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SENATE BILL 6465

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State of Washington

59th Legislature

2006 Regular Session

By Senators McAuliffe, Berkey, Haugen, Fairley, Shin, Rockefeller, Hargrove, Rasmussen, Franklin, Thibaudeau and Regala

Read first time 01/12/2006. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to designating the crime of possessing depictions  
2 of a minor engaged in sexually explicit conduct as a sex offense;  
3 amending RCW 9.94A.030 and 9.94A.030; providing an effective date;  
4 providing an expiration date; and declaring an emergency.

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

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

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

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

12 (2) "Collect," or any derivative thereof, "collect and remit," or  
13 "collect and deliver," when used with reference to the department,  
14 means that the department, either directly or through a collection  
15 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
16 and enforcing the offender's sentence with regard to the legal  
17 financial obligation, receiving payment thereof from the offender, and,  
18 consistent with current law, delivering daily the entire payment to the  
19 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 protection zone" means the area within eight hundred  
28 eighty feet of the facilities and grounds of a public or private  
29 school.

30 (9) "Community restitution" means compulsory service, without  
31 compensation, performed for the benefit of the community by the  
32 offender.

33 (10) "Community supervision" means a period of time during which a  
34 convicted offender is subject to crime-related prohibitions and other  
35 sentence conditions imposed by a court pursuant to this chapter or RCW  
36 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
37 a chemical dependency that has contributed to his or her offense, the  
38 conditions of supervision may, subject to available resources, include

1 treatment. For purposes of the interstate compact for out-of-state  
2 supervision of parolees and probationers, RCW 9.95.270, community  
3 supervision is the functional equivalent of probation and should be  
4 considered the same as probation by other states.

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

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

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

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

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

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

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

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

36 (16) "Day reporting" means a program of enhanced supervision  
37 designed to monitor the offender's daily activities and compliance with

1 sentence conditions, and in which the offender is required to report  
2 daily to a specific location designated by the department or the  
3 sentencing court.

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

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

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

25 (20) "Drug offender sentencing alternative" is a sentencing option  
26 available to persons convicted of a felony offense other than a violent  
27 offense or a sex offense and who are eligible for the option under RCW  
28 9.94A.660.

29 (21) "Drug offense" means:

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

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

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

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

3 (23) "Escape" means:

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

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

13 (24) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
16 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

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

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

10 (b) Assault in the second degree;

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

12 (d) Child molestation in the second degree;

13 (e) Controlled substance homicide;

14 (f) Extortion in the first degree;

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

16 (h) Indecent liberties;

17 (i) Kidnapping in the second degree;

18 (j) Leading organized crime;

19 (k) Manslaughter in the first degree;

20 (l) Manslaughter in the second degree;

21 (m) Promoting prostitution in the first degree;

22 (n) Rape in the third degree;

23 (o) Robbery in the second degree;

24 (p) Sexual exploitation;

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

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

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

35 (t) Any other felony with a deadly weapon verdict under RCW  
36 9.94A.602;

37 (u) Any felony offense in effect at any time prior to December 2,  
38 1993, that is comparable to a most serious offense under this

1 subsection, or any federal or out-of-state conviction for an offense  
2 that under the laws of this state would be a felony classified as a  
3 most serious offense under this subsection;

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

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

17 (30) "Nonviolent offense" means an offense which is not a violent  
18 offense.

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

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

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

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

37 (ii) Has, before the commission of the offense under (a) of this  
38 subsection, been convicted as an offender on at least two separate

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

7 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
8 of a child in the first degree, child molestation in the first degree,  
9 rape in the second degree, rape of a child in the second degree, or  
10 indecent liberties by forcible compulsion; (B) any of the following  
11 offenses with a finding of sexual motivation: Murder in the first  
12 degree, murder in the second degree, homicide by abuse, kidnapping in  
13 the first degree, kidnapping in the second degree, assault in the first  
14 degree, assault in the second degree, assault of a child in the first  
15 degree, or burglary in the first degree; or (C) an attempt to commit  
16 any crime listed in this subsection (33)(b)(i); and

17 (ii) Has, before the commission of the offense under (b)(i) of this  
18 subsection, been convicted as an offender on at least one occasion,  
19 whether in this state or elsewhere, of an offense listed in (b)(i) of  
20 this subsection or any federal or out-of-state offense or offense under  
21 prior Washington law that is comparable to the offenses listed in  
22 (b)(i) of this subsection. A conviction for rape of a child in the  
23 first degree constitutes a conviction under (b)(i) of this subsection  
24 only when the offender was sixteen years of age or older when the  
25 offender committed the offense. A conviction for rape of a child in  
26 the second degree constitutes a conviction under (b)(i) of this  
27 subsection only when the offender was eighteen years of age or older  
28 when the offender committed the offense.

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

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

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

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



1 (38) "Risk assessment" means the application of an objective  
2 instrument supported by research and adopted by the department for the  
3 purpose of assessing an offender's risk of reoffense, taking into  
4 consideration the nature of the harm done by the offender, place and  
5 circumstances of the offender related to risk, the offender's  
6 relationship to any victim, and any information provided to the  
7 department by victims. The results of a risk assessment shall not be  
8 based on unconfirmed or unconfirmable allegations.

9 (39) "Serious traffic offense" means:

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

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

18 (40) "Serious violent offense" is a subcategory of violent offense  
19 and means:

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

21 (ii) Homicide by abuse;

22 (iii) Murder in the second degree;

23 (iv) Manslaughter in the first degree;

24 (v) Assault in the first degree;

25 (vi) Kidnapping in the first degree;

26 (vii) Rape in the first degree;

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

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

30 (b) 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 serious  
32 violent offense under (a) of this subsection.

33 (41) "Sex offense" means:

34 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
35 RCW 9A.44.130(11);

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

37 (iii) A felony that is a violation of chapter 9.68A RCW other than  
38 RCW ((~~9.68A.070 or~~) 9.68A.080; or

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

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

6 (c) A felony with a finding of sexual motivation under RCW  
7 9.94A.835 or 13.40.135; or

8 (d) 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 sex  
10 offense under (a) of this subsection.

11 (42) "Sexual motivation" means that one of the purposes for which  
12 the defendant committed the crime was for the purpose of his or her  
13 sexual gratification.

14 (43) "Standard sentence range" means the sentencing court's  
15 discretionary range in imposing a nonappealable sentence.

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

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

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

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

33 (48) "Violent offense" means:

34 (a) Any of the following felonies:

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

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

1 (iii) Manslaughter in the first degree;  
2 (iv) Manslaughter in the second degree;  
3 (v) Indecent liberties if committed by forcible compulsion;  
4 (vi) Kidnapping in the second degree;  
5 (vii) Arson in the second degree;  
6 (viii) Assault in the second degree;  
7 (ix) Assault of a child in the second degree;  
8 (x) Extortion in the first degree;  
9 (xi) Robbery in the second degree;  
10 (xii) Drive-by shooting;  
11 (xiii) Vehicular assault, when caused by the operation or driving  
12 of a vehicle by a person while under the influence of intoxicating  
13 liquor or any drug or by the operation or driving of a vehicle in a  
14 reckless manner; and  
15 (xiv) Vehicular homicide, when proximately caused by the driving of  
16 any vehicle by any person while under the influence of intoxicating  
17 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
18 any vehicle in a reckless manner;  
19 (b) Any conviction for a felony offense in effect at any time prior  
20 to July 1, 1976, that is comparable to a felony classified as a violent  
21 offense in (a) of this subsection; and  
22 (c) 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 violent  
24 offense under (a) or (b) of this subsection.  
25 (49) "Work crew" means a program of partial confinement consisting  
26 of civic improvement tasks for the benefit of the community that  
27 complies with RCW 9.94A.725.  
28 (50) "Work ethic camp" means an alternative incarceration program  
29 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
30 the cost of corrections by requiring offenders to complete a  
31 comprehensive array of real-world job and vocational experiences,  
32 character-building work ethics training, life management skills  
33 development, substance abuse rehabilitation, counseling, literacy  
34 training, and basic adult education.  
35 (51) "Work release" means a program of partial confinement  
36 available to offenders who are employed or engaged as a student in a  
37 regular course of study at school.

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

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

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

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

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

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

20       (5) "Community custody" means that portion of an offender's  
21 sentence of confinement in lieu of earned release time or imposed  
22 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
23 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
24 community subject to controls placed on the offender's movement and  
25 activities by the department. For offenders placed on community  
26 custody for crimes committed on or after July 1, 2000, the department  
27 shall assess the offender's risk of reoffense and may establish and  
28 modify conditions of community custody, in addition to those imposed by  
29 the court, based upon the risk to community safety.

30       (6) "Community custody range" means the minimum and maximum period  
31 of community custody included as part of a sentence under RCW  
32 9.94A.715, as established by the commission or the legislature under  
33 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

34       (7) "Community placement" means that period during which the  
35 offender is subject to the conditions of community custody and/or  
36 postrelease supervision, which begins either upon completion of the  
37 term of confinement (postrelease supervision) or at such time as the

1 offender is transferred to community custody in lieu of earned release.  
2 Community placement may consist of entirely community custody, entirely  
3 postrelease supervision, or a combination of the two.

4 (8) "Community restitution" means compulsory service, without  
5 compensation, performed for the benefit of the community by the  
6 offender.

7 (9) "Community supervision" means a period of time during which a  
8 convicted offender is subject to crime-related prohibitions and other  
9 sentence conditions imposed by a court pursuant to this chapter or RCW  
10 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
11 a chemical dependency that has contributed to his or her offense, the  
12 conditions of supervision may, subject to available resources, include  
13 treatment. For purposes of the interstate compact for out-of-state  
14 supervision of parolees and probationers, RCW 9.95.270, community  
15 supervision is the functional equivalent of probation and should be  
16 considered the same as probation by other states.

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

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

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

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

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

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

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

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

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

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

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

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

36 (19) "Drug offender sentencing alternative" is a sentencing option  
37 available to persons convicted of a felony offense other than a violent

1 offense or a sex offense and who are eligible for the option under RCW  
2 9.94A.660.

3 (20) "Drug offense" means:

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

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

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

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

15 (22) "Escape" means:

16 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
17 first degree (RCW 9A.76.110), escape in the second degree (RCW  
18 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
19 willful failure to return from work release (RCW 72.65.070), or willful  
20 failure to be available for supervision by the department while in  
21 community custody (RCW 72.09.310); 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 an escape  
24 under (a) of this subsection.

25 (23) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
27 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
28 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

4 (27) "Legal financial obligation" means a sum of money that is  
5 ordered by a superior court of the state of Washington for legal  
6 financial obligations which may include restitution to the victim,  
7 statutorily imposed crime victims' compensation fees as assessed  
8 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
9 court-appointed attorneys' fees, and costs of defense, fines, and any  
10 other financial obligation that is assessed to the offender as a result  
11 of a felony conviction. Upon conviction for vehicular assault while  
12 under the influence of intoxicating liquor or any drug, RCW  
13 46.61.522(1)(b), or vehicular homicide while under the influence of  
14 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
15 obligations may also include payment to a public agency of the expense  
16 of an emergency response to the incident resulting in the conviction,  
17 subject to RCW 38.52.430.

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

20 (a) Any felony defined under any law as a class A felony or  
21 criminal solicitation of or criminal conspiracy to commit a class A  
22 felony;

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;



1 (q) Vehicular assault, when caused by the operation or driving of  
2 a vehicle by a person while under the influence of intoxicating liquor  
3 or any drug or by the operation or driving of a vehicle in a reckless  
4 manner;

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

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

11 (t) Any other felony with a deadly weapon verdict under RCW  
12 9.94A.602;

13 (u) Any felony offense in effect at any time prior to December 2,  
14 1993, that is comparable to a most serious offense under this  
15 subsection, or any federal or out-of-state conviction for an offense  
16 that under the laws of this state would be a felony classified as a  
17 most serious offense under this subsection;

18 (v)(i) A prior conviction for indecent liberties under RCW  
19 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
20 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
21 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
22 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

23 (ii) A prior conviction for indecent liberties under RCW  
24 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
25 if: (A) The crime was committed against a child under the age of  
26 fourteen; or (B) the relationship between the victim and perpetrator is  
27 included in the definition of indecent liberties under RCW  
28 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
29 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
30 through July 27, 1997.

31 (29) "Nonviolent offense" means an offense which is not a violent  
32 offense.

33 (30) "Offender" means a person who has committed a felony  
34 established by state law and is eighteen years of age or older or is  
35 less than eighteen years of age but whose case is under superior court  
36 jurisdiction under RCW 13.04.030 or has been transferred by the  
37 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and  
2 "defendant" are used interchangeably.

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

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

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

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

22 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
23 of a child in the first degree, child molestation in the first degree,  
24 rape in the second degree, rape of a child in the second degree, or  
25 indecent liberties by forcible compulsion; (B) any of the following  
26 offenses with a finding of sexual motivation: Murder in the first  
27 degree, murder in the second degree, homicide by abuse, kidnapping in  
28 the first degree, kidnapping in the second degree, assault in the first  
29 degree, assault in the second degree, assault of a child in the first  
30 degree, or burglary in the first degree; or (C) an attempt to commit  
31 any crime listed in this subsection (32)(b)(i); and

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

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

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

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

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

20 (36) "Serious traffic offense" means:

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

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

29 (37) "Serious violent offense" is a subcategory of violent offense  
30 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

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 felony that is, under chapter 9A.28 RCW, a criminal attempt,  
13 criminal solicitation, or criminal conspiracy to commit such crimes;

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

17 (c) A felony with a finding of sexual motivation under RCW  
18 9.94A.835 or 13.40.135; or

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

22 (39) "Sexual motivation" means that one of the purposes for which  
23 the defendant committed the crime was for the purpose of his or her  
24 sexual gratification.

25 (40) "Standard sentence range" means the sentencing court's  
26 discretionary range in imposing a nonappealable sentence.

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

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

35 (43) "Transition training" means written and verbal instructions  
36 and assistance provided by the department to the offender during the  
37 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 NEW SECTION. **Sec. 3.** Section 1 of this act is necessary for the  
14 immediate preservation of the public peace, health, or safety, or  
15 support of the state government and its existing public institutions,  
16 and takes effect immediately.

17 NEW SECTION. **Sec. 4.** Section 1 of this act expires July 1, 2006.

18 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect July 1,  
19 2006.

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