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HOUSE BILL 2638

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Goodman, Pettigrew, Appleton, and Ortiz-Self; by request of Department of Corrections

Read first time 01/11/18. Referred to Committee on Public Safety.

1 AN ACT Relating to creating a graduated reentry program of  
2 partial confinement for certain offenders; amending RCW 9.94A.030,  
3 9.94A.734, and 9.94A.190; reenacting and amending RCW 9.94A.728; and  
4 adding a new section to chapter 9.94A RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A  
7 RCW to read as follows:

8 (1) For offenders not participating in the work release program  
9 under chapter 72.65 RCW, but otherwise eligible under this section,  
10 no more than the final six months of the offender's term of  
11 confinement may be served in partial confinement as home detention as  
12 part of the graduated reentry program developed by the department.

13 (2) The secretary of the department may transfer an offender from  
14 a department correctional facility to home detention in the community  
15 if it is determined that the graduated reentry program is an  
16 appropriate placement and must assist the offender's transition from  
17 confinement to the community.

18 (3) The department and its officers, agents, and employees are  
19 not liable for the acts of offenders participating in the graduated  
20 reentry program unless the department or its officers, agents, and  
21 employees acted with willful and wanton disregard.

1 (4) All offenders placed on home detention as part of the  
2 graduated reentry program must provide an approved residence and  
3 living arrangement prior to transfer to home detention.

4 (5) While in the community on home detention as part of the  
5 graduated reentry program, the department must:

6 (a) Require the offender to be placed on electronic home  
7 monitoring;

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

10 (c) Assign a community corrections officer who will monitor the  
11 offender's compliance with conditions of partial confinement and  
12 programming requirements.

13 (6) The department retains the authority to return any offender  
14 serving partial confinement in the graduated reentry program to total  
15 confinement for any reason including, but not limited to, the  
16 offender's noncompliance with any sentence requirement.

17 (7) The department may issue rental vouchers for a period not to  
18 exceed six months for those transferring to partial confinement under  
19 this section if an approved address cannot be obtained without the  
20 assistance of a voucher.

21 (8) In the selection of offenders to participate in the graduated  
22 reentry program, and in setting, modifying, and enforcing the  
23 requirements of the graduated release program, the department is  
24 deemed to be performing a quasi-judicial function.

25 **Sec. 2.** RCW 9.94A.728 and 2015 c 156 s 1 and 2015 c 134 s 3 are  
26 each reenacted and amended to read as follows:

27 (1) No person serving a sentence imposed pursuant to this chapter  
28 and committed to the custody of the department shall leave the  
29 confines of the correctional facility or be released prior to the  
30 expiration of the sentence except as follows:

31 (a) An offender may earn early release time as authorized by RCW  
32 9.94A.729;

33 (b) An offender may leave a correctional facility pursuant to an  
34 authorized furlough or leave of absence. In addition, offenders may  
35 leave a correctional facility when in the custody of a corrections  
36 officer or officers;

37 (c)(i) The secretary may authorize an extraordinary medical  
38 placement for an offender when all of the following conditions exist:

1 (A) The offender has a medical condition that is serious and is  
2 expected to require costly care or treatment;

3 (B) The offender poses a low risk to the community because he or  
4 she is currently physically incapacitated due to age or the medical  
5 condition or is expected to be so at the time of release; and

6 (C) It is expected that granting the extraordinary medical  
7 placement will result in a cost savings to the state.

8 (ii) An offender sentenced to death or to life imprisonment  
9 without the possibility of release or parole is not eligible for an  
10 extraordinary medical placement.

11 (iii) The secretary shall require electronic monitoring for all  
12 offenders in extraordinary medical placement unless the electronic  
13 monitoring equipment interferes with the function of the offender's  
14 medical equipment or results in the loss of funding for the  
15 offender's medical care, in which case, an alternative type of  
16 monitoring shall be utilized. The secretary shall specify who shall  
17 provide the monitoring services and the terms under which the  
18 monitoring shall be performed.

19 (iv) The secretary may revoke an extraordinary medical placement  
20 under this subsection (1)(c) at any time.

21 (v) Persistent offenders are not eligible for extraordinary  
22 medical placement;

23 (d) The governor, upon recommendation from the clemency and  
24 pardons board, may grant an extraordinary release for reasons of  
25 serious health problems, senility, advanced age, extraordinary  
26 meritorious acts, or other extraordinary circumstances;

27 (e) No more than the final ~~((six))~~ twelve months of the  
28 offender's term of confinement may be served in partial confinement  
29 designed to aid the offender in finding work ~~((and))~~ or  
30 reestablishing himself or herself in the community ~~((or no more than~~  
31 ~~the final twelve months of the offender's term of confinement may be~~  
32 ~~served in partial confinement))~~ as part of the parenting program in  
33 RCW 9.94A.6551. This is in addition to that period of earned early  
34 release time that may be exchanged for partial confinement pursuant  
35 to RCW 9.94A.729(5)(d);

36 (f) No more than the final six months of the offender's term of  
37 confinement may be served in partial confinement as home detention as  
38 part of the graduated reentry program developed by the department  
39 under section 1 of this act;

40 (g) The governor may pardon any offender;

1       (~~(g)~~) (h) The department may release an offender from  
2 confinement any time within ten days before a release date calculated  
3 under this section;

4       (~~(h)~~) (i) An offender may leave a correctional facility prior  
5 to completion of his or her sentence if the sentence has been reduced  
6 as provided in RCW 9.94A.870;

7       (~~(i)~~) (j) Notwithstanding any other provisions of this section,  
8 an offender sentenced for a felony crime listed in RCW 9.94A.540 as  
9 subject to a mandatory minimum sentence of total confinement shall  
10 not be released from total confinement before the completion of the  
11 listed mandatory minimum sentence for that felony crime of conviction  
12 unless allowed under RCW 9.94A.540; and

13       (~~(j)~~) (k) Any person convicted of one or more crimes committed  
14 prior to the person's eighteenth birthday may be released from  
15 confinement pursuant to RCW 9.94A.730.

16       (2) Offenders residing in a juvenile correctional facility  
17 placement pursuant to RCW 72.01.410(1)(a) are not subject to the  
18 limitations in this section.

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

21       Unless the context clearly requires otherwise, the definitions in  
22 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

13 (9) "Conviction" means an adjudication of guilt pursuant to Title  
14 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,  
15 and acceptance of a plea of guilty.

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

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

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

32 (b) A conviction may be removed from a defendant's criminal  
33 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,  
34 9.95.240, or a similar out-of-state statute, or if the conviction has  
35 been vacated pursuant to a governor's pardon.

36 (c) The determination of a defendant's criminal history is  
37 distinct from the determination of an offender score. A prior  
38 conviction that was not included in an offender score calculated  
39 pursuant to a former version of the sentencing reform act remains  
40 part of the defendant's criminal history.

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

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

15 (14) "Criminal street gang-related offense" means any felony or  
16 misdemeanor offense, whether in this state or elsewhere, that is  
17 committed for the benefit of, at the direction of, or in association  
18 with any criminal street gang, or is committed with the intent to  
19 promote, further, or assist in any criminal conduct by the gang, or  
20 is committed for one or more of the following reasons:

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

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

24 (c) To exact revenge or retribution for the gang or any member of  
25 the gang;

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

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

31 (f) To provide the gang with any advantage in, or any control or  
32 dominance over any criminal market sector, including, but not limited  
33 to, manufacturing, delivering, or selling any controlled substance  
34 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
35 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
36 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual  
37 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter  
38 9.68 RCW).

39 (15) "Day fine" means a fine imposed by the sentencing court that  
40 equals the difference between the offender's net daily income and the

1 reasonable obligations that the offender has for the support of the  
2 offender and any dependents.

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

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

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

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

29 (20) "Domestic violence" has the same meaning as defined in RCW  
30 10.99.020 and 26.50.010.

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

35 (22) "Drug offense" means:

36 (a) Any felony violation of chapter 69.50 RCW except possession  
37 of a controlled substance (RCW 69.50.4013) or forged prescription for  
38 a controlled substance (RCW 69.50.403);

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

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

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

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

14 (a) Radio frequency signaling technology, which detects if the  
15 monitored individual is or is not at an approved location and  
16 notifies the monitoring agency of the time that the monitored  
17 individual either leaves the approved location or tampers with or  
18 removes the monitoring device; or

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

22 (25) "Escape" means:

23 (a) Sexually violent predator escape (RCW 9A.76.115), escape in  
24 the first degree (RCW 9A.76.110), escape in the second degree (RCW  
25 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
26 willful failure to return from work release (RCW 72.65.070), or  
27 willful failure to be available for supervision by the department  
28 while in community custody (RCW 72.09.310); or

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

32 (26) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
34 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
35 run injury-accident (RCW 46.52.020(4)), felony driving while under  
36 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),  
37 or felony physical control of a vehicle while under the influence of  
38 intoxicating liquor or any drug (RCW 46.61.504(6)); or



1 (b) 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 felony  
3 traffic offense under (a) of this subsection.

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

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

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

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

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

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

24 (c) A private residence where the individual stays as a transient  
25 invitee.

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

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

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

6 (a) Any felony defined under any law as a class A felony or  
7 criminal solicitation of or criminal conspiracy to commit a class A  
8 felony;

9 (b) Assault in the second degree;

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Promoting prostitution in the first degree;

21 (n) Rape in the third degree;

22 (o) Robbery in the second degree;

23 (p) Sexual exploitation;

24 (q) Vehicular assault, when caused by the operation or driving of  
25 a vehicle by a person while under the influence of intoxicating  
26 liquor or any drug or by the operation or driving of a vehicle in a  
27 reckless manner;

28 (r) Vehicular homicide, when proximately caused by the driving of  
29 any vehicle by any person while under the influence of intoxicating  
30 liquor or any drug as defined by RCW 46.61.502, or by the operation  
31 of any vehicle in a reckless manner;

32 (s) Any other class B felony offense with a finding of sexual  
33 motivation;

34 (t) Any other felony with a deadly weapon verdict under RCW  
35 9.94A.825;

36 (u) Any felony offense in effect at any time prior to December 2,  
37 1993, that is comparable to a most serious offense under this  
38 subsection, or any federal or out-of-state conviction for an offense  
39 that under the laws of this state would be a felony classified as a  
40 most serious offense under this subsection;

1 (v)(i) A prior conviction for indecent liberties under RCW  
2 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.  
3 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),  
4 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW  
5 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,  
6 until July 1, 1988;

7 (ii) A prior conviction for indecent liberties under RCW  
8 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
9 if: (A) The crime was committed against a child under the age of  
10 fourteen; or (B) the relationship between the victim and perpetrator  
11 is included in the definition of indecent liberties under RCW  
12 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,  
13 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,  
14 1993, through July 27, 1997;

15 (w) Any out-of-state conviction for a felony offense with a  
16 finding of sexual motivation if the minimum sentence imposed was ten  
17 years or more; provided that the out-of-state felony offense must be  
18 comparable to a felony offense under this title and Title 9A RCW and  
19 the out-of-state definition of sexual motivation must be comparable  
20 to the definition of sexual motivation contained in this section.

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

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

35 (36) "Partial confinement" means confinement for no more than one  
36 year in a facility or institution operated or utilized under contract  
37 by the state or any other unit of government, or, if home detention,  
38 electronic monitoring, or work crew has been ordered by the court or  
39 home detention has been ordered by the department as part of the  
40 parenting program or the graduated reentry program, in an approved

1 residence, for a substantial portion of each day with the balance of  
2 the day spent in the community. Partial confinement includes work  
3 release, home detention, work crew, electronic monitoring, and a  
4 combination of work crew, electronic monitoring, and home detention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW  
34 9A.56.070);

35 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
36 9A.56.075);

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

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

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

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

1 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
2 (xxiv) Coercion (RCW 9A.36.070);  
3 (xxv) Harassment (RCW 9A.46.020); or  
4 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
5 (b) That at least one of the offenses listed in (a) of this  
6 subsection shall have occurred after July 1, 2008;  
7 (c) That the most recent committed offense listed in (a) of this  
8 subsection occurred within three years of a prior offense listed in  
9 (a) of this subsection; and  
10 (d) Of the offenses that were committed in (a) of this  
11 subsection, the offenses occurred on separate occasions or were  
12 committed by two or more persons.  
13 (38) "Persistent offender" is an offender who:  
14 (a)(i) Has been convicted in this state of any felony considered  
15 a most serious offense; and  
16 (ii) Has, before the commission of the offense under (a) of this  
17 subsection, been convicted as an offender on at least two separate  
18 occasions, whether in this state or elsewhere, of felonies that under  
19 the laws of this state would be considered most serious offenses and  
20 would be included in the offender score under RCW 9.94A.525; provided  
21 that of the two or more previous convictions, at least one conviction  
22 must have occurred before the commission of any of the other most  
23 serious offenses for which the offender was previously convicted; or  
24 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
25 of a child in the first degree, child molestation in the first  
26 degree, rape in the second degree, rape of a child in the second  
27 degree, or indecent liberties by forcible compulsion; (B) any of the  
28 following offenses with a finding of sexual motivation: Murder in the  
29 first degree, murder in the second degree, homicide by abuse,  
30 kidnapping in the first degree, kidnapping in the second degree,  
31 assault in the first degree, assault in the second degree, assault of  
32 a child in the first degree, assault of a child in the second degree,  
33 or burglary in the first degree; or (C) an attempt to commit any  
34 crime listed in this subsection (38)(b)(i); and  
35 (ii) Has, before the commission of the offense under (b)(i) of  
36 this subsection, been convicted as an offender on at least one  
37 occasion, whether in this state or elsewhere, of an offense listed in  
38 (b)(i) of this subsection or any federal or out-of-state offense or  
39 offense under prior Washington law that is comparable to the offenses  
40 listed in (b)(i) of this subsection. A conviction for rape of a child

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

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

31 (40) "Private school" means a school regulated under chapter  
32 28A.195 or 28A.205 RCW.

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

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

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

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

1 (iii) Domestic violence violation of a protection order under  
2 chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony  
3 offense;

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

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

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

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

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

20 (45) "Serious traffic offense" means:

21 (a) Nonfelony driving while under the influence of intoxicating  
22 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
23 while under the influence of intoxicating liquor or any drug (RCW  
24 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
25 attended vehicle (RCW 46.52.020(5)); or

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

29 (46) "Serious violent offense" is a subcategory of violent  
30 offense and means:

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

32 (ii) Homicide by abuse;

33 (iii) Murder in the second degree;

34 (iv) Manslaughter in the first degree;

35 (v) Assault in the first degree;

36 (vi) Kidnapping in the first degree;

37 (vii) Rape in the first degree;

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

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

1 (b) 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  
3 serious violent offense under (a) of this subsection.

4 (47) "Sex offense" means:

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

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

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

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

13 (v) A felony violation of RCW 9A.44.132(1) (failure to register  
14 as a sex offender) if the person has been convicted of violating RCW  
15 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130  
16 prior to June 10, 2010, on at least one prior occasion;

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

20 (c) A felony with a finding of sexual motivation under RCW  
21 9.94A.835 or 13.40.135; or

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

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

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

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

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

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



1 (53) "Transition training" means written and verbal instructions  
2 and assistance provided by the department to the offender during the  
3 two weeks prior to the offender's successful completion of the work  
4 ethic camp program. The transition training shall include  
5 instructions in the offender's requirements and obligations during  
6 the offender's period of community custody.

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

10 (55) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

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

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

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 violent offense in (a) of this subsection; and

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

1 (56) "Work crew" means a program of partial confinement  
2 consisting of civic improvement tasks for the benefit of the  
3 community that complies with RCW 9.94A.725.

4 (57) "Work ethic camp" means an alternative incarceration program  
5 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
6 the cost of corrections by requiring offenders to complete a  
7 comprehensive array of real-world job and vocational experiences,  
8 character-building work ethics training, life management skills  
9 development, substance abuse rehabilitation, counseling, literacy  
10 training, and basic adult education.

11 (58) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school.

14 **Sec. 4.** RCW 9.94A.734 and 2015 c 287 s 2 are each amended to  
15 read as follows:

16 (1) Home detention may not be imposed for offenders convicted of  
17 the following offenses, unless imposed as partial confinement in the  
18 department's parenting program under RCW 9.94A.6551 or the graduated  
19 reentry program under section 1 of this act:

20 (a) A violent offense;

21 (b) Any sex offense;

22 (c) Any drug offense;

23 (d) Reckless burning in the first or second degree as defined in  
24 RCW 9A.48.040 or 9A.48.050;

25 (e) Assault in the third degree as defined in RCW 9A.36.031;

26 (f) Assault of a child in the third degree;

27 (g) Unlawful imprisonment as defined in RCW 9A.40.040; or

28 (h) Harassment as defined in RCW 9A.46.020.

29 Home detention may be imposed for offenders convicted of possession  
30 of a controlled substance under RCW 69.50.4013 or forged prescription  
31 for a controlled substance under RCW 69.50.403 if the offender  
32 fulfills the participation conditions set forth in this section and  
33 is monitored for drug use by a treatment alternatives to street crime  
34 program or a comparable court or agency-referred program.

35 (2) Home detention may be imposed for offenders convicted of  
36 burglary in the second degree as defined in RCW 9A.52.030 or  
37 residential burglary conditioned upon the offender:

38 (a) Successfully completing twenty-one days in a work release  
39 program;

1 (b) Having no convictions for burglary in the second degree or  
2 residential burglary during the preceding two years and not more than  
3 two prior convictions for burglary or residential burglary;

4 (c) Having no convictions for a violent felony offense during the  
5 preceding two years and not more than two prior convictions for a  
6 violent felony offense;

7 (d) Having no prior charges of escape; and

8 (e) Fulfilling the other conditions of the home detention  
9 program.

10 (3) Home detention may be imposed for offenders convicted of  
11 taking a motor vehicle without permission in the second degree as  
12 defined in RCW 9A.56.075, theft of a motor vehicle as defined under  
13 RCW 9A.56.065, or possession of a stolen motor vehicle as defined  
14 under RCW 9A.56.068 conditioned upon the offender:

15 (a) Having no convictions for taking a motor vehicle without  
16 permission, theft of a motor vehicle or possession of a stolen motor  
17 vehicle during the preceding five years and not more than two prior  
18 convictions for taking a motor vehicle without permission, theft of a  
19 motor vehicle or possession of a stolen motor vehicle;

20 (b) Having no convictions for a violent felony offense during the  
21 preceding two years and not more than two prior convictions for a  
22 violent felony offense;

23 (c) Having no prior charges of escape; and

24 (d) Fulfilling the other conditions of the home detention  
25 program.

26 (4) Participation in a home detention program shall be  
27 conditioned upon:

28 (a) The offender obtaining or maintaining current employment or  
29 attending a regular course of school study at regularly defined  
30 hours, or the offender performing parental duties to offspring or  
31 minors normally in the custody of the offender;

32 (b) Abiding by the rules of the home detention program; and

33 (c) Compliance with court-ordered legal financial obligations.

34 (5) The home detention program may also be made available to  
35 offenders whose charges and convictions do not otherwise disqualify  
36 them if medical or health-related conditions, concerns or treatment  
37 would be better addressed under the home detention program, or where  
38 the health and welfare of the offender, other inmates, or staff would  
39 be jeopardized by the offender's incarceration. Participation in the  
40 home detention program for medical or health-related reasons is

1 conditioned on the offender abiding by the rules of the home  
2 detention program and complying with court-ordered restitution.

3 (6)(a) A sentencing court shall deny the imposition of home  
4 detention if the court finds that (i) the offender has previously and  
5 knowingly violated the terms of a home detention program and (ii) the  
6 previous violation is not a technical, minor, or nonsubstantive  
7 violation.

8 (b) A sentencing court may deny the imposition of home detention  
9 if the court finds that (i) the offender has previously and knowingly  
10 violated the terms of a home detention program and (ii) the previous  
11 violation or violations were technical, minor, or nonsubstantive  
12 violations.

13 (7) A home detention program must be administered by a monitoring  
14 agency that meets the conditions described in RCW 9.94A.736.

15 **Sec. 5.** RCW 9.94A.190 and 2010 c 224 s 10 are each amended to  
16 read as follows:

17 (1) A sentence that includes a term or terms of confinement  
18 totaling more than one year shall be served in a facility or  
19 institution operated, or utilized under contract, by the state, or in  
20 home detention pursuant to RCW 9.94A.6551 or the graduated reentry  
21 program under section 1 of this act. Except as provided in subsection  
22 (3) or (5) of this section, a sentence of not more than one year of  
23 confinement shall be served in a facility operated, licensed, or  
24 utilized under contract, by the county, or if home detention or work  
25 crew has been ordered by the court, in the residence of either the  
26 offender or a member of the offender's immediate family.

27 (2) If a county uses a state partial confinement facility for the  
28 partial confinement of a person sentenced to confinement for not more  
29 than one year, the county shall reimburse the state for the use of  
30 the facility as provided in this subsection. The office of financial  
31 management shall set the rate of reimbursement based upon the average  
32 per diem cost per offender in the facility. The office of financial  
33 management shall determine to what extent, if any, reimbursement  
34 shall be reduced or eliminated because of funds provided by the  
35 legislature to the department for the purpose of covering the cost of  
36 county use of state partial confinement facilities. The office of  
37 financial management shall reestablish reimbursement rates each even-  
38 numbered year.

1           (3) A person who is sentenced for a felony to a term of not more  
2 than one year, and who is committed or returned to incarceration in a  
3 state facility on another felony conviction, either under the  
4 indeterminate sentencing laws, chapter 9.95 RCW, or under this  
5 chapter shall serve all terms of confinement, including a sentence of  
6 not more than one year, in a facility or institution operated, or  
7 utilized under contract, by the state, consistent with the provisions  
8 of RCW 9.94A.589.

9           (4) Notwithstanding any other provision of this section, a  
10 sentence imposed pursuant to RCW 9.94A.660 which has a standard  
11 sentence range of over one year, regardless of length, shall be  
12 served in a facility or institution operated, or utilized under  
13 contract, by the state.

14           (5) Sentences imposed pursuant to RCW 9.94A.507 shall be served  
15 in a facility or institution operated, or utilized under contract, by  
16 the state.

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