
THIRD SUBSTITUTE SENATE BILL 5291

State of Washington

66th Legislature

2020 Regular Session

By Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Randall, Kuderer, Frockt, Hasegawa, Nguyen, and Saldaña)

READ FIRST TIME 02/03/20.

1 AN ACT Relating to creating alternatives to total confinement for
2 certain qualifying persons with minor children; amending RCW
3 9.94A.655 and 9.94A.6551; and reenacting and amending RCW 9.94A.030.

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

5 **Sec. 1.** RCW 9.94A.030 and 2019 c 331 s 5, 2019 c 271 s 6, 2019 c
6 187 s 1, and 2019 c 46 s 5007 are each reenacted and amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

17 (9) "Conviction" means an adjudication of guilt pursuant to Title
18 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
19 and acceptance of a plea of guilty.

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

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

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

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

1 includes a vacated prior conviction for the sole purpose of
2 establishing that such vacated prior conviction constitutes an
3 element of the present recidivist offense as provided in RCW
4 9.94A.640(3)(b) and 9.96.060(5)(c).

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

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

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

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

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

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

33 (c) To exact revenge or retribution for the gang or any member of
34 the gang;

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

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

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

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

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

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

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

27 (19) "Disposable earnings" means that part of the earnings of an
28 offender remaining after the deduction from those earnings of any
29 amount required by law to be withheld. For the purposes of this
30 definition, "earnings" means compensation paid or payable for
31 personal services, whether denominated as wages, salary, commission,
32 bonuses, or otherwise, and, notwithstanding any other provision of
33 law making the payments exempt from garnishment, attachment, or other
34 process to satisfy a court-ordered legal financial obligation,
35 specifically includes periodic payments pursuant to pension or
36 retirement programs, or insurance policies of any type, but does not
37 include payments made under Title 50 RCW, except as provided in RCW
38 50.40.020 and 50.40.050, or Title 74 RCW.

39 (20) "Domestic violence" has the same meaning as defined in RCW
40 10.99.020 and 26.50.010.

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

5 (22) "Drug offense" means:

6 (a) Any felony violation of chapter 69.50 RCW except possession
7 of a controlled substance (RCW 69.50.4013) or forged prescription for
8 a controlled substance (RCW 69.50.403);

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

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

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

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

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

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

30 (25) "Escape" means:

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

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

40 (26) "Felony traffic offense" means:

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

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

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

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

16 (29) "Home detention" is a subset of electronic monitoring and
17 means a program of partial confinement available to offenders wherein
18 the offender is confined in a private residence twenty-four hours a
19 day, unless an absence from the residence is approved, authorized, or
20 otherwise permitted in the order by the court or other supervising
21 agency that ordered home detention, and the offender is subject to
22 electronic monitoring.

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

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

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

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

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

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

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

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

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

14 (b) Assault in the second degree;

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

16 (d) Child molestation in the second degree;

17 (e) Controlled substance homicide;

18 (f) Extortion in the first degree;

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

20 (h) Indecent liberties;

21 (i) Kidnapping in the second degree;

22 (j) Leading organized crime;

23 (k) Manslaughter in the first degree;

24 (l) Manslaughter in the second degree;

25 (m) Promoting prostitution in the first degree;

26 (n) Rape in the third degree;

27 (o) Sexual exploitation;

28 (p) Vehicular assault, when caused by the operation or driving of
29 a vehicle by a person while under the influence of intoxicating
30 liquor or any drug or by the operation or driving of a vehicle in a
31 reckless manner;

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

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

38 (s) Any other felony with a deadly weapon verdict under RCW
39 9.94A.825;

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

6 (u)(i) A prior conviction for indecent liberties under RCW
7 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
8 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
9 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
10 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
11 until July 1, 1988;

12 (ii) A prior conviction for indecent liberties under RCW
13 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
14 if: (A) The crime was committed against a child under the age of
15 fourteen; or (B) the relationship between the victim and perpetrator
16 is included in the definition of indecent liberties under RCW
17 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
18 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
19 1993, through July 27, 1997;

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

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

28 (35) "Offender" means a person who has committed a felony
29 established by state law and is eighteen years of age or older or is
30 less than eighteen years of age but whose case is under superior
31 court jurisdiction under RCW 13.04.030 or has been transferred by the
32 appropriate juvenile court to a criminal court pursuant to RCW
33 13.40.110. In addition, for the purpose of community custody
34 requirements under this chapter, "offender" also means a misdemeanor
35 or gross misdemeanor probationer ordered by a superior court to
36 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
37 supervised by the department pursuant to RCW 9.94A.501 and
38 9.94A.5011. Throughout this chapter, the terms "offender" and
39 "defendant" are used interchangeably.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
40 9A.56.070);

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

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

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

37 (40) "Private school" means a school regulated under chapter
38 28A.195 or 28A.205 RCW.

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

1 (42) "Recidivist offense" means a felony offense where a prior
2 conviction of the same offense or other specified offense is an
3 element of the crime including, but not limited to:

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

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

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

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

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

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

11 (g) Violation of a no-contact or protection order, RCW
12 26.50.110(5).

13 (43) "Repetitive domestic violence offense" means any:

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

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

18 (iii) Domestic violence violation of a protection order under
19 chapter 26.09, 26.10, 26.26A, 26.26B, or 26.50 RCW that is not a
20 felony offense;

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

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

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

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

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

37 (46) "Serious traffic offense" means:

38 (a) Nonfelony driving while under the influence of intoxicating
39 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
40 while under the influence of intoxicating liquor or any drug (RCW

1 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
2 attended vehicle (RCW 46.52.020(5)); or

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

6 (47) "Serious violent offense" is a subcategory of violent
7 offense and means:

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

9 (ii) Homicide by abuse;

10 (iii) Murder in the second degree;

11 (iv) Manslaughter in the first degree;

12 (v) Assault in the first degree;

13 (vi) Kidnapping in the first degree;

14 (vii) Rape in the first degree;

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

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

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

21 (48) "Sex offense" means:

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

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

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

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

30 (v) A felony violation of RCW 9A.44.132(1) (failure to register
31 as a sex offender) if the person has been convicted of violating RCW
32 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
33 prior to June 10, 2010, on at least one prior occasion;

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

37 (c) A felony with a finding of sexual motivation under RCW
38 9.94A.835 or 13.40.135; or

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

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

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

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

14 (52) "Stranger" means that the victim did not know the offender
15 twenty-four hours before the offense.

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

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

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

29 (56) "Violent offense" means:

30 (a) Any of the following felonies:

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

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

35 (iii) Manslaughter in the first degree;

36 (iv) Manslaughter in the second degree;

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

38 (vi) Kidnapping in the second degree;

39 (vii) Arson in the second degree;

40 (viii) Assault in the second degree;

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

2 (x) Extortion in the first degree;

3 (xi) Robbery in the second degree;

4 (xii) Drive-by shooting;

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

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

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

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

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

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

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

32 (60) "Expectant parent" means a pregnant or other parent awaiting
33 the birth of his or her child, or an adoptive parent or person in the
34 process of a final adoption.

35 **Sec. 2.** RCW 9.94A.655 and 2018 c 58 s 45 are each amended to
36 read as follows:

37 (1) An offender is eligible for the parenting sentencing
38 alternative if:

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

3 (b) The offender has no (~~prior or~~) current conviction for a
4 felony that is classified as a sex offense or a serious violent
5 offense;

6 (c) The offender has (~~not been found by the United States~~
7 ~~attorney general to be subject to a deportation detainer or order and~~
8 ~~does not become subject to a deportation order during the period of~~
9 ~~the sentence~~) a prior or current conviction for a nonviolent
10 offense, or has a prior conviction for a violent offense and has not
11 been determined to be a high risk to reoffend;

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

15 (e) The offender (~~has physical custody of his or her minor child~~
16 ~~or is a legal guardian or custodian with physical custody of a child~~
17 ~~under the age of eighteen at the time of the current offense~~) is:

18 (i) A parent with physical custody of a minor child;

19 (ii) An expectant parent;

20 (iii) A legal guardian of a minor child; or

21 (iv) A biological parent, adoptive parent, custodian, or
22 stepparent with a proven, established, ongoing, and substantial
23 relationship with a minor child that existed at the time of the
24 offense.

25 (2) Prior juvenile adjudications are not considered offenses when
26 considering eligibility for the parenting sentencing alternative.

27 (3) To assist the court in making its determination, the court
28 may order the department to complete (~~either~~) a risk assessment
29 report, including a family impact statement, or a chemical dependency
30 screening report as provided in RCW 9.94A.500(~~(, or both reports)~~)
31 prior to sentencing.

32 (~~(3)~~) (4) If the court is considering this alternative, the
33 court shall request that the department contact the department of
34 children, youth, and families to determine if the agency has an open
35 child welfare case or prior substantiated referral of abuse or
36 neglect involving the offender or if the agency is aware of any
37 substantiated case of abuse or neglect with a tribal child welfare
38 agency involving the offender.

39 (a) If the offender has an open child welfare case or child abuse
40 or neglect investigation, the department will provide the release of

1 information waiver and request that the department of children,
2 youth, and families or the tribal child welfare agency provide a
3 report to the court. The department of children, youth, and families
4 shall provide a copy of the most recent court order, if any, or if
5 there is no court involvement or no court order, the agency shall
6 report within seven business days of the request that includes, at
7 the minimum, the following:

8 (i) Legal status of the child welfare case or child abuse or
9 neglect investigation;

10 (ii) Length of time the department of children, youth, and
11 families has ~~((been involved with))~~ had an open child welfare case or
12 open child abuse or neglect investigation involving the offender; and

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

14 ~~(iv))~~ Any special needs of the child(~~(-~~

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

17 ~~(vi) If the offender)).~~

18 (b) The department shall report to the court if the offender has
19 been convicted of a crime against a child.

20 ~~((b))~~ (c) If a report is required from a tribal child welfare
21 agency, the department shall attempt to obtain information that is
22 similar to what is required for the report provided by the department
23 of children, youth, and families in a timely manner.

24 ~~((e))~~ (d) If the offender does not have an open child welfare
25 case with the department of children, youth, and families or with a
26 tribal child welfare agency but has prior involvement, the department
27 will obtain information from the department of children, youth, and
28 families on the number and type of past substantiated referrals of
29 abuse or neglect and report that information to the court. If the
30 department of children, youth, and families has never had any
31 substantiated referrals or an open case with the offender, the
32 department will inform the court.

33 ~~((4))~~ (5) The existence of a prior substantiated referral of
34 child abuse or neglect or of an open child welfare case shall not,
35 alone, disqualify the parent from applying or participating in this
36 alternative. The court shall consider whether the child-parent
37 relationship can be readily maintained during parental incarceration,
38 and whether, due to the existence of an open child welfare case,
39 parental incarceration exacerbates the likelihood of termination of
40 the child-parent relationship.

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

8 ~~((+5))~~ (7) When a court imposes a sentence of community custody
9 under this section:

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

13 (b) The department may impose conditions as authorized in RCW
14 9.94A.704 that may include, but are not limited to:

15 (i) Parenting classes;

16 (ii) Chemical dependency treatment;

17 (iii) Mental health treatment;

18 (iv) Vocational training;

19 (v) ~~((Offender change))~~ Change programs;

20 (vi) Life skills classes.

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

23 ~~((+6))~~ (8) The department shall provide the court with quarterly
24 progress reports regarding the offender's progress in required
25 programming, treatment, and other supervision conditions. When an
26 offender has an open child welfare case, the department will seek to
27 coordinate services with the department of children, youth, and
28 families.

29 ~~((+7))~~ (9)(a) The court may bring any offender sentenced under
30 this section back into court at any time during the period of
31 community custody on its own initiative to evaluate the offender's
32 progress in treatment, or to determine if any violations of the
33 conditions of the sentence have occurred.

34 (b) At the commencement of such a hearing, the court shall advise
35 the person sentenced under this section of the person's right to
36 assistance of counsel and appoint counsel if the person is indigent.

37 (c) If the offender is brought back to court, the court may
38 modify the conditions of community custody or impose sanctions under
39 ~~((+e))~~ (d) of this subsection, including extending the length of
40 participation in the alternative program by no more than six months.

1 ~~((e))~~ (d) The court may order the offender to serve a term of
2 total confinement within the standard range of the offender's current
3 offense at any time during the period of community custody, if the
4 offender violates the conditions or requirements of the sentence or
5 if the offender is failing to make satisfactory progress in
6 treatment.

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

10 (f) An offender sentenced under this section is subject to all
11 rules relating to earned release time with respect to any period
12 served in total confinement.

13 (10) For the purposes of this section and RCW 9.94A.6551, "minor
14 child" means a child under the age of eighteen.

15 **Sec. 3.** RCW 9.94A.6551 and 2018 c 58 s 47 are each amended to
16 read as follows:

17 For an offender~~((s))~~ not sentenced under RCW 9.94A.655, but
18 otherwise eligible under this section, no more than the final twelve
19 months of 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) The offender has no current conviction for a felony that is
29 classified as a sex offense or a serious violent offense;

30 (c) The offender has ~~((not been found by the United States~~
31 ~~attorney general to be subject to a deportation detainer or order and~~
32 ~~does not become subject to a deportation order during the period of~~
33 ~~the sentence))~~ a current conviction for a nonviolent offense, or has
34 a current conviction for a violent offense and has not been
35 determined to be a high risk to reoffend;

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

39 (e) The offender is:

1 (i) ~~((Has physical or legal custody of a minor child;~~
2 ~~(ii) Has a proven, established, ongoing, and substantial~~
3 ~~relationship with his or her minor child that existed prior to the~~
4 ~~commission of the current offense; or~~

5 ~~(iii) Is a legal guardian of a child that was under the age of~~
6 ~~eighteen at the time of the current offense)) A parent with~~

7 guardianship or legal custody of a minor child;

8 (ii) An expectant parent; or

9 (iii) A biological parent, adoptive parent, custodian, or
10 stepparent with a proven, established, ongoing, and substantial
11 relationship with a minor child that existed at the time of the
12 offense; and

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

15 (2) Prior juvenile adjudications are not considered offenses when
16 considering eligibility for the parenting program developed by the
17 department.

18 (3) When the department is considering partial confinement as
19 part of the parenting program for an offender, the department shall
20 inquire of the individual and the department of children, youth, and
21 families whether the agency has an open child welfare case or prior
22 substantiated referral for abuse or neglect involving the offender.

23 (4) If the department of children, youth, and families or a
24 tribal jurisdiction has an open child welfare case, the department
25 will seek input from the department of children, youth, and families
26 or the involved tribal jurisdiction as to: (a) The status of the
27 child welfare case; and (b) recommendations regarding placement of
28 the offender ~~((and services required of the department and the court~~
29 ~~governing)), services agreed to by the offender working voluntarily~~
30 with the department, or services ordered by the court in the
31 individual's child welfare case. The department and its officers,
32 agents, and employees are not liable for the acts of offenders
33 participating in the parenting program unless the department or its
34 officers, agents, and employees acted with willful and wanton
35 disregard.

36 ~~((3))~~ (5) All offenders placed on home detention as part of the
37 parenting program shall provide an approved residence and living
38 arrangement prior to transfer to home detention.

39 ~~((4))~~ (6) While in the community on home detention as part of
40 the parenting program, the department shall:

1 (a) Require the offender to be placed on electronic home
2 monitoring;

3 (b) Require the offender to participate in programming and
4 treatment that the department determines is needed after
5 consideration of the offender's stated needs;

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

9 (d) If the offender has an open child welfare case with the
10 department of children, youth, and families, collaborate and
11 communicate with the identified social worker in the provision of
12 services.

13 ((+5)) (7) The department has the authority to return any
14 offender serving partial confinement in the parenting program to
15 total confinement if the offender is not complying with sentence
16 requirements.

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