
HOUSE BILL 2755

State of Washington 59th Legislature 2006 Regular Session

By Representatives Schindler, Ahern, Holmquist, Sump, Talcott, McDonald, Crouse, Shabro, Roach, McCune, Buck and Woods

Read first time 01/12/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to sex offenders; amending RCW 9.94A.030,
2 9.94A.030, 9.94A.712, 9.94A.712, 9.68A.040, 9.68A.050, 9.68A.060,
3 9.68A.070, 9.68A.100, 9A.36.130, 9A.36.140, 9A.40.090, 9A.44.060,
4 9A.44.079, 9A.44.086, 9A.44.093, 9A.44.105, 9A.44.160, 9A.52.025,
5 9A.52.030, 9A.64.020, 9A.64.030, 9A.88.010, and 9A.88.070; reenacting
6 and amending RCW 9.94A.515; adding a new section to chapter 9A.44 RCW;
7 prescribing penalties; providing an effective date; providing an
8 expiration date; and declaring an emergency.

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

10 **Sec. 1.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
11 as follows:

12 Unless the context clearly requires otherwise, the definitions in
13 this section apply throughout this chapter.

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

16 (2) "Collect," or any derivative thereof, "collect and remit," or
17 "collect and deliver," when used with reference to the department,
18 means that the department, either directly or through a collection
19 agreement authorized by RCW 9.94A.760, is responsible for monitoring

1 and enforcing the offender's sentence with regard to the legal
2 financial obligation, receiving payment thereof from the offender, and,
3 consistent with current law, delivering daily the entire payment to the
4 superior court clerk without depositing it in a departmental account.

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

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

10 (5) "Community custody" means that portion of an offender's
11 sentence of confinement in lieu of earned release time or imposed
12 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
13 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
14 community subject to controls placed on the offender's movement and
15 activities by the department. For offenders placed on community
16 custody for crimes committed on or after July 1, 2000, the department
17 shall assess the offender's risk of reoffense and may establish and
18 modify conditions of community custody, in addition to those imposed by
19 the court, based upon the risk to community safety.

20 (6) "Community custody range" means the minimum and maximum period
21 of community custody included as part of a sentence under RCW
22 9.94A.715, as established by the commission or the legislature under
23 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

24 (7) "Community placement" means that period during which the
25 offender is subject to the conditions of community custody and/or
26 postrelease supervision, which begins either upon completion of the
27 term of confinement (postrelease supervision) or at such time as the
28 offender is transferred to community custody in lieu of earned release.
29 Community placement may consist of entirely community custody, entirely
30 postrelease supervision, or a combination of the two.

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

34 (9) "Community restitution" means compulsory service, without
35 compensation, performed for the benefit of the community by the
36 offender.

37 (10) "Community supervision" means a period of time during which a
38 convicted offender is subject to crime-related prohibitions and other

1 sentence conditions imposed by a court pursuant to this chapter or RCW
2 16.52.200(6) or 46.61.524. Where the court finds that any offender has
3 a chemical dependency that has contributed to his or her offense, the
4 conditions of supervision may, subject to available resources, include
5 treatment. For purposes of the interstate compact for out-of-state
6 supervision of parolees and probationers, RCW 9.95.270, community
7 supervision is the functional equivalent of probation and should be
8 considered the same as probation by other states.

9 (11) "Confinement" means total or partial confinement.

10 (12) "Conviction" means an adjudication of guilt pursuant to Titles
11 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
12 acceptance of a plea of guilty.

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

20 (14) "Criminal history" means the list of a defendant's prior
21 convictions and juvenile adjudications, whether in this state, in
22 federal court, or elsewhere.

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

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

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

36 (15) "Day fine" means a fine imposed by the sentencing court that
37 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 with
5 sentence conditions, and in which the offender is required to report
6 daily to a specific location designated by the department or the
7 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 supervision, the
12 number of actual hours or days of community restitution work, or
13 dollars or terms of a legal financial obligation. The fact that an
14 offender through earned release can reduce the actual period of
15 confinement shall not affect the classification of the sentence as a
16 determinate 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 personal
21 services, whether denominated as wages, salary, commission, bonuses, or
22 otherwise, and, notwithstanding any other provision of law making the
23 payments exempt from garnishment, attachment, or other process to
24 satisfy a court-ordered legal financial obligation, specifically
25 includes periodic payments pursuant to pension or retirement programs,
26 or insurance policies of any type, but does not include payments made
27 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
28 or Title 74 RCW.

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

33 (21) "Drug offense" means:

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

37 (b) Any offense defined as a felony under federal law that relates

1 to the possession, manufacture, distribution, or transportation of a
2 controlled substance; or

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

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

8 (23) "Escape" means:

9 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
10 first degree (RCW 9A.76.110), escape in the second degree (RCW
11 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
12 willful failure to return from work release (RCW 72.65.070), or willful
13 failure to be available for supervision by the department while in
14 community custody (RCW 72.09.310); or

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

18 (24) "Felony traffic offense" means:

19 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
20 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
21 and-run injury-accident (RCW 46.52.020(4)); or

22 (b) 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 felony
24 traffic offense under (a) of this subsection.

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

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

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

34 (28) "Legal financial obligation" means a sum of money that is
35 ordered by a superior court of the state of Washington for legal
36 financial obligations which may include restitution to the victim,
37 statutorily imposed crime victims' compensation fees as assessed
38 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,

1 court-appointed attorneys' fees, and costs of defense, fines, and any
2 other financial obligation that is assessed to the offender as a result
3 of a felony conviction. Upon conviction for vehicular assault while
4 under the influence of intoxicating liquor or any drug, RCW
5 46.61.522(1)(b), or vehicular homicide while under the influence of
6 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
7 obligations may also include payment to a public agency of the expense
8 of an emergency response to the incident resulting in the conviction,
9 subject to RCW 38.52.430.

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

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

15 (b) Assault in the second degree;

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

17 (d) Child molestation in the second degree;

18 (e) Controlled substance homicide;

19 (f) Extortion in the first degree;

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

21 (h) Indecent liberties;

22 (i) Kidnapping in the second degree;

23 (j) Leading organized crime;

24 (k) Manslaughter in the first degree;

25 (l) Manslaughter in the second degree;

26 (m) Promoting prostitution in the first degree;

27 (n) Rape in the third degree;

28 (o) Robbery in the second degree;

29 (p) Sexual exploitation;

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

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

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

3 (t) Any other felony with a deadly weapon verdict under RCW
4 9.94A.602;

5 (u) Any felony offense in effect at any time prior to December 2,
6 1993, that is comparable to a most serious offense under this
7 subsection, or any federal or out-of-state conviction for an offense
8 that under the laws of this state would be a felony classified as a
9 most serious offense under this subsection;

10 (v)(i) A prior conviction for indecent liberties under RCW
11 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
12 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
13 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
14 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

15 (ii) A prior conviction for indecent liberties under RCW
16 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
17 if: (A) The crime was committed against a child under the age of
18 fourteen; or (B) the relationship between the victim and perpetrator is
19 included in the definition of indecent liberties under RCW
20 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
21 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
22 through July 27, 1997.

23 (30) "Nonviolent offense" means an offense which is not a violent
24 offense.

25 (31) "Offender" means a person who has committed a felony
26 established by state law and is eighteen years of age or older or is
27 less than eighteen years of age but whose case is under superior court
28 jurisdiction under RCW 13.04.030 or has been transferred by the
29 appropriate juvenile court to a criminal court pursuant to RCW
30 13.40.110. Throughout this chapter, the terms "offender" and
31 "defendant" are used interchangeably.

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

1 detention, work crew, and a combination of work crew and home
2 detention.

3 (33) "Persistent offender" is an offender who:

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

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

14 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
15 of a child in the first degree, child molestation in the first degree,
16 custodial sexual misconduct in the first degree, incest in the first
17 degree, promoting prostitution in the first degree when the perpetrator
18 advances or profits from prostitution of a person under eighteen years
19 old, sexual misconduct with a minor in the first degree, rape in the
20 second degree, rape of a child in the second degree, child molestation
21 in the second degree, rape in the third degree if the victim was under
22 sixteen years old, rape of a child in the third degree, dealing in
23 depictions of a minor engaged in sexually explicit conduct, luring,
24 patronizing a juvenile prostitute, possession of depictions of a minor
25 engaged in sexually explicit conduct, sending or bringing into the
26 state depictions of a minor engaged in sexually explicit conduct,
27 sexual exploitation of a minor, sexually violating human remains by
28 sexual intercourse, or indecent liberties by forcible compulsion; (B)
29 any of the following offenses with a finding of sexual motivation:
30 Murder in the first degree, murder in the second degree, homicide by
31 abuse, kidnapping in the first degree, kidnapping in the second degree,
32 assault in the first degree, assault in the second degree, assault of
33 a child in the first degree, (~~or~~) assault of a child in the second
34 degree, assault of a child in the third degree, child buying, child
35 selling, indecent exposure to a person under fourteen years old,
36 residential burglary, burglary in the first degree, or burglary in the
37 second degree; or (C) an attempt to commit any crime listed in this
38 subsection (33)(b)(i); and

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

13 (34) "Postrelease supervision" is that portion of an offender's
14 community placement that is not community custody.

15 (35) "Private school" means a school regulated under chapter
16 28A.195 or 28A.205 RCW.

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

18 (37) "Restitution" means a specific sum of money ordered by the
19 sentencing court to be paid by the offender to the court over a
20 specified period of time as payment of damages. The sum may include
21 both public and private costs.

22 (38) "Risk assessment" means the application of an objective
23 instrument supported by research and adopted by the department for the
24 purpose of assessing an offender's risk of reoffense, taking into
25 consideration the nature of the harm done by the offender, place and
26 circumstances of the offender related to risk, the offender's
27 relationship to any victim, and any information provided to the
28 department by victims. The results of a risk assessment shall not be
29 based on unconfirmed or unconfirmable allegations.

30 (39) "Serious traffic offense" means:

31 (a) Driving while under the influence of intoxicating liquor or any
32 drug (RCW 46.61.502), actual physical control while under the influence
33 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
34 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
35 or

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

1 (40) "Serious violent offense" is a subcategory of violent offense
2 and means:
3 (a)(i) Murder in the first degree;
4 (ii) Homicide by abuse;
5 (iii) Murder in the second degree;
6 (iv) Manslaughter in the first degree;
7 (v) Assault in the first degree;
8 (vi) Kidnapping in the first degree;
9 (vii) Rape in the first degree;
10 (viii) Assault of a child in the first degree; or
11 (ix) An attempt, criminal solicitation, or criminal conspiracy to
12 commit one of these felonies; or
13 (b) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a serious
15 violent offense under (a) of this subsection.
16 (41) "Sex offense" means:
17 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
18 RCW 9A.44.130(11);
19 (ii) A violation of RCW 9A.64.020;
20 (iii) A felony that is a violation of chapter 9.68A RCW other than
21 RCW ((~~9.68A.070 or~~) 9.68A.080; ((~~or~~))
22 (iv) A violation of RCW 9A.40.090; or
23 (v) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
24 criminal solicitation, or criminal conspiracy to commit such crimes;
25 (b) Any conviction for a felony offense in effect at any time prior
26 to July 1, 1976, that is comparable to a felony classified as a sex
27 offense in (a) of this subsection;
28 (c) A felony with a finding of sexual motivation under RCW
29 9.94A.835 or 13.40.135; or
30 (d) Any federal or out-of-state conviction for an offense that
31 under the laws of this state would be a felony classified as a sex
32 offense under (a) of this subsection.
33 (42) "Sexual motivation" means that one of the purposes for which
34 the defendant committed the crime was for the purpose of his or her
35 sexual gratification.
36 (43) "Standard sentence range" means the sentencing court's
37 discretionary range in imposing a nonappealable sentence.

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

5 (45) "Total confinement" means confinement inside the physical
6 boundaries of a facility or institution operated or utilized under
7 contract by the state or any other unit of government for twenty-four
8 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

9 (46) "Transition training" means written and verbal instructions
10 and assistance provided by the department to the offender during the
11 two weeks prior to the offender's successful completion of the work
12 ethic camp program. The transition training shall include instructions
13 in the offender's requirements and obligations during the offender's
14 period of community custody.

15 (47) "Victim" means any person who has sustained emotional,
16 psychological, physical, or financial injury to person or property as
17 a direct result of the crime charged.

18 (48) "Violent offense" means:

19 (a) Any of the following felonies:

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

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

24 (iii) Manslaughter in the first degree;

25 (iv) Manslaughter in the second degree;

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

27 (vi) Kidnapping in the second degree;

28 (vii) Arson in the second degree;

29 (viii) Assault in the second degree;

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

31 (x) Extortion in the first degree;

32 (xi) Robbery in the second degree;

33 (xii) Drive-by shooting;

34 (xiii) Vehicular assault, when caused by the operation or driving
35 of a vehicle by a person while under the influence of intoxicating
36 liquor or any drug or by the operation or driving of a vehicle in a
37 reckless manner; and

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

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

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

11 (49) "Work crew" means a program of partial confinement consisting
12 of civic improvement tasks for the benefit of the community that
13 complies with RCW 9.94A.725.

14 (50) "Work ethic camp" means an alternative incarceration program
15 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
16 the cost of corrections by requiring offenders to complete a
17 comprehensive array of real-world job and vocational experiences,
18 character-building work ethics training, life management skills
19 development, substance abuse rehabilitation, counseling, literacy
20 training, and basic adult education.

21 (51) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school.

24 **Sec. 2.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
25 as follows:

26 Unless the context clearly requires otherwise, the definitions in
27 this section apply throughout this chapter.

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

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

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

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

6 (5) "Community custody" means that portion of an offender's
7 sentence of confinement in lieu of earned release time or imposed
8 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
9 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
10 community subject to controls placed on the offender's movement and
11 activities by the department. For offenders placed on community
12 custody for crimes committed on or after July 1, 2000, the department
13 shall assess the offender's risk of reoffense and may establish and
14 modify conditions of community custody, in addition to those imposed by
15 the court, based upon the risk to community safety.

16 (6) "Community custody range" means the minimum and maximum period
17 of community custody included as part of a sentence under RCW
18 9.94A.715, as established by the commission or the legislature under
19 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

20 (7) "Community placement" means that period during which the
21 offender is subject to the conditions of community custody and/or
22 postrelease supervision, which begins either upon completion of the
23 term of confinement (postrelease supervision) or at such time as the
24 offender is transferred to community custody in lieu of earned release.
25 Community placement may consist of entirely community custody, entirely
26 postrelease supervision, or a combination of the two.

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

30 (9) "Community supervision" means a period of time during which a
31 convicted offender is subject to crime-related prohibitions and other
32 sentence conditions imposed by a court pursuant to this chapter or RCW
33 16.52.200(6) or 46.61.524. Where the court finds that any offender has
34 a chemical dependency that has contributed to his or her offense, the
35 conditions of supervision may, subject to available resources, include
36 treatment. For purposes of the interstate compact for out-of-state
37 supervision of parolees and probationers, RCW 9.95.270, community

1 supervision is the functional equivalent of probation and should be
2 considered the same as probation by other states.

3 (10) "Confinement" means total or partial confinement.

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

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

14 (13) "Criminal history" means the list of a defendant's prior
15 convictions and juvenile adjudications, whether in this state, in
16 federal court, or elsewhere.

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

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

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

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

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

1 (16) "Department" means the department of corrections.

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

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

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

26 (20) "Drug offense" means:

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

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

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

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

38 (22) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
2 first degree (RCW 9A.76.110), escape in the second degree (RCW
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
4 willful failure to return from work release (RCW 72.65.070), or willful
5 failure to be available for supervision by the department while in
6 community custody (RCW 72.09.310); 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 an escape
9 under (a) of this subsection.

10 (23) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
12 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
13 and-run injury-accident (RCW 46.52.020(4)); or

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

17 (24) "Fine" means a specific sum of money ordered by the sentencing
18 court to be paid by the offender to the court over a specific period of
19 time.

20 (25) "First-time offender" means any person who has no prior
21 convictions for a felony and is eligible for the first-time offender
22 waiver under RCW 9.94A.650.

23 (26) "Home detention" means a program of partial confinement
24 available to offenders wherein the offender is confined in a private
25 residence subject to electronic surveillance.

26 (27) "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 funds,
31 court-appointed attorneys' fees, and costs of defense, fines, and any
32 other financial obligation that is assessed to the offender as a result
33 of a felony conviction. Upon conviction for vehicular assault while
34 under the influence of intoxicating liquor or any drug, RCW
35 46.61.522(1)(b), or vehicular homicide while under the influence of
36 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
37 obligations may also include payment to a public agency of the expense

1 of an emergency response to the incident resulting in the conviction,
2 subject to RCW 38.52.430.

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

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

8 (b) Assault in the second degree;

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

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

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

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

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

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

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

33 (t) Any other felony with a deadly weapon verdict under RCW
34 9.94A.602;

35 (u) Any felony offense in effect at any time prior to December 2,
36 1993, that is comparable to a most serious offense under this
37 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a
2 most serious offense under this subsection;

3 (v)(i) A prior conviction for indecent liberties under RCW
4 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
5 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
6 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
7 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

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

16 (29) "Nonviolent offense" means an offense which is not a violent
17 offense.

18 (30) "Offender" means a person who has committed a felony
19 established by state law and is eighteen years of age or older or is
20 less than eighteen years of age but whose case is under superior court
21 jurisdiction under RCW 13.04.030 or has been transferred by the
22 appropriate juvenile court to a criminal court pursuant to RCW
23 13.40.110. Throughout this chapter, the terms "offender" and
24 "defendant" are used interchangeably.

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

33 (32) "Persistent offender" is an offender who:

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

36 (ii) Has, before the commission of the offense under (a) of this
37 subsection, been convicted as an offender on at least two separate
38 occasions, whether in this state or elsewhere, of felonies that under

1 the laws of this state would be considered most serious offenses and
2 would be included in the offender score under RCW 9.94A.525; provided
3 that of the two or more previous convictions, at least one conviction
4 must have occurred before the commission of any of the other most
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
7 of a child in the first degree, child molestation in the first degree,
8 custodial sexual misconduct in the first degree, incest in the first
9 degree, promoting prostitution in the first degree when the perpetrator
10 advances or profits from prostitution of a person under eighteen years
11 old, sexual misconduct with a minor in the first degree, rape in the
12 second degree, rape of a child in the second degree, child molestation
13 in the second degree, rape in the third degree if the victim was under
14 sixteen years old, rape of a child in the third degree, dealing in
15 depictions of a minor engaged in sexually explicit conduct, luring,
16 patronizing a juvenile prostitute, possession of depictions of a minor
17 engaged in sexually explicit conduct, sending or bringing into the
18 state depictions of a minor engaged in sexually explicit conduct,
19 sexual exploitation of a minor, sexually violating human remains by
20 sexual intercourse, or indecent liberties by forcible compulsion; (B)
21 any of the following offenses with a finding of sexual motivation:
22 Murder in the first degree, murder in the second degree, homicide by
23 abuse, kidnapping in the first degree, kidnapping in the second degree,
24 assault in the first degree, assault in the second degree, assault of
25 a child in the first degree, (~~or~~) assault of a child in the second
26 degree, assault of a child in the third degree, child buying, child
27 selling, indecent exposure to a person under fourteen years old,
28 residential burglary, burglary in the first degree, or burglary in the
29 second degree; or (C) an attempt to commit any crime listed in this
30 subsection (32)(b)(i); and

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

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

5 (33) "Postrelease supervision" is that portion of an offender's
6 community placement that is not community custody.

7 (34) "Restitution" means a specific sum of money ordered by the
8 sentencing court to be paid by the offender to the court over a
9 specified period of time as payment of damages. The sum may include
10 both public and private costs.

11 (35) "Risk assessment" means the application of an objective
12 instrument supported by research and adopted by the department for the
13 purpose of assessing an offender's risk of reoffense, taking into
14 consideration the nature of the harm done by the offender, place and
15 circumstances of the offender related to risk, the offender's
16 relationship to any victim, and any information provided to the
17 department by victims. The results of a risk assessment shall not be
18 based on unconfirmed or unconfirmable allegations.

19 (36) "Serious traffic offense" means:

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

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

28 (37) "Serious violent offense" is a subcategory of violent offense
29 and means:

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

31 (ii) Homicide by abuse;

32 (iii) Murder in the second degree;

33 (iv) Manslaughter in the first degree;

34 (v) Assault in the first degree;

35 (vi) Kidnapping in the first degree;

36 (vii) Rape in the first degree;

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

1 (ix) An attempt, criminal solicitation, or criminal conspiracy to
2 commit one of these felonies; or
3 (b) Any federal or out-of-state conviction for an offense that
4 under the laws of this state would be a felony classified as a serious
5 violent offense under (a) of this subsection.
6 (38) "Sex offense" means:
7 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
8 RCW 9A.44.130(11);
9 (ii) A violation of RCW 9A.64.020;
10 (iii) A felony that is a violation of chapter 9.68A RCW other than
11 RCW ((~~9.68A.070 or~~) 9.68A.080; ((~~or~~))
12 (iv) A violation of RCW 9A.40.090; or
13 (v) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
14 criminal solicitation, or criminal conspiracy to commit such crimes;
15 (b) Any conviction for a felony offense in effect at any time prior
16 to July 1, 1976, that is comparable to a felony classified as a sex
17 offense in (a) of this subsection;
18 (c) A felony with a finding of sexual motivation under RCW
19 9.94A.835 or 13.40.135; or
20 (d) Any federal or out-of-state conviction for an offense that
21 under the laws of this state would be a felony classified as a sex
22 offense under (a) of this subsection.
23 (39) "Sexual motivation" means that one of the purposes for which
24 the defendant committed the crime was for the purpose of his or her
25 sexual gratification.
26 (40) "Standard sentence range" means the sentencing court's
27 discretionary range in imposing a nonappealable sentence.
28 (41) "Statutory maximum sentence" means the maximum length of time
29 for which an offender may be confined as punishment for a crime as
30 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
31 crime, or other statute defining the maximum penalty for a crime.
32 (42) "Total confinement" means confinement inside the physical
33 boundaries of a facility or institution operated or utilized under
34 contract by the state or any other unit of government for twenty-four
35 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
36 (43) "Transition training" means written and verbal instructions
37 and assistance provided by the department to the offender during the
38 two weeks prior to the offender's successful completion of the work

1 ethic camp program. The transition training shall include instructions
2 in the offender's requirements and obligations during the offender's
3 period of community custody.

4 (44) "Victim" means any person who has sustained emotional,
5 psychological, physical, or financial injury to person or property as
6 a direct result of the crime charged.

7 (45) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

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

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

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

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

37 (46) "Work crew" means a program of partial confinement consisting

1 of civic improvement tasks for the benefit of the community that
2 complies with RCW 9.94A.725.

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

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

13 **Sec. 3.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read
14 as follows:

15 (1) An offender who is not a persistent offender shall be sentenced
16 under this section if the offender:

17 (a) Is convicted of:

18 (i) Rape in the first degree, rape in the second degree, rape of a
19 child in the first degree, child molestation in the first degree,
20 custodial sexual misconduct in the first degree, incest in the first
21 degree, promoting prostitution in the first degree when the perpetrator
22 advances or profits from prostitution of a person under eighteen years
23 old, sexual misconduct with a minor in the first degree, rape of a
24 child in the second degree, child molestation in the second degree,
25 rape in the third degree if the victim was under sixteen years old,
26 rape of a child in the third degree, dealing in depictions of a minor
27 engaged in sexually explicit conduct, luring, patronizing a juvenile
28 prostitute, possession of depictions of a minor engaged in sexually
29 explicit conduct, sending or bringing into the state depictions of a
30 minor engaged in sexually explicit conduct, sexual exploitation of a
31 minor, sexually violating human remains by sexual intercourse, or
32 indecent liberties by forcible compulsion;

33 (ii) Any of the following offenses with a finding of sexual
34 motivation: Murder in the first degree, murder in the second degree,
35 homicide by abuse, kidnapping in the first degree, kidnapping in the
36 second degree, assault in the first degree, assault in the second
37 degree, assault of a child in the first degree, (~~(or)~~) assault of a

1 child in the second degree, assault of a child in the third degree,
2 child buying, child selling, indecent exposure to a person under
3 fourteen years old, residential burglary, burglary in the first degree,
4 or burglary in the second degree; or

5 (iii) An attempt to commit any crime listed in this subsection
6 (1)(a);

7 committed on or after September 1, 2001; or

8 (b) Has a prior conviction for an offense listed in RCW
9 9.94A.030(33)(b), and is convicted of any sex offense which was
10 committed after September 1, 2001.

11 For purposes of this subsection (1)(b), failure to register is not
12 a sex offense.

13 (2) An offender convicted of rape of a child in the first or second
14 degree or child molestation in the first degree who was seventeen years
15 of age or younger at the time of the offense shall not be sentenced
16 under this section.

17 (3) Upon a finding that the offender is subject to sentencing under
18 this section, the court shall impose a sentence to a maximum term
19 consisting of the statutory maximum sentence for the offense and a
20 minimum term either within the standard sentence range for the offense,
21 or outside the standard sentence range pursuant to RCW 9.94A.535, if
22 the offender is otherwise eligible for such a sentence.

23 (4) A person sentenced under subsection (3) of this section shall
24 serve the sentence in a facility or institution operated, or utilized
25 under contract, by the state.

26 (5) When a court sentences a person to the custody of the
27 department under this section, the court shall, in addition to the
28 other terms of the sentence, sentence the offender to community custody
29 under the supervision of the department and the authority of the board
30 for any period of time the person is released from total confinement
31 before the expiration of the maximum sentence.

32 (6)(a)(i) Unless a condition is waived by the court, the conditions
33 of community custody shall include those provided for in RCW
34 9.94A.700(4). The conditions may also include those provided for in
35 RCW 9.94A.700(5). The court may also order the offender to participate
36 in rehabilitative programs or otherwise perform affirmative conduct
37 reasonably related to the circumstances of the offense, the offender's

1 risk of reoffending, or the safety of the community, and the department
2 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
3 9.95.425, and 9.95.430.

4 (ii) If the offense that caused the offender to be sentenced under
5 this section was an offense listed in subsection (1)(a) of this section
6 and the victim of the offense was under eighteen years of age at the
7 time of the offense, the court shall, as a condition of community
8 custody, prohibit the offender from residing in a community protection
9 zone.

10 (b) As part of any sentence under this section, the court shall
11 also require the offender to comply with any conditions imposed by the
12 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

13 **Sec. 4.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
14 as follows:

15 (1) An offender who is not a persistent offender shall be sentenced
16 under this section if the offender:

17 (a) Is convicted of:

18 (i) Rape in the first degree, rape in the second degree, rape of a
19 child in the first degree, child molestation in the first degree,
20 custodial sexual misconduct in the first degree, incest in the first
21 degree, promoting prostitution in the first degree when the perpetrator
22 advances or profits from prostitution of a person under eighteen years
23 old, sexual misconduct with a minor in the first degree, rape of a
24 child in the second degree, child molestation in the second degree,
25 rape in the third degree if the victim was under sixteen years old,
26 rape of a child in the third degree, dealing in depictions of a minor
27 engaged in sexually explicit conduct, luring, patronizing a juvenile
28 prostitute, possession of depictions of a minor engaged in sexually
29 explicit conduct, sending or bringing into the state depictions of a
30 minor engaged in sexually explicit conduct, sexual exploitation of a
31 minor, sexually violating human remains by sexual intercourse, or
32 indecent liberties by forcible compulsion;

33 (ii) Any of the following offenses with a finding of sexual
34 motivation: Murder in the first degree, murder in the second degree,
35 homicide by abuse, kidnapping in the first degree, kidnapping in the
36 second degree, assault in the first degree, assault in the second
37 degree, assault of a child in the first degree, ~~((or))~~ assault of a

1 child in the second degree, assault of a child in the third degree,
2 child buying, child selling, indecent exposure to a person under
3 fourteen years old, residential burglary, burglary in the first degree,
4 or burglary in the second degree; or

5 (iii) An attempt to commit any crime listed in this subsection
6 (1)(a);

7 committed on or after September 1, 2001; or

8 (b) Has a prior conviction for an offense listed in RCW
9 9.94A.030(32)(b), and is convicted of any sex offense which was
10 committed after September 1, 2001.

11 For purposes of this subsection (1)(b), failure to register is not
12 a sex offense.

13 (2) An offender convicted of rape of a child in the first or second
14 degree or child molestation in the first degree who was seventeen years
15 of age or younger at the time of the offense shall not be sentenced
16 under this section.

17 (3) Upon a finding that the offender is subject to sentencing under
18 this section, the court shall impose a sentence to a maximum term
19 consisting of the statutory maximum sentence for the offense and a
20 minimum term either within the standard sentence range for the offense,
21 or outside the standard sentence range pursuant to RCW 9.94A.535, if
22 the offender is otherwise eligible for such a sentence.

23 (4) A person sentenced under subsection (3) of this section shall
24 serve the sentence in a facility or institution operated, or utilized
25 under contract, by the state.

26 (5) When a court sentences a person to the custody of the
27 department under this section, the court shall, in addition to the
28 other terms of the sentence, sentence the offender to community custody
29 under the supervision of the department and the authority of the board
30 for any period of time the person is released from total confinement
31 before the expiration of the maximum sentence.

32 (6)(a) Unless a condition is waived by the court, the conditions of
33 community custody shall include those provided for in RCW 9.94A.700(4).
34 The conditions may also include those provided for in RCW 9.94A.700(5).
35 The court may also order the offender to participate in rehabilitative
36 programs or otherwise perform affirmative conduct reasonably related to
37 the circumstances of the offense, the offender's risk of reoffending,

1 or the safety of the community, and the department and the board shall
2 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
3 9.95.430.

4 (b) As part of any sentence under this section, the court shall
5 also require the offender to comply with any conditions imposed by the
6 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

7 **Sec. 5.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are
8 each reenacted and amended to read as follows:

9 TABLE 2

10 CRIMES INCLUDED WITHIN
11 EACH SERIOUSNESS LEVEL

- 12 XVI Aggravated Murder 1 (RCW
13 10.95.020)
- 14 XV Homicide by abuse (RCW 9A.32.055)
15 Malicious explosion 1 (RCW
16 70.74.280(1))
17 Murder 1 (RCW 9A.32.030)
- 18 XIV Murder 2 (RCW 9A.32.050)
19 Trafficking 1 (RCW 9A.40.100(1))
- 20 XIII Malicious explosion 2 (RCW
21 70.74.280(2))
22 Malicious placement of an explosive 1
23 (RCW 70.74.270(1))
- 24 XII Assault 1 (RCW 9A.36.011)
25 Assault of a Child 1 (RCW 9A.36.120)
26 Malicious placement of an imitation
27 device 1 (RCW 70.74.272(1)(a))
28 Rape 1 (RCW 9A.44.040)
29 Rape of a Child 1 (RCW 9A.44.073)
30 Trafficking 2 (RCW 9A.40.100(2))
- 31 XI Manslaughter 1 (RCW 9A.32.060)
32 Rape 2 (RCW 9A.44.050)
33 Rape of a Child 2 (RCW 9A.44.076)
- 34 X Child Molestation 1 (RCW 9A.44.083)

1 Indecent Liberties (with forcible
2 compulsion) (RCW
3 9A.44.100(1)(a))
4 Kidnapping 1 (RCW 9A.40.020)
5 Leading Organized Crime (RCW
6 9A.82.060(1)(a))
7 Malicious explosion 3 (RCW
8 70.74.280(3))
9 Sexually Violent Predator Escape
10 (RCW 9A.76.115)
11 IX Assault 2 (with sexual motivation)
12 (RCW 9A.36.021)
13 Assault of a Child 2 (RCW 9A.36.130)
14 Assault of a Child 3 (with sexual
15 motivation) (RCW
16 9A.36.140(2)(b))
17 Burglary 1 (with sexual motivation)
18 (RCW 9A.52.020)
19 Burglary 2 (with sexual motivation)
20 (RCW 9A.52.030(2)(b))
21 Child Buying (with sexual motivation)
22 (RCW 9A.64.030(3)(b)(ii))
23 Child Molestation 2 (RCW 9A.44.086)
24 Child Selling (with sexual motivation)
25 (RCW 9A.64.030(3)(b)(i))
26 Communication with a Minor for
27 Immoral Purposes (RCW
28 9.68A.090)
29 Custodial Sexual Misconduct 1 (RCW
30 9A.44.160)
31 Dealing in depictions of minor engaged
32 in sexually explicit conduct (RCW
33 9.68A.050)
34 Explosive devices prohibited (RCW
35 70.74.180)

1 Failure to Register as a Kidnapping
2 Offender (felony offense) (RCW
3 9A.44.130(11)(a))
4 Failure to Register as a Sex Offender
5 (felony offense) (RCW
6 9A.44.130(10)(a))
7 Hit and Run--Death (RCW
8 46.52.020(4)(a))
9 Homicide by Watercraft, by being
10 under the influence of intoxicating
11 liquor or any drug (RCW
12 79A.60.050)
13 Incest 1 (RCW 9A.64.020(1))
14 Inciting Criminal Profiteering (RCW
15 9A.82.060(1)(b))
16 Indecent Exposure to Person Under
17 Age Fourteen (with sexual
18 motivation) (RCW
19 9A.88.010(2)(d))
20 Kidnapping 2 (with sexual motivation)
21 (RCW 9A.40.030)
22 Luring (RCW 9A.40.090)
23 Malicious placement of an explosive 2
24 (RCW 70.74.270(2))
25 Patronizing a Juvenile Prostitute (RCW
26 9.68A.100)
27 Possession of Depictions of a Minor
28 Engaged in Sexually Explicit
29 Conduct (RCW 9.68A.070)
30 Promoting Prostitution 1 (advances or
31 profits from prostitution of a
32 person less than eighteen years
33 old) (RCW 9A.88.070(3))
34 Rape 3 (victim under sixteen) (RCW
35 9A.44.060(2)(b))
36 Rape of a Child 3 (RCW 9A.44.079)

1 Residential Burglary (with sexual
2 motivation) (RCW
3 9A.52.025(2)(b))
4 Robbery 1 (RCW 9A.56.200)
5 Sending, bringing into state depictions
6 of minor engaged in sexually
7 explicit conduct (RCW 9.68A.060)
8 Sexual Exploitation (RCW 9.68A.040)
9 Sexual Misconduct with a Minor 1
10 (RCW 9A.44.093)
11 Sexually Violating Human Remains (by
12 sexual intercourse) (RCW
13 9A.44.105(1)(b))
14 Vehicular Homicide, by being under
15 the influence of intoxicating liquor
16 or any drug (RCW 46.61.520)
17 VIII Arson 1 (RCW 9A.48.020)
18 Homicide by Watercraft, by the
19 operation of any vessel in a
20 reckless manner (RCW
21 79A.60.050)
22 Manslaughter 2 (RCW 9A.32.070)
23 Promoting Prostitution 1 (advances
24 prostitution by compelling a
25 person by threat or force to engage
26 in prostitution or profits from
27 prostitution that results from such
28 threat or force) (RCW
29 9A.88.070(2))
30 Theft of Ammonia (RCW 69.55.010)
31 Vehicular Homicide, by the operation
32 of any vehicle in a reckless
33 manner (RCW 46.61.520)
34 VII Burglary 1 (without sexual motivation)
35 (RCW 9A.52.020)
36 (~~Child Molestation 2 (RCW~~
37 ~~9A.44.086))~~)

1 Civil Disorder Training (RCW
2 9A.48.120)
3 ~~((Dealing in depictions of minor
4 engaged in sexually explicit
5 conduct (RCW 9.68A.050)))~~
6 Drive-by Shooting (RCW 9A.36.045)
7 Homicide by Watercraft, by disregard
8 for the safety of others (RCW
9 79A.60.050)
10 Indecent Liberties (without forcible
11 compulsion) (RCW 9A.44.100(1)
12 (b) and (c))
13 Introducing Contraband 1 (RCW
14 9A.76.140)
15 Malicious placement of an explosive 3
16 (RCW 70.74.270(3))
17 Negligently Causing Death By Use of
18 a Signal Preemption Device
19 (RCW 46.37.675)
20 ~~((Sending, bringing into state
21 depictions of minor engaged in
22 sexually explicit conduct (RCW
23 9.68A.060)))~~
24 Unlawful Possession of a Firearm in
25 the first degree (RCW
26 9.41.040(1))
27 Use of a Machine Gun in Commission
28 of a Felony (RCW 9.41.225)
29 Vehicular Homicide, by disregard for
30 the safety of others (RCW
31 46.61.520)
32 VI Bail Jumping with Murder 1 (RCW
33 9A.76.170(3)(a))
34 Bribery (RCW 9A.68.010)
35 ~~((Incest 1 (RCW 9A.64.020(1))))~~
36 Intimidating a Judge (RCW
37 9A.72.160)

1 Intimidating a Juror/Witness (RCW
2 9A.72.110, 9A.72.130)
3 Malicious placement of an imitation
4 device 2 (RCW 70.74.272(1)(b))
5 (~~Rape of a Child 3 (RCW~~
6 ~~9A.44.079))~~)
7 Theft of a Firearm (RCW 9A.56.300)
8 Unlawful Storage of Ammonia (RCW
9 69.55.020)
10 V Abandonment of dependent person 1
11 (RCW 9A.42.060)
12 Advancing money or property for
13 extortionate extension of credit
14 (RCW 9A.82.030)
15 Bail Jumping with class A Felony
16 (RCW 9A.76.170(3)(b))
17 Child Molestation 3 (RCW 9A.44.089)
18 Criminal Mistreatment 1 (RCW
19 9A.42.020)
20 (~~Custodial Sexual Misconduct 4~~
21 ~~(RCW 9A.44.160))~~)
22 Domestic Violence Court Order
23 Violation (RCW 10.99.040,
24 10.99.050, 26.09.300, 26.10.220,
25 26.26.138, 26.50.110, 26.52.070,
26 or 74.34.145)
27 Extortion 1 (RCW 9A.56.120)
28 Extortionate Extension of Credit
29 (RCW 9A.82.020)
30 Extortionate Means to Collect
31 Extensions of Credit (RCW
32 9A.82.040)
33 Incest 2 (RCW 9A.64.020(2))
34 Kidnapping 2 (without sexual
35 motivation) (RCW 9A.40.030)
36 Perjury 1 (RCW 9A.72.020)

1 Persistent prison misbehavior (RCW
2 9.94.070)
3 Possession of a Stolen Firearm (RCW
4 9A.56.310)
5 Rape 3 (victim sixteen years of age or
6 older) (RCW 9A.44.060(2)(a))
7 Rendering Criminal Assistance 1
8 (RCW 9A.76.070)
9 (~~(Sexual Misconduct with a Minor 1~~
10 ~~(RCW 9A.44.093))~~)
11 Sexually Violating Human Remains (by
12 sexual contact) (RCW
13 9A.44.105(1)(a))
14 Stalking (RCW 9A.46.110)
15 Taking Motor Vehicle Without
16 Permission 1 (RCW 9A.56.070)
17 IV Arson 2 (RCW 9A.48.030)
18 Assault 2 (without sexual motivation)
19 (RCW 9A.36.021)
20 Assault 3 (of a Peace Officer with a
21 Projectile Stun Gun) (RCW
22 9A.36.031(1)(h))
23 Assault by Watercraft (RCW
24 79A.60.060)
25 Bribing a Witness/Bribe Received by
26 Witness (RCW 9A.72.090,
27 9A.72.100)
28 Cheating 1 (RCW 9.46.1961)
29 Commercial Bribery (RCW
30 9A.68.060)
31 Counterfeiting (RCW 9.16.035(4))
32 Endangerment with a Controlled
33 Substance (RCW 9A.42.100)
34 Escape 1 (RCW 9A.76.110)
35 Hit and Run--Injury (RCW
36 46.52.020(4)(b))

1 Hit and Run with Vessel--Injury
2 Accident (RCW 79A.60.200(3))
3 Identity Theft 1 (RCW 9.35.020(2))
4 Indecent Exposure to Person (~~Under~~)
5 Age Fourteen (~~((subsequent sex-~~
6 ~~offense))) or Higher (with a~~
7 ~~previous conviction of a sex~~
8 ~~offense or indecent exposure)~~
9 (RCW 9A.88.010)
10 Influencing Outcome of Sporting
11 Event (RCW 9A.82.070)
12 Malicious Harassment (RCW
13 9A.36.080)
14 Residential Burglary (without sexual
15 motivation) (RCW
16 9A.52.025(2)(a))
17 Robbery 2 (RCW 9A.56.210)
18 Theft of Livestock 1 (RCW 9A.56.080)
19 Threats to Bomb (RCW 9.61.160)
20 Trafficking in Stolen Property 1 (RCW
21 9A.82.050)
22 Unlawful factoring of a credit card or
23 payment card transaction (RCW
24 9A.56.290(4)(b))
25 Unlawful transaction of health
26 coverage as a health care service
27 contractor (RCW 48.44.016(3))
28 Unlawful transaction of health
29 coverage as a health maintenance
30 organization (RCW 48.46.033(3))
31 Unlawful transaction of insurance
32 business (RCW 48.15.023(3))
33 Unlicensed practice as an insurance
34 professional (RCW 48.17.063(3))
35 Use of Proceeds of Criminal
36 Profiteering (RCW 9A.82.080 (1)
37 and (2))

1 Vehicular Assault, by being under the
2 influence of intoxicating liquor or
3 any drug, or by the operation or
4 driving of a vehicle in a reckless
5 manner (RCW 46.61.522)
6 Willful Failure to Return from
7 Furlough (RCW 72.66.060)
8 III Abandonment of dependent person 2
9 (RCW 9A.42.070)
10 Assault 3 (Except Assault 3 of a Peace
11 Officer With a Projectile Stun
12 Gun) (RCW 9A.36.031 except
13 subsection (1)(h))
14 Assault of a Child 3 (without sexual
15 motivation) (RCW
16 9A.36.140(2)(a))
17 Bail Jumping with class B or C Felony
18 (RCW 9A.76.170(3)(c))
19 Burglary 2 (without sexual motivation)
20 (RCW 9A.52.030(2)(a))
21 (~~Communication with a Minor for~~
22 ~~Immoral Purposes (RCW~~
23 ~~9.68A.090)))~~
24 Criminal Gang Intimidation (RCW
25 9A.46.120)
26 Criminal Mistreatment 2 (RCW
27 9A.42.030)
28 Custodial Assault (RCW 9A.36.100)
29 Cyberstalking (subsequent conviction
30 or threat of death) (RCW
31 9.61.260(3))
32 Escape 2 (RCW 9A.76.120)
33 Extortion 2 (RCW 9A.56.130)
34 Harassment (RCW 9A.46.020)
35 Intimidating a Public Servant (RCW
36 9A.76.180)

1 Introducing Contraband 2 (RCW
2 9A.76.150)
3 Malicious Injury to Railroad Property
4 (RCW 81.60.070)
5 Negligently Causing Substantial Bodily
6 Harm By Use of a Signal
7 Preemption Device (RCW
8 46.37.674)
9 ~~((Patronizing a Juvenile Prostitute—
10 (RCW 9.68A.100)))~~
11 Perjury 2 (RCW 9A.72.030)
12 Possession of Incendiary Device (RCW
13 9.40.120)
14 Possession of Machine Gun or Short-
15 Barreled Shotgun or Rifle (RCW
16 9.41.190)
17 Promoting Prostitution 2 (RCW
18 9A.88.080)
19 Securities Act violation (RCW
20 21.20.400)
21 Tampering with a Witness (RCW
22 9A.72.120)
23 Telephone Harassment (subsequent
24 conviction or threat of death)
25 (RCW 9.61.230(2))
26 Theft of Livestock 2 (RCW 9A.56.083)
27 Trafficking in Stolen Property 2 (RCW
28 9A.82.055)
29 Unlawful Imprisonment (RCW
30 9A.40.040)
31 Unlawful possession of firearm in the
32 second degree (RCW 9.41.040(2))
33 Vehicular Assault, by the operation or
34 driving of a vehicle with disregard
35 for the safety of others (RCW
36 46.61.522)

1 Willful Failure to Return from Work
2 Release (RCW 72.65.070)
3 II Computer Trespass 1 (RCW
4 9A.52.110)
5 Counterfeiting (RCW 9.16.035(3))
6 Escape from Community Custody
7 (RCW 72.09.310)
8 Health Care False Claims (RCW
9 48.80.030)
10 Identity Theft 2 (RCW 9.35.020(3))
11 Improperly Obtaining Financial
12 Information (RCW 9.35.010)
13 Malicious Mischief 1 (RCW
14 9A.48.070)
15 Possession of Stolen Property 1 (RCW
16 9A.56.150)
17 Theft 1 (RCW 9A.56.030)
18 Theft of Rental, Leased, or Lease-
19 purchased Property (valued at one
20 thousand five hundred dollars or
21 more) (RCW 9A.56.096(5)(a))
22 Trafficking in Insurance Claims (RCW
23 48.30A.015)
24 Unlawful factoring of a credit card or
25 payment card transaction (RCW
26 9A.56.290(4)(a))
27 Unlawful Practice of Law (RCW
28 2.48.180)
29 Unlicensed Practice of a Profession or
30 Business (RCW 18.130.190(7))
31 I Attempting to Elude a Pursuing Police
32 Vehicle (RCW 46.61.024)
33 False Verification for Welfare (RCW
34 74.08.055)
35 Forgery (RCW 9A.60.020)

1 Fraudulent Creation or Revocation of a
2 Mental Health Advance Directive
3 (RCW 9A.60.060)
4 Malicious Mischief 2 (RCW
5 9A.48.080)
6 Mineral Trespass (RCW 78.44.330)
7 Possession of Stolen Property 2 (RCW
8 9A.56.160)
9 Reckless Burning 1 (RCW 9A.48.040)
10 Taking Motor Vehicle Without
11 Permission 2 (RCW 9A.56.075)
12 Theft 2 (RCW 9A.56.040)
13 Theft of Rental, Leased, or Lease-
14 purchased Property (valued at two
15 hundred fifty dollars or more but
16 less than one thousand five
17 hundred dollars) (RCW
18 9A.56.096(5)(b))
19 Transaction of insurance business
20 beyond the scope of licensure
21 (RCW 48.17.063(4))
22 Unlawful Issuance of Checks or Drafts
23 (RCW 9A.56.060)
24 Unlawful Possession of Fictitious
25 Identification (RCW 9A.56.320)
26 Unlawful Possession of Instruments of
27 Financial Fraud (RCW
28 9A.56.320)
29 Unlawful Possession of Payment
30 Instruments (RCW 9A.56.320)
31 Unlawful Possession of a Personal
32 Identification Device (RCW
33 9A.56.320)
34 Unlawful Production of Payment
35 Instruments (RCW 9A.56.320)
36 Unlawful Trafficking in Food Stamps
37 (RCW 9.91.142)

4 **Sec. 6.** RCW 9.68A.040 and 1989 c 32 s 2 are each amended to read
5 as follows:

6 (1) A person is guilty of sexual exploitation of a minor if the
7 person:

8 (a) Compels a minor by threat or force to engage in sexually
9 explicit conduct, knowing that such conduct will be photographed or
10 part of a live performance;

11 (b) Aids, invites, employs, authorizes, or causes a minor to engage
12 in sexually explicit conduct, knowing that such conduct will be
13 photographed or part of a live performance; or

14 (c) Being a parent, legal guardian, or person having custody or
15 control of a minor, permits the minor to engage in sexually explicit
16 conduct, knowing that the conduct will be photographed or part of a
17 live performance.

18 (2) Sexual exploitation of a minor is a class ((B)) A felony
19 punishable under chapter 9A.20 RCW.

20 **Sec. 7.** RCW 9.68A.050 and 1989 c 32 s 3 are each amended to read
21 as follows:

22 A person who:

23 (1) Knowingly develops, duplicates, publishes, prints,
24 disseminates, exchanges, finances, attempts to finance, or sells any
25 visual or printed matter that depicts a minor engaged in an act of
26 sexually explicit conduct; or

27 (2) Possesses with intent to develop, duplicate, publish, print,
28 disseminate, exchange, or sell any visual or printed matter that
29 depicts a minor engaged in an act of sexually explicit conduct
30 is guilty of a class ((C)) A felony punishable under chapter 9A.20 RCW.

31 **Sec. 8.** RCW 9.68A.060 and 1989 c 32 s 4 are each amended to read
32 as follows:

33 A person who knowingly sends or causes to be sent, or brings or
34 causes to be brought, into this state for sale or distribution, any

1 visual or printed matter that depicts a minor engaged in sexually
2 explicit conduct is guilty of a class ((E)) A felony punishable under
3 chapter 9A.20 RCW.

4 **Sec. 9.** RCW 9.68A.070 and 1990 c 155 s 1 are each amended to read
5 as follows:

6 A person who knowingly possesses visual or printed matter depicting
7 a minor engaged in sexually explicit conduct is guilty of a class ((E))
8 A felony.

9 **Sec. 10.** RCW 9.68A.100 and 1999 c 327 s 4 are each amended to read
10 as follows:

11 A person is guilty of patronizing a juvenile prostitute if that
12 person engages or agrees or offers to engage in sexual conduct with a
13 minor in return for a fee, and is guilty of a class ((E)) A felony
14 punishable under chapter 9A.20 RCW. In addition to any other penalty
15 provided under chapter 9A.20 RCW, a person guilty of patronizing a
16 juvenile prostitute is subject to the provisions under RCW 9A.88.130
17 and 9A.88.140.

18 **Sec. 11.** RCW 9A.36.130 and 1992 c 145 s 2 are each amended to read
19 as follows:

20 (1) A person eighteen years of age or older is guilty of the crime
21 of assault of a child in the second degree if the child is under the
22 age of thirteen and the person:

23 (a) Commits the crime of assault in the second degree, as defined
24 in RCW 9A.36.021, against a child; or

25 (b) Intentionally assaults the child and causes bodily harm that is
26 greater than transient physical pain or minor temporary marks, and the
27 person has previously engaged in a pattern or practice either of (i)
28 assaulting the child which has resulted in bodily harm that is greater
29 than transient pain or minor temporary marks, or (ii) causing the child
30 physical pain or agony that is equivalent to that produced by torture.

31 (2)(a) Except as provided in (b) of this subsection, assault of a
32 child in the second degree is a class B felony.

33 (b) Assault of a child in the second degree with a finding of
34 sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

1 **Sec. 12.** RCW 9A.36.140 and 1992 c 145 s 3 are each amended to read
2 as follows:

3 (1) A person eighteen years of age or older is guilty of the crime
4 of assault of a child in the third degree if the child is under the age
5 of thirteen and the person commits the crime of assault in the third
6 degree as defined in RCW 9A.36.031(1)(d) or (f) against the child.

7 (2)(a) Except as provided in (b) of this subsection, assault of a
8 child in the third degree is a class C felony.

9 (b) Assault of a child in the third degree with a finding of sexual
10 motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

11 **Sec. 13.** RCW 9A.40.090 and 1995 c 156 s 1 are each amended to read
12 as follows:

13 A person commits the crime of luring if the person:

14 (1)(a) Orders, lures, or attempts to lure a minor or a person with
15 a developmental disability into any area or structure that is obscured
16 from or inaccessible to the public or into a motor vehicle;

17 (b) Does not have the consent of the minor's parent or guardian or
18 of the guardian of the person with a developmental disability; and

19 (c) Is unknown to the child or developmentally disabled person.

20 (2) It is a defense to luring, which the defendant must prove by a
21 preponderance of the evidence, that the defendant's actions were
22 reasonable under the circumstances and the defendant did not have any
23 intent to harm the health, safety, or welfare of the minor or the
24 person with the developmental disability.

25 (3) For purposes of this section:

26 (a) "Minor" means a person under the age of sixteen;

27 (b) "Person with a developmental disability" means a person with a
28 developmental disability as defined in RCW 71A.10.020.

29 (4) Luring is a class ((C)) A felony.

30 **Sec. 14.** RCW 9A.44.060 and 1999 c 143 s 34 are each amended to
31 read as follows:

32 (1) A person is guilty of rape in the third degree when, under
33 circumstances not constituting rape in the first or second degrees,
34 such person engages in sexual intercourse with another person, not
35 married to the perpetrator:

1 (a) Where the victim did not consent as defined in RCW
2 9A.44.010(7), to sexual intercourse with the perpetrator and such lack
3 of consent was clearly expressed by the victim's words or conduct, or

4 (b) Where there is threat of substantial unlawful harm to property
5 rights of the victim.

6 (2)(a) Except as provided in (b) of this subsection, rape in the
7 third degree is a class C felony.

8 (b) Rape in the third degree is a class A felony if the victim is
9 under the age of sixteen.

10 **Sec. 15.** RCW 9A.44.079 and 1988 c 145 s 4 are each amended to read
11 as follows:

12 (1) A person is guilty of rape of a child in the third degree when
13 the person has sexual intercourse with another who is at least fourteen
14 years old but less than sixteen years old and not married to the
15 perpetrator and the perpetrator is at least forty-eight months older
16 than the victim.

17 (2) Rape of a child in the third degree is a class ((E)) A felony.

18 **Sec. 16.** RCW 9A.44.086 and 1994 c 271 s 304 are each amended to
19 read as follows:

20 (1) A person is guilty of child molestation in the second degree
21 when the person has, or knowingly causes another person under the age
22 of eighteen to have, sexual contact with another who is at least twelve
23 years old but less than fourteen years old and not married to the
24 perpetrator and the perpetrator is at least thirty-six months older
25 than the victim.

26 (2) Child molestation in the second degree is a class ((B)) A
27 felony.

28 **Sec. 17.** RCW 9A.44.093 and 2005 c 262 s 2 are each amended to read
29 as follows:

30 (1) A person is guilty of sexual misconduct with a minor in the
31 first degree when: (a) The person has, or knowingly causes another
32 person under the age of eighteen to have, sexual intercourse with
33 another person who is at least sixteen years old but less than eighteen
34 years old and not married to the perpetrator, if the perpetrator is at
35 least sixty months older than the victim, is in a significant

1 relationship to the victim, and abuses a supervisory position within
2 that relationship in order to engage in or cause another person under
3 the age of eighteen to engage in sexual intercourse with the victim;
4 (b) the person is a school employee who has, or knowingly causes
5 another person under the age of eighteen to have, sexual intercourse
6 with a registered student of the school who is at least sixteen years
7 old and not married to the employee, if the employee is at least sixty
8 months older than the student; or (c) the person is a foster parent who
9 has, or knowingly causes another person under the age of eighteen to
10 have, sexual intercourse with his or her foster child who is at least
11 sixteen.

12 (2) Sexual misconduct with a minor in the first degree is a class
13 ((E)) A felony.

14 (3) For the purposes of this section, "school employee" means an
15 employee of a common school defined in RCW 28A.150.020, or a grade
16 kindergarten through twelve employee of a private school under chapter
17 28A.195 RCW, who is not enrolled as a student of the common school or
18 private school.

19 **Sec. 18.** RCW 9A.44.105 and 1994 c 53 s 1 are each amended to read
20 as follows:

21 (1)(a) Any person who has (~~(sexual intercourse or)~~) sexual contact
22 with a dead human body is guilty of a class C felony.

23 (b) Any person who has sexual intercourse with a dead human body is
24 guilty of a class A felony.

25 (2) As used in this section:

26 (a) "Sexual intercourse" (i) has its ordinary meaning and occurs
27 upon any penetration, however slight; and (ii) also means any
28 penetration of the vagina or anus however slight, by an object, when
29 committed on a dead human body, except when such penetration is
30 accomplished as part of a procedure authorized or required under
31 chapter 68.50 RCW or other law; and (iii) also means any act of sexual
32 contact between the sex organs of a person and the mouth or anus of a
33 dead human body.

34 (b) "Sexual contact" means any touching by a person of the sexual
35 or other intimate parts of a dead human body done for the purpose of
36 gratifying the sexual desire of the person.

1 **Sec. 19.** RCW 9A.44.160 and 1999 c 45 s 1 are each amended to read
2 as follows:

3 (1) A person is guilty of custodial sexual misconduct in the first
4 degree when the person has sexual intercourse with another person:

5 (a) When:

6 (i) The victim is a resident of a state, county, or city adult or
7 juvenile correctional facility, including but not limited to jails,
8 prisons, detention centers, or work release facilities, or is under
9 correctional supervision; and

10 (ii) The perpetrator is an employee or contract personnel of a
11 correctional agency and the perpetrator has, or the victim reasonably
12 believes the perpetrator has, the ability to influence the terms,
13 conditions, length, or fact of incarceration or correctional
14 supervision; or

15 (b) When the victim is being detained, under arrest(~~(+)~~), or in
16 the custody of a law enforcement officer and the perpetrator is a law
17 enforcement officer.

18 (2) Consent of the victim is not a defense to a prosecution under
19 this section.

20 (3) Custodial sexual misconduct in the first degree is a class
21 ((E)) A felony.

22 **Sec. 20.** RCW 9A.52.025 and 1989 2nd ex.s. c 1 s 1 are each amended
23 to read as follows:

24 (1) A person is guilty of residential burglary if, with intent to
25 commit a crime against a person or property therein, the person enters
26 or remains unlawfully in a dwelling other than a vehicle.

27 (2)(a) Except as provided in (b) of this subsection, residential
28 burglary is a class B felony.

29 (b) Residential burglary with a finding of sexual motivation under
30 RCW 9.94A.835 or 13.40.135 is a class A felony.

31 (c) In establishing sentencing guidelines and disposition
32 standards, the sentencing guidelines commission and the juvenile
33 disposition standards commission shall consider residential burglary as
34 a more serious offense than second degree burglary.

35 **Sec. 21.** RCW 9A.52.030 and 1989 2nd ex.s. c 1 s 2 are each amended
36 to read as follows:

1 (1) A person is guilty of burglary in the second degree if, with
2 intent to commit a crime against a person or property therein, he
3 enters or remains unlawfully in a building other than a vehicle or a
4 dwelling.

5 (2)(a) Except as provided in (b) of this subsection, burglary in
6 the second degree is a class B felony.

7 (b) Burglary in the second degree with a finding of sexual
8 motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

9 **Sec. 22.** RCW 9A.64.020 and 2003 c 53 s 80 are each amended to read
10 as follows:

11 (1)(a) A person is guilty of incest in the first degree if he or
12 she engages in sexual intercourse with a person whom he or she knows to
13 be related to him or her, either legitimately or illegitimately, as an
14 ancestor, descendant, brother, or sister of either the whole or the
15 half blood.

16 (b) Incest in the first degree is a class ((B)) A felony.

17 (2)(a) A person is guilty of incest in the second degree if he or
18 she engages in sexual contact with a person whom he or she knows to be
19 related to him or her, either legitimately or illegitimately, as an
20 ancestor, descendant, brother, or sister of either the whole or the
21 half blood.

22 (b) Incest in the second degree is a class C felony.

23 (3) As used in this section:

24 (a) "Descendant" includes stepchildren and adopted children under
25 eighteen years of age;

26 (b) "Sexual contact" has the same meaning as in RCW 9A.44.010; and

27 (c) "Sexual intercourse" has the same meaning as in RCW 9A.44.010.

28 **Sec. 23.** RCW 9A.64.030 and 2003 c 53 s 81 are each amended to read
29 as follows:

30 (1) It is unlawful for any person to sell or purchase a minor
31 child.

32 (2) A transaction shall not be a purchase or sale under subsection
33 (1) of this section if any of the following exists:

34 (a) The transaction is between the parents of the minor child; or

35 (b) The transaction is between a person receiving or to receive the
36 child and an agency recognized under RCW 26.33.020; or

1 (c) The transaction is between the person receiving or to receive
2 the child and a state agency or other governmental agency; or

3 (d) The transaction is pursuant to chapter 26.34 RCW; or

4 (e) The transaction is pursuant to court order; or

5 (f) The only consideration paid by the person receiving or to
6 receive the child is intended to pay for the prenatal hospital or
7 medical expenses involved in the birth of the child, or attorneys' fees
8 and court costs involved in effectuating transfer of child custody.

9 (3)(a) Except as provided in (b) of this subsection:

10 (i) Child selling is a class C felony.

11 ~~((b))~~ (ii) Child buying is a class C felony.

12 (b) If there is a finding of sexual motivation under RCW 9.94A.835
13 or 13.40.135:

14 (i) Child selling is a class A felony.

15 (ii) Child buying is a class A felony.

16 **Sec. 24.** RCW 9A.88.010 and 2003 c 53 s 92 are each amended to read
17 as follows:

18 (1) A person is guilty of indecent exposure if he or she
19 intentionally makes any open and obscene exposure of his or her person
20 or the person of another knowing that such conduct is likely to cause
21 reasonable affront or alarm. The act of breastfeeding or expressing
22 breast milk is not indecent exposure.

23 (2)(a) Except as provided in (b) ~~((and))~~, (c), and (d) of this
24 subsection, indecent exposure is a misdemeanor.

25 (b) Except as provided in (d) of this subsection, indecent exposure
26 is a gross misdemeanor on the first offense if the person exposes
27 himself or herself to a person under the age of fourteen years.

28 (c) Except as provided in (d) of this subsection, indecent exposure
29 is a class C felony if the person has previously been convicted under
30 this section or of a sex offense as defined in RCW 9.94A.030.

31 (d) Indecent exposure with a finding of sexual motivation under RCW
32 9.94A.835 or 13.40.135 is a class A felony if the person exposes
33 himself or herself to a person under the age of fourteen years.

34 **Sec. 25.** RCW 9A.88.070 and 1975 1st ex.s. c 260 s 9A.88.070 are
35 each amended to read as follows:

1 (1) A person is guilty of promoting prostitution in the first
2 degree if he knowingly:

3 (a) Advances prostitution by compelling a person by threat or force
4 to engage in prostitution or profits from prostitution which results
5 from such threat or force; or

6 (b) Advances or profits from prostitution of a person less than
7 eighteen years old.

8 (2) Promoting prostitution in the first degree is a class B felony
9 when committed under subsection (1)(a) of this section.

10 (3) Promoting prostitution in the first degree is a class A felony
11 when committed under subsection (1)(b) of this section.

12 NEW SECTION. Sec. 26. A new section is added to chapter 9A.44 RCW
13 to read as follows:

14 (1) Beginning July 1, 2007, a person required to register under RCW
15 9A.44.130 shall be electronically monitored during the period of
16 registration. The monitoring agency shall electronically monitor the
17 person using an active global positioning system or similar tracking
18 system. The system must actively monitor, identify, and timely report
19 the person's location.

20 (2) The monitoring agency shall, upon request, provide information
21 on the whereabouts of an offender who is being monitored by the agency
22 to any state or local law enforcement agency. Information on the
23 whereabouts of an offender may not be disclosed under any other
24 circumstances.

25 (3) The monitoring agency may contract for the electronic
26 monitoring required by this section. A contract entered into under
27 this subsection shall require the party performing the monitoring to
28 adhere to the same requirements under this section as the monitoring
29 agency.

30 (4) The monitoring agency may adopt rules to implement the
31 requirements of this section.

32 (5) For purposes of this section, "monitoring agency" means:

33 (a) The department of corrections if the person is being supervised
34 by the department of corrections in the community;

35 (b) The department of social and health services if the person is
36 being supervised by the department of social and health services in the
37 community; and

1 (c) The state patrol if the person is not under the supervision of
2 the department of corrections or the department of social and health
3 services.

4 NEW SECTION. **Sec. 27.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 28.** Sections 1 and 3 of this act expire July 1,
9 2006.

10 NEW SECTION. **Sec. 29.** (1) Sections 1, 3, and 5 through 27 of this
11 act are necessary for the immediate preservation of the public peace,
12 health, or safety, or support of the state government and its existing
13 public institutions, and take effect immediately.

14 (2) Sections 2 and 4 of this act take effect July 1, 2006.

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