminal charges be filed and the
17 case involves the following crimes or situations:

18 (i) Assault cases where the victim has suffered little or no
19 injury;

20 (ii) Crimes against property, not involving violence, where no
21 major loss was suffered;

22 (iii) Where doing so would not jeopardize the safety of society.

23 Care should be taken to insure that the victim's request is
24 freely made and is not the product of threats or pressure by the
25 accused.

26 The presence of these factors may also justify the decision to
27 dismiss a prosecution which has been commenced.

28 Notification

29 The prosecutor is encouraged to notify the victim, when
30 practical, and the law enforcement personnel, of the decision not to
31 prosecute.

32 (2) Decision to prosecute.

33 (a) STANDARD:

34 Crimes against persons will be filed if sufficient admissible
35 evidence exists, which, when considered with the most plausible,
36 reasonably foreseeable defense that could be raised under the
37 evidence, would justify conviction by a reasonable and objective fact
38 finder. With regard to offenses prohibited by RCW 9A.44.040,
39 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,
40 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling

1 agreements or diversions intended to place the accused in a program
2 of treatment or counseling, so that treatment, if determined to be
3 beneficial, can be provided pursuant to RCW 9.94A.670.

4 Crimes against property/other crimes will be filed if the
5 admissible evidence is of such convincing force as to make it
6 probable that a reasonable and objective fact finder would convict
7 after hearing all the admissible evidence and the most plausible
8 defense that could be raised.

9 See table below for the crimes within these categories.

10 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

11 CRIMES AGAINST PERSONS

12 Aggravated Murder (RCW 10.95.020)

13 1st Degree Murder (RCW 9A.32.030)

14 2nd Degree Murder (RCW 9A.32.050)

15 1st Degree Manslaughter (RCW 9A.32.060)

16 2nd Degree Manslaughter (RCW 9A.32.070)

17 1st Degree Kidnapping (RCW 9A.40.020)

18 2nd Degree Kidnapping (RCW 9A.40.030)

19 1st Degree Assault (RCW 9A.36.011)

20 2nd Degree Assault (RCW 9A.36.021)

21 3rd Degree Assault (RCW 9A.36.031)

22 4th Degree Assault (if a violation of RCW 9A.36.041(3))

23 1st Degree Assault of a Child (RCW 9A.36.120)

24 2nd Degree Assault of a Child (RCW 9A.36.130)

25 3rd Degree Assault of a Child (RCW 9A.36.140)

26 1st Degree Rape (RCW 9A.44.040)

27 2nd Degree Rape (RCW 9A.44.050)

28 3rd Degree Rape (RCW 9A.44.060)

29 1st Degree Rape of a Child (RCW 9A.44.073)

30 2nd Degree Rape of a Child (RCW 9A.44.076)

31 3rd Degree Rape of a Child (RCW 9A.44.079)

32 1st Degree Robbery (RCW 9A.56.200)

33 2nd Degree Robbery (RCW 9A.56.210)

34 1st Degree Arson (RCW 9A.48.020)

35 1st Degree Burglary (RCW 9A.52.020)

36 1st Degree Identity Theft (RCW 9.35.020(2))

37 2nd Degree Identity Theft (RCW 9.35.020(3))

38 1st Degree Extortion (RCW 9A.56.120)

39 2nd Degree Extortion (RCW 9A.56.130)

1 1st Degree Criminal Mistreatment (RCW 9A.42.020)
2 2nd Degree Criminal Mistreatment (RCW 9A.42.030)
3 1st Degree Theft from a Vulnerable Adult (RCW 9A.56.400(1))
4 2nd Degree Theft from a Vulnerable Adult (RCW 9A.56.400(2))
5 Indecent Liberties (RCW 9A.44.100)
6 Incest (RCW 9A.64.020)
7 Vehicular Homicide (RCW 46.61.520)
8 Vehicular Assault (RCW 46.61.522)
9 1st Degree Child Molestation (RCW 9A.44.083)
10 2nd Degree Child Molestation (RCW 9A.44.086)
11 3rd Degree Child Molestation (RCW 9A.44.089)
12 1st Degree Promoting Prostitution (RCW 9A.88.070)
13 Intimidating a Juror (RCW 9A.72.130)
14 Communication with a Minor (RCW 9.68A.090)
15 Intimidating a Witness (RCW 9A.72.110)
16 Intimidating a Public Servant (RCW 9A.76.180)
17 Bomb Threat (if against person) (RCW 9.61.160)
18 Unlawful Imprisonment (RCW 9A.40.040)
19 Promoting a Suicide Attempt (RCW 9A.36.060)
20 Criminal Mischief (if against person) (RCW 9A.84.010)
21 Stalking (RCW 9A.46.110)
22 Custodial Assault (RCW 9A.36.100)
23 Domestic Violence Court Order Violation (RCW 10.99.040,
24 10.99.050, 26.09.300, 26.10.220, (~~26.26.138~~) 26.26B.050, 26.50.110,
25 26.52.070, or 74.34.145)
26 Counterfeiting (if a violation of RCW 9.16.035(4))
27 Felony Driving a Motor Vehicle While Under the Influence of
28 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
29 Felony Physical Control of a Motor Vehicle While Under the
30 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
31 Providing Harmful Material to a Minor (section 1 of this act)
32 CRIMES AGAINST PROPERTY/OTHER CRIMES
33 2nd Degree Arson (RCW 9A.48.030)
34 1st Degree Escape (RCW 9A.76.110)
35 2nd Degree Escape (RCW 9A.76.120)
36 2nd Degree Burglary (RCW 9A.52.030)
37 1st Degree Theft (RCW 9A.56.030)
38 2nd Degree Theft (RCW 9A.56.040)
39 1st Degree Perjury (RCW 9A.72.020)

1 2nd Degree Perjury (RCW 9A.72.030)
2 1st Degree Introducing Contraband (RCW 9A.76.140)
3 2nd Degree Introducing Contraband (RCW 9A.76.150)
4 1st Degree Possession of Stolen Property (RCW 9A.56.150)
5 2nd Degree Possession of Stolen Property (RCW 9A.56.160)
6 Bribery (RCW 9A.68.010)
7 Bribing a Witness (RCW 9A.72.090)
8 Bribe received by a Witness (RCW 9A.72.100)
9 Bomb Threat (if against property) (RCW 9.61.160)
10 1st Degree Malicious Mischief (RCW 9A.48.070)
11 2nd Degree Malicious Mischief (RCW 9A.48.080)
12 1st Degree Reckless Burning (RCW 9A.48.040)
13 Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and
14 9A.56.075)
15 Forgery (RCW 9A.60.020)
16 2nd Degree Promoting Prostitution (RCW 9A.88.080)
17 Tampering with a Witness (RCW 9A.72.120)
18 Trading in Public Office (RCW 9A.68.040)
19 Trading in Special Influence (RCW 9A.68.050)
20 Receiving/Granting Unlawful Compensation (RCW 9A.68.030)
21 Bigamy (RCW 9A.64.010)
22 Eluding a Pursuing Police Vehicle (RCW 46.61.024)
23 Willful Failure to Return from Furlough
24 Escape from Community Custody
25 Criminal Mischief (if against property) (RCW 9A.84.010)
26 1st Degree Theft of Livestock (RCW 9A.56.080)
27 2nd Degree Theft of Livestock (RCW 9A.56.083)

28 ALL OTHER UNCLASSIFIED FELONIES

29 Selection of Charges/Degree of Charge

30 (i) The prosecutor should file charges which adequately describe
31 the nature of defendant's conduct. Other offenses may be charged only
32 if they are necessary to ensure that the charges:

33 (A) Will significantly enhance the strength of the state's case
34 at trial; or

35 (B) Will result in restitution to all victims.

36 (ii) The prosecutor should not overcharge to obtain a guilty
37 plea. Overcharging includes:

38 (A) Charging a higher degree;

39 (B) Charging additional counts.

1 This standard is intended to direct prosecutors to charge those
2 crimes which demonstrate the nature and seriousness of a defendant's
3 criminal conduct, but to decline to charge crimes which are not
4 necessary to such an indication. Crimes which do not merge as a
5 matter of law, but which arise from the same course of conduct, do
6 not all have to be charged.

7 (b) GUIDELINES/COMMENTARY:

8 (i) Police Investigation

9 A prosecuting attorney is dependent upon law enforcement agencies
10 to conduct the necessary factual investigation which must precede the
11 decision to prosecute. The prosecuting attorney shall ensure that a
12 thorough factual investigation has been conducted before a decision
13 to prosecute is made. In ordinary circumstances the investigation
14 should include the following:

15 (A) The interviewing of all material witnesses, together with the
16 obtaining of written statements whenever possible;

17 (B) The completion of necessary laboratory tests; and

18 (C) The obtaining, in accordance with constitutional
19 requirements, of the suspect's version of the events.

20 If the initial investigation is incomplete, a prosecuting
21 attorney should insist upon further investigation before a decision
22 to prosecute is made, and specify what the investigation needs to
23 include.

24 (ii) Exceptions

25 In certain situations, a prosecuting attorney may authorize
26 filing of a criminal complaint before the investigation is complete
27 if:

28 (A) Probable cause exists to believe the suspect is guilty; and

29 (B) The suspect presents a danger to the community or is likely
30 to flee if not apprehended; or

31 (C) The arrest of the suspect is necessary to complete the
32 investigation of the crime.

33 In the event that the exception to the standard is applied, the
34 prosecuting attorney shall obtain a commitment from the law
35 enforcement agency involved to complete the investigation in a timely
36 manner. If the subsequent investigation does not produce sufficient
37 evidence to meet the normal charging standard, the complaint should
38 be dismissed.

39 (iii) Investigation Techniques

1 The prosecutor should be fully advised of the investigatory
2 techniques that were used in the case investigation including:

- 3 (A) Polygraph testing;
- 4 (B) Hypnosis;
- 5 (C) Electronic surveillance;
- 6 (D) Use of informants.

7 (iv) Prefiling Discussions with Defendant

8 Discussions with the defendant or his/her representative
9 regarding the selection or disposition of charges may occur prior to
10 the filing of charges, and potential agreements can be reached.

11 (v) Prefiling Discussions with Victim(s)

12 Discussions with the victim(s) or victims' representatives
13 regarding the selection or disposition of charges may occur before
14 the filing of charges. The discussions may be considered by the
15 prosecutor in charging and disposition decisions, and should be
16 considered before reaching any agreement with the defendant regarding
17 these decisions.

18 **Sec. 4.** RCW 9.94A.501 and 2016 sp.s. c 28 s 1 are each amended
19 to read as follows:

20 (1) The department shall supervise the following offenders who
21 are sentenced to probation in superior court, pursuant to RCW
22 9.92.060, 9.95.204, or 9.95.210:

23 (a) Offenders convicted of:

- 24 (i) Sexual misconduct with a minor second degree;
- 25 (ii) Custodial sexual misconduct second degree;
- 26 (iii) Communication with a minor for immoral purposes; (~~and~~)
- 27 (iv) Providing harmful material to a minor; and

28 (v) Violation of RCW 9A.44.132(2) (failure to register); and

29 (b) Offenders who have:

30 (i) A current conviction for a repetitive domestic violence
31 offense where domestic violence has been pleaded and proven after
32 August 1, 2011; and

33 (ii) A prior conviction for a repetitive domestic violence
34 offense or domestic violence felony offense where domestic violence
35 has been pleaded and proven after August 1, 2011.

36 (2) Misdemeanor and gross misdemeanor offenders supervised by the
37 department pursuant to this section shall be placed on community
38 custody.

1 (3) The department shall supervise every felony offender
2 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
3 whose risk assessment classifies the offender as one who is at a high
4 risk to reoffend.

5 (4) Notwithstanding any other provision of this section, the
6 department shall supervise an offender sentenced to community custody
7 regardless of risk classification if the offender:

8 (a) Has a current conviction for a sex offense or a serious
9 violent offense and was sentenced to a term of community custody
10 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

11 (b) Has been identified by the department as a dangerous mentally
12 ill offender pursuant to RCW 72.09.370;

13 (c) Has an indeterminate sentence and is subject to parole
14 pursuant to RCW 9.95.017;

15 (d) Has a current conviction for violating RCW 9A.44.132(1)
16 (failure to register) and was sentenced to a term of community
17 custody pursuant to RCW 9.94A.701;

18 (e)(i) Has a current conviction for a domestic violence felony
19 offense where domestic violence has been pleaded and proven after
20 August 1, 2011, and a prior conviction for a repetitive domestic
21 violence offense or domestic violence felony offense where domestic
22 violence was pleaded and proven after August 1, 2011. This subsection
23 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

24 (ii) Has a current conviction for a domestic violence felony
25 offense where domestic violence was pleaded and proven. The state and
26 its officers, agents, and employees shall not be held criminally or
27 civilly liable for its supervision of an offender under this
28 subsection (4)(e)(ii) unless the state and its officers, agents, and
29 employees acted with gross negligence;

30 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
31 9.94A.670;

32 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

33 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
34 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)
35 (felony DUI), or RCW 46.61.504(6) (felony physical control).

36 (5) The department shall supervise any offender who is released
37 by the indeterminate sentence review board and who was sentenced to
38 community custody or subject to community custody under the terms of
39 release.

1 (6) The department is not authorized to, and may not, supervise
2 any offender sentenced to a term of community custody or any
3 probationer unless the offender or probationer is one for whom
4 supervision is required under this section or RCW 9.94A.5011.

5 (7) The department shall conduct a risk assessment for every
6 felony offender sentenced to a term of community custody who may be
7 subject to supervision under this section or RCW 9.94A.5011.

8 (8) The period of time the department is authorized to supervise
9 an offender under this section may not exceed the duration of
10 community custody specified under RCW 9.94B.050, 9.94A.701 (1)
11 through (8), or 9.94A.702, except in cases where the court has
12 imposed an exceptional term of community custody under RCW 9.94A.535.

13 **Sec. 5.** RCW 9.94A.515 and 2018 c 236 s 721 and 2018 c 7 s 7 are
14 each reenacted and amended to read as follows:

15 TABLE 2

16 CRIMES INCLUDED WITHIN EACH
17 SERIOUSNESS LEVEL

- 18 XVI Aggravated Murder 1 (RCW 10.95.020)
- 19 XV Homicide by abuse (RCW 9A.32.055)
- 20 Malicious explosion 1 (RCW
21 70.74.280(1))
- 22 Murder 1 (RCW 9A.32.030)
- 23 XIV Murder 2 (RCW 9A.32.050)
- 24 Trafficking 1 (RCW 9A.40.100(1))
- 25 XIII Malicious explosion 2 (RCW
26 70.74.280(2))
- 27 Malicious placement of an explosive 1
28 (RCW 70.74.270(1))
- 29 XII Assault 1 (RCW 9A.36.011)
- 30 Assault of a Child 1 (RCW 9A.36.120)
- 31 Malicious placement of an imitation
32 device 1 (RCW 70.74.272(1)(a))
- 33 Promoting Commercial Sexual Abuse of
34 a Minor (RCW 9.68A.101)
- 35 Rape 1 (RCW 9A.44.040)

1 Rape of a Child 1 (RCW 9A.44.073)
2 Trafficking 2 (RCW 9A.40.100(3))
3 XI Manslaughter 1 (RCW 9A.32.060)
4 Rape 2 (RCW 9A.44.050)
5 Rape of a Child 2 (RCW 9A.44.076)
6 Vehicular Homicide, by being under the
7 influence of intoxicating liquor or
8 any drug (RCW 46.61.520)
9 Vehicular Homicide, by the operation of
10 any vehicle in a reckless manner
11 (RCW 46.61.520)
12 X Child Molestation 1 (RCW 9A.44.083)
13 Criminal Mistreatment 1 (RCW
14 9A.42.020)
15 Indecent Liberties (with forcible
16 compulsion) (RCW
17 9A.44.100(1)(a))
18 Kidnapping 1 (RCW 9A.40.020)
19 Leading Organized Crime (RCW
20 9A.82.060(1)(a))
21 Malicious explosion 3 (RCW
22 70.74.280(3))
23 Sexually Violent Predator Escape (RCW
24 9A.76.115)
25 IX Abandonment of Dependent Person 1
26 (RCW 9A.42.060)
27 Assault of a Child 2 (RCW 9A.36.130)
28 Explosive devices prohibited (RCW
29 70.74.180)
30 Hit and Run—Death (RCW
31 46.52.020(4)(a))
32 Homicide by Watercraft, by being under
33 the influence of intoxicating liquor
34 or any drug (RCW 79A.60.050)

1 Inciting Criminal Profiteering (RCW
2 9A.82.060(1)(b))
3 Malicious placement of an explosive 2
4 (RCW 70.74.270(2))
5 Robbery 1 (RCW 9A.56.200)
6 Sexual Exploitation (RCW 9.68A.040)
7 VIII Arson 1 (RCW 9A.48.020)
8 Commercial Sexual Abuse of a Minor
9 (RCW 9.68A.100)
10 Homicide by Watercraft, by the
11 operation of any vessel in a reckless
12 manner (RCW 79A.60.050)
13 Manslaughter 2 (RCW 9A.32.070)
14 Promoting Prostitution 1 (RCW
15 9A.88.070)
16 Theft of Ammonia (RCW 69.55.010)
17 VII Air bag diagnostic systems (causing
18 bodily injury or death) (RCW
19 46.37.660(2)(b))
20 Air bag replacement requirements
21 (causing bodily injury or death)
22 (RCW 46.37.660(1)(b))
23 Burglary 1 (RCW 9A.52.020)
24 Child Molestation 2 (RCW 9A.44.086)
25 Civil Disorder Training (RCW
26 9A.48.120)
27 Dealing in depictions of minor engaged
28 in sexually explicit conduct 1
29 (RCW 9.68A.050(1))
30 Drive-by Shooting (RCW 9A.36.045)
31 Homicide by Watercraft, by disregard
32 for the safety of others (RCW
33 79A.60.050)

1 Indecent Liberties (without forcible
2 compulsion) (RCW 9A.44.100(1)
3 (b) and (c))
4 Introducing Contraband 1 (RCW
5 9A.76.140)
6 Malicious placement of an explosive 3
7 (RCW 70.74.270(3))
8 Manufacture or import counterfeit,
9 nonfunctional, damaged, or
10 previously deployed air bag
11 (causing bodily injury or death)
12 (RCW 46.37.650(1)(b))
13 Negligently Causing Death By Use of a
14 Signal Preemption Device (RCW
15 46.37.675)
16 Sell, install, or reinstall counterfeit,
17 nonfunctional, damaged, or
18 previously deployed airbag (RCW
19 46.37.650(2)(b))
20 Sending, bringing into state depictions
21 of minor engaged in sexually
22 explicit conduct 1 (RCW
23 9.68A.060(1))
24 Unlawful Possession of a Firearm in the
25 first degree (RCW 9.41.040(1))
26 Use of a Machine Gun or Bump-fire
27 Stock in Commission of a Felony
28 (RCW 9.41.225)
29 Vehicular Homicide, by disregard for
30 the safety of others (RCW
31 46.61.520)
32 VI Bail Jumping with Murder 1 (RCW
33 9A.76.170(3)(a))
34 Bribery (RCW 9A.68.010)
35 Incest 1 (RCW 9A.64.020(1))
36 Intimidating a Judge (RCW 9A.72.160)

1 Intimidating a Juror/Witness (RCW
2 9A.72.110, 9A.72.130)
3 Malicious placement of an imitation
4 device 2 (RCW 70.74.272(1)(b))
5 Possession of Depictions of a Minor
6 Engaged in Sexually Explicit
7 Conduct 1 (RCW 9.68A.070(1))
8 Rape of a Child 3 (RCW 9A.44.079)
9 Theft of a Firearm (RCW 9A.56.300)
10 Theft from a Vulnerable Adult 1 (RCW
11 9A.56.400(1))
12 Unlawful Storage of Ammonia (RCW
13 69.55.020)
14 V Abandonment of Dependent Person 2
15 (RCW 9A.42.070)
16 Advancing money or property for
17 extortionate extension of credit
18 (RCW 9A.82.030)
19 Air bag diagnostic systems (RCW
20 46.37.660(2)(c))
21 Air bag replacement requirements
22 (RCW 46.37.660(1)(c))
23 Bail Jumping with class A Felony
24 (RCW 9A.76.170(3)(b))
25 Child Molestation 3 (RCW 9A.44.089)
26 Criminal Mistreatment 2 (RCW
27 9A.42.030)
28 Custodial Sexual Misconduct 1 (RCW
29 9A.44.160)
30 Dealing in Depictions of Minor
31 Engaged in Sexually Explicit
32 Conduct 2 (RCW 9.68A.050(2))

1 Domestic Violence Court Order
2 Violation (RCW 10.99.040,
3 10.99.050, 26.09.300, 26.10.220,
4 ((~~26.26.138~~)) 26.26B.050,
5 26.50.110, 26.52.070, or 74.34.145)
6 Extortion 1 (RCW 9A.56.120)
7 Extortionate Extension of Credit (RCW
8 9A.82.020)
9 Extortionate Means to Collect
10 Extensions of Credit (RCW
11 9A.82.040)
12 Incest 2 (RCW 9A.64.020(2))
13 Kidnapping 2 (RCW 9A.40.030)
14 Manufacture or import counterfeit,
15 nonfunctional, damaged, or
16 previously deployed air bag (RCW
17 46.37.650(1)(c))
18 Perjury 1 (RCW 9A.72.020)
19 Persistent prison misbehavior (RCW
20 9.94.070)
21 Possession of a Stolen Firearm (RCW
22 9A.56.310)
23 Rape 3 (RCW 9A.44.060)
24 Rendering Criminal Assistance 1 (RCW
25 9A.76.070)
26 Sell, install, or reinstall counterfeit,
27 nonfunctional, damaged, or
28 previously deployed airbag (RCW
29 46.37.650(2)(c))
30 Sending, Bringing into State Depictions
31 of Minor Engaged in Sexually
32 Explicit Conduct 2 (RCW
33 9.68A.060(2))
34 Sexual Misconduct with a Minor 1
35 (RCW 9A.44.093)

1 Sexually Violating Human Remains
2 (RCW 9A.44.105)
3 Stalking (RCW 9A.46.110)
4 Taking Motor Vehicle Without
5 Permission 1 (RCW 9A.56.070)
6 IV Arson 2 (RCW 9A.48.030)
7 Assault 2 (RCW 9A.36.021)
8 Assault 3 (of a Peace Officer with a
9 Projectile Stun Gun) (RCW
10 9A.36.031(1)(h))
11 Assault 4 (third domestic violence
12 offense) (RCW 9A.36.041(3))
13 Assault by Watercraft (RCW
14 79A.60.060)
15 Bribing a Witness/Bribe Received by
16 Witness (RCW 9A.72.090,
17 9A.72.100)
18 Cheating 1 (RCW 9A.46.1961)
19 Commercial Bribery (RCW 9A.68.060)
20 Counterfeiting (RCW 9.16.035(4))
21 Driving While Under the Influence
22 (RCW 46.61.502(6))
23 Endangerment with a Controlled
24 Substance (RCW 9A.42.100)
25 Escape 1 (RCW 9A.76.110)
26 Hit and Run—Injury (RCW
27 46.52.020(4)(b))
28 Hit and Run with Vessel—Injury
29 Accident (RCW 79A.60.200(3))
30 Identity Theft 1 (RCW 9.35.020(2))
31 Indecent Exposure to Person Under Age
32 Fourteen (subsequent sex offense)
33 (RCW 9A.88.010)
34 Influencing Outcome of Sporting Event
35 (RCW 9A.82.070)

1 Malicious Harassment (RCW
2 9A.36.080)
3 Physical Control of a Vehicle While
4 Under the Influence (RCW
5 46.61.504(6))
6 Possession of Depictions of a Minor
7 Engaged in Sexually Explicit
8 Conduct 2 (RCW 9.68A.070(2))
9 Residential Burglary (RCW 9A.52.025)
10 Robbery 2 (RCW 9A.56.210)
11 Theft of Livestock 1 (RCW 9A.56.080)
12 Threats to Bomb (RCW 9.61.160)
13 Trafficking in Stolen Property 1 (RCW
14 9A.82.050)
15 Unlawful factoring of a credit card or
16 payment card transaction (RCW
17 9A.56.290(4)(b))
18 Unlawful transaction of health coverage
19 as a health care service contractor
20 (RCW 48.44.016(3))
21 Unlawful transaction of health coverage
22 as a health maintenance
23 organization (RCW 48.46.033(3))
24 Unlawful transaction of insurance
25 business (RCW 48.15.023(3))
26 Unlicensed practice as an insurance
27 professional (RCW 48.17.063(2))
28 Use of Proceeds of Criminal
29 Profiteering (RCW 9A.82.080 (1)
30 and (2))
31 Vehicle Prowling 2 (third or subsequent
32 offense) (RCW 9A.52.100(3))

1 Vehicular Assault, by being under the
2 influence of intoxicating liquor or
3 any drug, or by the operation or
4 driving of a vehicle in a reckless
5 manner (RCW 46.61.522)

6 Viewing of Depictions of a Minor
7 Engaged in Sexually Explicit
8 Conduct 1 (RCW 9.68A.075(1))

9 Willful Failure to Return from Furlough
10 (RCW 72.66.060)

11 III Animal Cruelty 1 (Sexual Conduct or
12 Contact) (RCW 16.52.205(3))

13 Assault 3 (Except Assault 3 of a Peace
14 Officer With a Projectile Stun Gun)
15 (RCW 9A.36.031 except subsection
16 (1)(h))

17 Assault of a Child 3 (RCW 9A.36.140)

18 Bail Jumping with class B or C Felony
19 (RCW 9A.76.170(3)(c))

20 Burglary 2 (RCW 9A.52.030)

21 Communication with a Minor for
22 Immoral Purposes (RCW
23 9.68A.090)

24 Criminal Gang Intimidation (RCW
25 9A.46.120)

26 Custodial Assault (RCW 9A.36.100)

27 Cyberstalking (subsequent conviction or
28 threat of death) (RCW 9.61.260(3))

29 Escape 2 (RCW 9A.76.120)

30 Extortion 2 (RCW 9A.56.130)

31 Harassment (RCW 9A.46.020)

32 Intimidating a Public Servant (RCW
33 9A.76.180)

34 Introducing Contraband 2 (RCW
35 9A.76.150)

1 Malicious Injury to Railroad Property
2 (RCW 81.60.070)
3 Mortgage Fraud (RCW 19.144.080)
4 Negligently Causing Substantial Bodily
5 Harm By Use of a Signal
6 Preemption Device (RCW
7 46.37.674)
8 Organized Retail Theft 1 (RCW
9 9A.56.350(2))
10 Perjury 2 (RCW 9A.72.030)
11 Possession of Incendiary Device (RCW
12 9.40.120)
13 Possession of Machine Gun, Bump-fire
14 Stock, or Short-Barreled Shotgun or
15 Rifle (RCW 9.41.190)
16 Promoting Prostitution 2 (RCW
17 9A.88.080)
18 Providing Harmful Material to a Minor
19 (section 1(2)(b) of this act)
20 Retail Theft with Special Circumstances
21 1 (RCW 9A.56.360(2))
22 Securities Act violation (RCW
23 21.20.400)
24 Tampering with a Witness (RCW
25 9A.72.120)
26 Telephone Harassment (subsequent
27 conviction or threat of death) (RCW
28 9.61.230(2))
29 Theft of Livestock 2 (RCW 9A.56.083)
30 Theft with the Intent to Resell 1 (RCW
31 9A.56.340(2))
32 Trafficking in Stolen Property 2 (RCW
33 9A.82.055)
34 Unlawful Hunting of Big Game 1 (RCW
35 77.15.410(3)(b))

1 Unlawful Imprisonment (RCW
2 9A.40.040)

3 Unlawful Misbranding of (~~Food~~) Fish
4 or Shellfish 1 (RCW 77.140.060(3))

5 Unlawful possession of firearm in the
6 second degree (RCW 9.41.040(2))

7 Unlawful Taking of Endangered Fish or
8 Wildlife 1 (RCW 77.15.120(3)(b))

9 Unlawful Trafficking in Fish, Shellfish,
10 or Wildlife 1 (RCW
11 77.15.260(3)(b))

12 Unlawful Use of a Nondesignated
13 Vessel (RCW 77.15.530(4))

14 Vehicular Assault, by the operation or
15 driving of a vehicle with disregard
16 for the safety of others (RCW
17 46.61.522)

18 Willful Failure to Return from Work
19 Release (RCW 72.65.070)

20 II Commercial Fishing Without a License
21 1 (RCW 77.15.500(3)(b))

22 Computer Trespass 1 (RCW 9A.90.040)

23 Counterfeiting (RCW 9.16.035(3))

24 Electronic Data Service Interference
25 (RCW 9A.90.060)

26 Electronic Data Tampering 1 (RCW
27 9A.90.080)

28 Electronic Data Theft (RCW 9A.90.100)

29 Engaging in Fish Dealing Activity
30 Unlicensed 1 (RCW 77.15.620(3))

31 Escape from Community Custody
32 (RCW 72.09.310)

33 Failure to Register as a Sex Offender
34 (second or subsequent offense)
35 (RCW 9A.44.130 prior to June 10,
36 2010, and RCW 9A.44.132)

1 Health Care False Claims (RCW
2 48.80.030)
3 Identity Theft 2 (RCW 9.35.020(3))
4 Improperly Obtaining Financial
5 Information (RCW 9.35.010)
6 Malicious Mischief 1 (RCW 9A.48.070)
7 Organized Retail Theft 2 (RCW
8 9A.56.350(3))
9 Possession of Stolen Property 1 (RCW
10 9A.56.150)
11 Possession of a Stolen Vehicle (RCW
12 9A.56.068)
13 Retail Theft with Special Circumstances
14 2 (RCW 9A.56.360(3))
15 Scrap Processing, Recycling, or
16 Supplying Without a License
17 (second or subsequent offense)
18 (RCW 19.290.100)
19 Theft 1 (RCW 9A.56.030)
20 Theft of a Motor Vehicle (RCW
21 9A.56.065)
22 Theft of Rental, Leased, Lease-
23 purchased, or Loaned Property
24 (valued at five thousand dollars or
25 more) (RCW 9A.56.096(5)(a))
26 Theft with the Intent to Resell 2 (RCW
27 9A.56.340(3))
28 Trafficking in Insurance Claims (RCW
29 48.30A.015)
30 Unlawful factoring of a credit card or
31 payment card transaction (RCW
32 9A.56.290(4)(a))
33 Unlawful Participation of Non-Indians
34 in Indian Fishery (RCW
35 77.15.570(2))

1 Unlawful Practice of Law (RCW
2 2.48.180)
3 Unlawful Purchase or Use of a License
4 (RCW 77.15.650(3)(b))
5 Unlawful Trafficking in Fish, Shellfish,
6 or Wildlife 2 (RCW
7 77.15.260(3)(a))
8 Unlicensed Practice of a Profession or
9 Business (RCW 18.130.190(7))
10 Voyeurism 1 (RCW 9A.44.115)
11 I Attempting to Elude a Pursuing Police
12 Vehicle (RCW 46.61.024)
13 False Verification for Welfare (RCW
14 74.08.055)
15 Forgery (RCW 9A.60.020)
16 Fraudulent Creation or Revocation of a
17 Mental Health Advance Directive
18 (RCW 9A.60.060)
19 Malicious Mischief 2 (RCW 9A.48.080)
20 Mineral Trespass (RCW 78.44.330)
21 Possession of Stolen Property 2 (RCW
22 9A.56.160)
23 Reckless Burning 1 (RCW 9A.48.040)
24 Spotlighting Big Game 1 (RCW
25 77.15.450(3)(b))
26 Suspension of Department Privileges 1
27 (RCW 77.15.670(3)(b))
28 Taking Motor Vehicle Without
29 Permission 2 (RCW 9A.56.075)
30 Theft 2 (RCW 9A.56.040)
31 Theft from a Vulnerable Adult 2 (RCW
32 9A.56.400(2))

1 Theft of Rental, Leased, Lease-
2 purchased, or Loaned Property
3 (valued at seven hundred fifty
4 dollars or more but less than five
5 thousand dollars) (RCW
6 9A.56.096(5)(b))
7 Transaction of insurance business
8 beyond the scope of licensure
9 (RCW 48.17.063)
10 Unlawful Fish and Shellfish Catch
11 Accounting (RCW 77.15.630(3)(b))
12 Unlawful Issuance of Checks or Drafts
13 (RCW 9A.56.060)
14 Unlawful Possession of Fictitious
15 Identification (RCW 9A.56.320)
16 Unlawful Possession of Instruments of
17 Financial Fraud (RCW 9A.56.320)
18 Unlawful Possession of Payment
19 Instruments (RCW 9A.56.320)
20 Unlawful Possession of a Personal
21 Identification Device (RCW
22 9A.56.320)
23 Unlawful Production of Payment
24 Instruments (RCW 9A.56.320)
25 Unlawful Releasing, Planting,
26 Possessing, or Placing Deleterious
27 Exotic Wildlife (RCW
28 77.15.250(2)(b))
29 Unlawful Trafficking in Food Stamps
30 (RCW 9.91.142)
31 Unlawful Use of Food Stamps (RCW
32 9.91.144)
33 Unlawful Use of Net to Take Fish 1
34 (RCW 77.15.580(3)(b))
35 Unlawful Use of Prohibited Aquatic
36 Animal Species (RCW
37 77.15.253(3))

1 Vehicle Prowl 1 (RCW 9A.52.095)

2 Violating Commercial Fishing Area or

3 Time 1 (RCW 77.15.550(3)(b))

4 **Sec. 6.** RCW 9.95.062 and 2011 c 111 s 3 are each amended to read
5 as follows:

6 (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant
7 in a criminal action shall not stay the execution of the judgment of
8 conviction, if the court determines by a preponderance of the
9 evidence that:

10 (a) The defendant is likely to flee or to pose a danger to the
11 safety of any other person or the community if the judgment is
12 stayed; or

13 (b) The delay resulting from the stay will unduly diminish the
14 deterrent effect of the punishment; or

15 (c) A stay of the judgment will cause unreasonable trauma to the
16 victims of the crime or their families; or

17 (d) The defendant has not undertaken to the extent of the
18 defendant's financial ability to pay the financial obligations under
19 the judgment or has not posted an adequate performance bond to assure
20 payment.

21 (2) An appeal by a defendant convicted of one of the following
22 offenses shall not stay execution of the judgment of conviction: Rape
23 in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of
24 a child in the first, second, or third degree (RCW 9A.44.073,
25 9A.44.076, and 9A.44.079); child molestation in the first, second, or
26 third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual
27 misconduct with a minor in the first or second degree (RCW 9A.44.093
28 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW
29 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or
30 second degree (RCW 9A.40.100); promoting commercial sexual abuse of a
31 minor (RCW 9.68A.101); any class A or B felony that is a sexually
32 motivated offense as defined in RCW 9.94A.030; a felony violation of
33 RCW 9.68A.090; a felony violation of section 1 of this act; or any
34 offense that is, under chapter 9A.28 RCW, a criminal attempt,
35 solicitation, or conspiracy to commit one of those offenses.

36 (3) In case the defendant has been convicted of a felony, and has
37 been unable to obtain release pending the appeal by posting an appeal
38 bond, cash, adequate security, release on personal recognizance, or

1 any other conditions imposed by the court, the time the defendant has
2 been imprisoned pending the appeal shall be deducted from the term
3 for which the defendant was sentenced, if the judgment is affirmed.

4 **Sec. 7.** RCW 9A.44.128 and 2015 c 261 s 2 are each amended to
5 read as follows:

6 For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200,
7 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

8 (1) "Business day" means any day other than Saturday, Sunday, or
9 a legal local, state, or federal holiday.

10 (2) "Conviction" means any adult conviction or juvenile
11 adjudication for a sex offense or kidnapping offense.

12 (3) "Disqualifying offense" means a conviction for: Any offense
13 that is a felony; a sex offense as defined in this section; a crime
14 against children or persons as defined in RCW 43.43.830(7) and
15 9.94A.411(2)(a); an offense with a domestic violence designation as
16 provided in RCW 10.99.020; permitting the commercial sexual abuse of
17 a minor as defined in RCW 9.68A.103; or any violation of chapter
18 9A.88 RCW.

19 (4) "Employed" or "carries on a vocation" means employment that
20 is full time or part time for a period of time exceeding fourteen
21 days, or for an aggregate period of time exceeding thirty days during
22 any calendar year. A person is employed or carries on a vocation
23 whether the person's employment is financially compensated,
24 volunteered, or for the purpose of government or educational benefit.

25 (5) "Fixed residence" means a building that a person lawfully and
26 habitually uses as living quarters a majority of the week. Uses as
27 living quarters means to conduct activities consistent with the
28 common understanding of residing, such as sleeping; eating; keeping
29 personal belongings; receiving mail; and paying utilities, rent, or
30 mortgage. A nonpermanent structure including, but not limited to, a
31 motor home, travel trailer, camper, or boat may qualify as a
32 residence provided it is lawfully and habitually used as living
33 quarters a majority of the week, primarily kept at one location with
34 a physical address, and the location it is kept at is either owned or
35 rented by the person or used by the person with the permission of the
36 owner or renter. A shelter program may qualify as a residence
37 provided it is a shelter program designed to provide temporary living
38 accommodations for the homeless, provides an offender with a

1 personally assigned living space, and the offender is permitted to
2 store belongings in the living space.

3 (6) "In the community" means residing outside of confinement or
4 incarceration for a disqualifying offense.

5 (7) "Institution of higher education" means any public or private
6 institution dedicated to postsecondary education, including any
7 college, university, community college, trade, or professional
8 school.

9 (8) "Kidnapping offense" means:

10 (a) The crimes of kidnapping in the first degree, kidnapping in
11 the second degree, and unlawful imprisonment, as defined in chapter
12 9A.40 RCW, where the victim is a minor and the offender is not the
13 minor's parent;

14 (b) Any offense that is, under chapter 9A.28 RCW, a criminal
15 attempt, criminal solicitation, or criminal conspiracy to commit an
16 offense that is classified as a kidnapping offense under this
17 subsection;

18 (c) Any federal or out-of-state conviction for: An offense for
19 which the person would be required to register as a kidnapping
20 offender if residing in the state of conviction; or, if not required
21 to register in the state of conviction, an offense that under the
22 laws of this state would be classified as a kidnapping offense under
23 this subsection; and

24 (d) Any tribal conviction for an offense for which the person
25 would be required to register as a kidnapping offender while residing
26 in the reservation of conviction; or, if not required to register in
27 the reservation of conviction, an offense that under the laws of this
28 state would be classified as a kidnapping offense under this
29 subsection.

30 (9) "Lacks a fixed residence" means the person does not have a
31 living situation that meets the definition of a fixed residence and
32 includes, but is not limited to, a shelter program designed to
33 provide temporary living accommodations for the homeless, an outdoor
34 sleeping location, or locations where the person does not have
35 permission to stay.

36 (10) "Sex offense" means:

37 (a) Any offense defined as a sex offense by RCW 9.94A.030;

38 (b) Any violation under RCW 9A.44.096 (sexual misconduct with a
39 minor in the second degree);

40 (c) Any violation under RCW 9A.40.100(1)(b)(ii) (trafficking);

1 (d) Any violation under RCW 9.68A.090 (communication with a minor
2 for immoral purposes);

3 (e) A violation under RCW 9A.88.070 (promoting prostitution in
4 the first degree) or RCW 9A.88.080 (promoting prostitution in the
5 second degree) if the person has a prior conviction for one of these
6 offenses;

7 (f) Any violation under RCW 9A.40.100(1)(a)(i)(A) (III) or (IV)
8 or (a)(i)(B);

9 (g) Any violation under section 1 of this act;

10 (h) Any gross misdemeanor that is, under chapter 9A.28 RCW, a
11 criminal attempt, criminal solicitation, or criminal conspiracy to
12 commit an offense that is classified as a sex offense under RCW
13 9.94A.030 or this subsection;

14 (~~(h)~~) (i) Any out-of-state conviction for an offense for which
15 the person would be required to register as a sex offender while
16 residing in the state of conviction; or, if not required to register
17 in the state of conviction, an offense that under the laws of this
18 state would be classified as a sex offense under this subsection;

19 (~~(i)~~) (j) Any federal conviction classified as a sex offense
20 under 42 U.S.C. Sec. 16911 (SORNA);

21 (~~(j)~~) (k) Any military conviction for a sex offense. This
22 includes sex offenses under the uniform code of military justice, as
23 specified by the United States secretary of defense;

24 (~~(k)~~) (l) Any conviction in a foreign country for a sex offense
25 if it was obtained with sufficient safeguards for fundamental
26 fairness and due process for the accused under guidelines or
27 regulations established pursuant to 42 U.S.C. Sec. 16912;

28 (~~(l)~~) (m) Any tribal conviction for an offense for which the
29 person would be required to register as a sex offender while residing
30 in the reservation of conviction; or, if not required to register in
31 the reservation of conviction, an offense that under the laws of this
32 state would be classified as a sex offense under this subsection.

33 (11) "School" means a public or private school regulated under
34 Title 28A RCW or chapter 72.40 RCW.

35 (12) "Student" means a person who is enrolled, on a full-time or
36 part-time basis, in any school or institution of higher education.

37 **Sec. 8.** RCW 9A.44.140 and 2015 c 261 s 6 are each amended to
38 read as follows:

1 The duty to register under RCW 9A.44.130 shall continue for the
2 duration provided in this section.

3 (1) For a person convicted in this state of a class A felony, or
4 a person convicted of any sex offense or kidnapping offense who has
5 one or more prior convictions for a sex offense or kidnapping
6 offense, the duty to register shall continue indefinitely.

7 (2) For a person convicted in this state of a class B felony who
8 does not have one or more prior convictions for a sex offense or
9 kidnapping offense, the duty to register shall end fifteen years
10 after the last date of release from confinement, if any, (including
11 full-time residential treatment) pursuant to the conviction, or entry
12 of the judgment and sentence, if the person has spent fifteen
13 consecutive years in the community without being convicted of a
14 disqualifying offense during that time period.

15 (3) For a person convicted in this state of a class C felony, a
16 violation of RCW 9.68A.090 (~~(or)~~), 9A.44.096, or section 1 of this
17 act, or an attempt, solicitation, or conspiracy to commit a class C
18 felony, and the person does not have one or more prior convictions
19 for a sex offense or kidnapping offense, the duty to register shall
20 end ten years after the last date of release from confinement, if
21 any, (including full-time residential treatment) pursuant to the
22 conviction, or entry of the judgment and sentence, if the person has
23 spent ten consecutive years in the community without being convicted
24 of a disqualifying offense during that time period.

25 (4) Except as provided in RCW 9A.44.142, for a person required to
26 register for a federal, tribal, or out-of-state conviction, the duty
27 to register shall continue indefinitely.

28 (5) For a person who is or has been determined to be a sexually
29 violent predator pursuant to chapter 71.09 RCW, the duty to register
30 shall continue for the person's lifetime.

31 (6) Nothing in this section prevents a person from being relieved
32 of the duty to register under RCW 9A.44.142 and 9A.44.143.

33 (7) Nothing in RCW 9.94A.637 relating to discharge of an offender
34 shall be construed as operating to relieve the offender of his or her
35 duty to register pursuant to RCW 9A.44.130.

36 (8) For purposes of determining whether a person has been
37 convicted of more than one sex offense, failure to register as a sex
38 offender or kidnapping offender is not a sex or kidnapping offense.

39 (9) The provisions of this section and RCW 9A.44.141 through
40 9A.44.143 apply equally to a person who has been found not guilty by

1 reason of insanity under chapter 10.77 RCW of a sex offense or
2 kidnapping offense.

3 **Sec. 9.** RCW 10.64.025 and 2011 c 111 s 4 are each amended to
4 read as follows:

5 (1) A defendant who has been found guilty of a felony and is
6 awaiting sentencing shall be detained unless the court finds by clear
7 and convincing evidence that the defendant is not likely to flee or
8 to pose a danger to the safety of any other person or the community
9 if released. Any bail bond that was posted on behalf of a defendant
10 shall, upon the defendant's conviction, be exonerated.

11 (2) A defendant who has been found guilty of one of the following
12 offenses shall be detained pending sentencing: Rape in the first or
13 second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the
14 first, second, or third degree (RCW 9A.44.073, 9A.44.076, and
15 9A.44.079); child molestation in the first, second, or third degree
16 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a
17 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);
18 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring
19 (RCW 9A.40.090); human trafficking in the first or second degree (RCW
20 9A.40.100); promoting commercial sexual abuse of a minor (RCW
21 9.68A.101); any class A or B felony that is a sexually motivated
22 offense as defined in RCW 9.94A.030; a felony violation of RCW
23 9.68A.090; a felony violation of section 1 of this act; or any
24 offense that is, under chapter 9A.28 RCW, a criminal attempt,
25 solicitation, or conspiracy to commit one of those offenses.

26 **Sec. 10.** RCW 43.43.754 and 2017 c 272 s 4 are each amended to
27 read as follows:

28 (1) A biological sample must be collected for purposes of DNA
29 identification analysis from:

30 (a) Every adult or juvenile individual convicted of a felony, or
31 any of the following crimes (or equivalent juvenile offenses):

32 (i) Assault in the fourth degree where domestic violence as
33 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
34 9.94A.030);

35 (ii) Assault in the fourth degree with sexual motivation (RCW
36 9A.36.041, 9.94A.835);

37 (iii) Communication with a minor for immoral purposes (RCW
38 9.68A.090);

1 (iv) Custodial sexual misconduct in the second degree (RCW
2 9A.44.170);

3 (v) Failure to register (RCW 9A.44.130 for persons convicted on
4 or before June 10, 2010, and RCW 9A.44.132 for persons convicted
5 after June 10, 2010);

6 (vi) Harassment (RCW 9A.46.020);

7 (vii) Patronizing a prostitute (RCW 9A.88.110);

8 (viii) Sexual misconduct with a minor in the second degree (RCW
9 9A.44.096);

10 (ix) Stalking (RCW 9A.46.110);

11 (x) Providing harmful material to a minor (section 1 of this
12 act);

13 (xi) Violation of a sexual assault protection order granted under
14 chapter 7.90 RCW; and

15 (b) Every adult or juvenile individual who is required to
16 register under RCW 9A.44.130.

17 (2) If the Washington state patrol crime laboratory already has a
18 DNA sample from an individual for a qualifying offense, a subsequent
19 submission is not required to be submitted.

20 (3) Biological samples shall be collected in the following
21 manner:

22 (a) For persons convicted of any offense listed in subsection
23 (1)(a) of this section or adjudicated guilty of an equivalent
24 juvenile offense who do not serve a term of confinement in a
25 department of corrections facility, and do serve a term of
26 confinement in a city or county jail facility, the city or county
27 shall be responsible for obtaining the biological samples.

28 (b) The local police department or sheriff's office shall be
29 responsible for obtaining the biological samples for:

30 (i) Persons convicted of any offense listed in subsection (1)(a)
31 of this section or adjudicated guilty of an equivalent juvenile
32 offense who do not serve a term of confinement in a department of
33 corrections facility, and do not serve a term of confinement in a
34 city or county jail facility; and

35 (ii) Persons who are required to register under RCW 9A.44.130.

36 (c) For persons convicted of any offense listed in subsection
37 (1)(a) of this section or adjudicated guilty of an equivalent
38 juvenile offense, who are serving or who are to serve a term of
39 confinement in a department of corrections facility or a department
40 of social and health services facility, the facility holding the

1 person shall be responsible for obtaining the biological samples. For
2 those persons incarcerated before June 12, 2008, who have not yet had
3 a biological sample collected, priority shall be given to those
4 persons who will be released the soonest.

5 (4) Any biological sample taken pursuant to RCW 43.43.752 through
6 43.43.758 may be retained by the forensic laboratory services bureau,
7 and shall be used solely for the purpose of providing DNA or other
8 tests for identification analysis and prosecution of a criminal
9 offense or for the identification of human remains or missing
10 persons. Nothing in this section prohibits the submission of results
11 derived from the biological samples to the federal bureau of
12 investigation combined DNA index system.

13 (5) The forensic laboratory services bureau of the Washington
14 state patrol is responsible for testing performed on all biological
15 samples that are collected under subsection (1) of this section, to
16 the extent allowed by funding available for this purpose. The
17 director shall give priority to testing on samples collected from
18 those adults or juveniles convicted of a felony or adjudicated guilty
19 of an equivalent juvenile offense that is defined as a sex offense or
20 a violent offense in RCW 9.94A.030. Known duplicate samples may be
21 excluded from testing unless testing is deemed necessary or advisable
22 by the director.

23 (6) This section applies to:

24 (a) All adults and juveniles to whom this section applied prior
25 to June 12, 2008;

26 (b) All adults and juveniles to whom this section did not apply
27 prior to June 12, 2008, who:

28 (i) Are convicted on or after June 12, 2008, of an offense listed
29 in subsection (1)(a) of this section; or

30 (ii) Were convicted prior to June 12, 2008, of an offense listed
31 in subsection (1)(a) of this section and are still incarcerated on or
32 after June 12, 2008; and

33 (c) All adults and juveniles who are required to register under
34 RCW 9A.44.130 on or after June 12, 2008, whether convicted before,
35 on, or after June 12, 2008.

36 (7) This section creates no rights in a third person. No cause of
37 action may be brought based upon the noncollection or nonanalysis or
38 the delayed collection or analysis of a biological sample authorized
39 to be taken under RCW 43.43.752 through 43.43.758.

1 (8) The detention, arrest, or conviction of a person based upon a
2 database match or database information is not invalidated if it is
3 determined that the sample was obtained or placed in the database by
4 mistake, or if the conviction or juvenile adjudication that resulted
5 in the collection of the biological sample was subsequently vacated
6 or otherwise altered in any future proceeding including but not
7 limited to posttrial or postfact-finding motions, appeals, or
8 collateral attacks.

9 (9) A person commits the crime of refusal to provide DNA if the
10 person has a duty to register under RCW 9A.44.130 and the person
11 willfully refuses to comply with a legal request for a DNA sample as
12 required under this section. The refusal to provide DNA is a gross
13 misdemeanor.

14 **Sec. 11.** RCW 43.43.830 and 2017 c 272 s 5 are each amended to
15 read as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout RCW 43.43.830 through 43.43.845.

18 (1) "Agency" means any person, firm, partnership, association,
19 corporation, or facility which receives, provides services to, houses
20 or otherwise cares for vulnerable adults, juveniles, or children, or
21 which provides child day care, early learning, or early childhood
22 education services.

23 (2) "Applicant" means:

24 (a) Any prospective employee who will or may have unsupervised
25 access to children under sixteen years of age or developmentally
26 disabled persons or vulnerable adults during the course of his or her
27 employment or involvement with the business or organization;

28 (b) Any prospective volunteer who will have regularly scheduled
29 unsupervised access to children under sixteen years of age,
30 developmentally disabled persons, or vulnerable adults during the
31 course of his or her employment or involvement with the business or
32 organization under circumstances where such access will or may
33 involve groups of (i) five or fewer children under twelve years of
34 age, (ii) three or fewer children between twelve and sixteen years of
35 age, (iii) developmentally disabled persons, or (iv) vulnerable
36 adults;

37 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
38 or

1 (d) Any prospective custodian in a nonparental custody proceeding
2 under chapter 26.10 RCW.

3 (3) "Business or organization" means a person, business, or
4 organization licensed in this state, any agency of the state, or
5 other governmental entity, that educates, trains, treats, supervises,
6 houses, or provides recreation to developmentally disabled persons,
7 vulnerable adults, or children under sixteen years of age, or that
8 provides child day care, early learning, or early learning childhood
9 education services, including but not limited to public housing
10 authorities, school districts, and educational service districts.

11 (4) "Civil adjudication proceeding" is a judicial or
12 administrative adjudicative proceeding that results in a finding of,
13 or upholds an agency finding of, domestic violence, abuse, sexual
14 abuse, neglect, abandonment, violation of a professional licensing
15 standard regarding a child or vulnerable adult, or exploitation or
16 financial exploitation of a child or vulnerable adult under any
17 provision of law, including but not limited to chapter 13.34, 26.44,
18 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.
19 "Civil adjudication proceeding" also includes judicial or
20 administrative findings that become final due to the failure of the
21 alleged perpetrator to timely exercise a legal right to
22 administratively challenge such findings.

23 (5) "Client" or "resident" means a child, person with
24 developmental disabilities, or vulnerable adult applying for housing
25 assistance from a business or organization.

26 (6) "Conviction record" means "conviction record" information as
27 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed
28 by either an adult or a juvenile. It does not include a conviction
29 for an offense that has been the subject of an expungement, pardon,
30 annulment, certificate of rehabilitation, or other equivalent
31 procedure based on a finding of the rehabilitation of the person
32 convicted, or a conviction that has been the subject of a pardon,
33 annulment, or other equivalent procedure based on a finding of
34 innocence. It does include convictions for offenses for which the
35 defendant received a deferred or suspended sentence, unless the
36 record has been expunged according to law.

37 (7) "Crime against children or other persons" means a conviction
38 of any of the following offenses: Aggravated murder; first or second
39 degree murder; first or second degree kidnapping; first, second, or
40 third degree assault; fourth degree assault (if a violation of RCW

1 9A.36.041(3)); first, second, or third degree assault of a child;
2 first, second, or third degree rape; first, second, or third degree
3 rape of a child; first or second degree robbery; first degree arson;
4 first degree burglary; first or second degree manslaughter; first or
5 second degree extortion; indecent liberties; incest; vehicular
6 homicide; first degree promoting prostitution; communication with a
7 minor; providing harmful material to a minor; unlawful imprisonment;
8 simple assault; sexual exploitation of minors; first or second degree
9 criminal mistreatment; endangerment with a controlled substance;
10 child abuse or neglect as defined in RCW 26.44.020; first or second
11 degree custodial interference; first or second degree custodial
12 sexual misconduct; malicious harassment; first, second, or third
13 degree child molestation; first or second degree sexual misconduct
14 with a minor; commercial sexual abuse of a minor; child abandonment;
15 promoting pornography; selling or distributing erotic material to a
16 minor; custodial assault; violation of child abuse restraining order;
17 child buying or selling; prostitution; felony indecent exposure;
18 criminal abandonment; or any of these crimes as they may be renamed
19 in the future.

20 (8) "Crimes relating to drugs" means a conviction of a crime to
21 manufacture, delivery, or possession with intent to manufacture or
22 deliver a controlled substance.

23 (9) "Crimes relating to financial exploitation" means a
24 conviction for first, second, or third degree extortion; first,
25 second, or third degree theft; first or second degree robbery;
26 forgery; or any of these crimes as they may be renamed in the future.

27 (10) "Financial exploitation" means "financial exploitation" as
28 defined in RCW 74.34.020.

29 (11) "Health care facility" means a nursing home licensed under
30 chapter 18.51 RCW, (~~(a—[an])~~) an assisted living facility licensed
31 under chapter 18.20 RCW, or an adult family home licensed under
32 chapter 70.128 RCW.

33 (12) "Peer counselor" means a nonprofessional person who has
34 equal standing with another person, providing advice on a topic about
35 which the nonprofessional person is more experienced or
36 knowledgeable, and who is a counselor for a peer counseling program
37 that contracts with or is otherwise approved by the department,
38 another state or local agency, or the court.

39 (13) "Unsupervised" means not in the presence of:

1 (a) Another employee or volunteer from the same business or
2 organization as the applicant; or

3 (b) Any relative or guardian of any of the children or
4 developmentally disabled persons or vulnerable adults to which the
5 applicant has access during the course of his or her employment or
6 involvement with the business or organization.

7 With regard to peer counselors, "unsupervised" does not include
8 incidental contact with children under age sixteen at the location at
9 which the peer counseling is taking place. "Incidental contact" means
10 minor or casual contact with a child in an area accessible to and
11 within visual or auditory range of others. It could include passing a
12 child while walking down a hallway but would not include being alone
13 with a child for any period of time in a closed room or office.

14 (14) "Vulnerable adult" means "vulnerable adult" as defined in
15 chapter 74.34 RCW, except that for the purposes of requesting and
16 receiving background checks pursuant to RCW 43.43.832, it shall also
17 include adults of any age who lack the functional, mental, or
18 physical ability to care for themselves.

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