

CERTIFICATION OF ENROLLMENT

HOUSE BILL 3277

Chapter 122, Laws of 2006

59th Legislature
2006 Regular Session

SEX OFFENSES

EFFECTIVE DATE: 3/20/06 - Except sections 5 and 7, which become effective 7/1/06.

Passed by the House March 4, 2006
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 1, 2006
Yeas 45 Nays 1

BRAD OWEN

President of the Senate

Approved March 20, 2006.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 3277** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 20, 2006 - 11:09 a.m.

**Secretary of State
State of Washington**

HOUSE BILL 3277

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Representatives O'Brien, Rodne, Kirby, Williams, Darneille, Sells, Kessler, Lovick, Ericks, Simpson, Kilmer, Lantz, Anderson, Takko, Green, Moeller, Campbell, Morris, Hunt, Conway and Fromhold

Read first time 01/31/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to authorizing special verdicts that would result
2 in more severe punishment for certain sex offenses against children and
3 vulnerable adults by increasing the minimum sentences to twenty-five
4 years or the maximum of the standard sentence range, whichever is
5 greater, for rape of a child in the first degree, rape of a child in
6 the second degree, and child molestation in the first degree, when a
7 special allegation that the offense was predatory has been made and
8 proven beyond a reasonable doubt, by increasing the minimum sentences
9 to twenty-five years or the maximum of the standard sentence range,
10 whichever is greater, for rape in the first degree, rape in the second
11 degree, indecent liberties by forcible compulsion, and kidnapping in
12 the first degree with sexual motivation, when a special allegation that
13 the victim was under age fifteen at the time of the crime has been made
14 and proven beyond a reasonable doubt, and by increasing the minimum
15 sentences to twenty-five years or the maximum of the standard sentence
16 range, whichever is greater, for rape in the first degree, rape in the
17 second degree by forcible compulsion, indecent liberties by forcible
18 compulsion, and kidnapping in the first degree with sexual motivation,
19 when a special allegation that the victim was, at the time of the
20 crime, developmentally disabled, mentally disordered, or a frail elder
21 or vulnerable adult, has been made and proven beyond a reasonable

1 doubt, without making any change to the sentencing grid, RCW 9.94A.510,
2 or the seriousness level table, RCW 9.94A.515; amending RCW 9.94A.712,
3 9.94A.712, 9.94A.030, and 9.94A.030; adding new sections to chapter
4 9.94A RCW; prescribing penalties; providing an effective date;
5 providing an expiration date; and declaring an emergency.

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

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

9 (1) In a prosecution for rape of a child in the first degree, rape
10 of a child in the second degree, or child molestation in the first
11 degree, the prosecuting attorney shall file a special allegation that
12 the offense was predatory whenever sufficient admissible evidence
13 exists, which, when considered with the most plausible, reasonably
14 foreseeable defense that could be raised under the evidence, would
15 justify a finding by a reasonable and objective fact-finder that the
16 offense was predatory, unless the prosecuting attorney determines,
17 after consulting with a victim, that filing a special allegation under
18 this section is likely to interfere with the ability to obtain a
19 conviction.

20 (2) Once a special allegation has been made under this section, the
21 state has the burden to prove beyond a reasonable doubt that the
22 offense was predatory. If a jury is had, the jury shall, if it finds
23 the defendant guilty, also find a special verdict as to whether the
24 offense was predatory. If no jury is had, the court shall make a
25 finding of fact as to whether the offense was predatory.

26 (3) The prosecuting attorney shall not withdraw a special
27 allegation filed under this section without the approval of the court
28 through an order of dismissal of the allegation. The court may not
29 dismiss the special allegation unless it finds that the order is
30 necessary to correct an error in the initial charging decision or that
31 there are evidentiary problems that make proving the special allegation
32 doubtful.

33 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
34 to read as follows:

35 (1) In a prosecution for rape in the first degree, rape in the

1 second degree, indecent liberties by forcible compulsion, or kidnapping
2 in the first degree with sexual motivation, the prosecuting attorney
3 shall file a special allegation that the victim of the offense was
4 under fifteen years of age at the time of the offense whenever
5 sufficient admissible evidence exists, which, when considered with the
6 most plausible, reasonably foreseeable defense that could be raised
7 under the evidence, would justify a finding by a reasonable and
8 objective fact-finder that the victim was under fifteen years of age at
9 the time of the offense, unless the prosecuting attorney determines,
10 after consulting with a victim, that filing a special allegation under
11 this section is likely to interfere with the ability to obtain a
12 conviction.

13 (2) Once a special allegation has been made under this section, the
14 state has the burden to prove beyond a reasonable doubt that the victim
15 was under fifteen years of age at the time of the offense. If a jury
16 is had, the jury shall, if it finds the defendant guilty, also find a
17 special verdict as to whether the victim was under the age of fifteen
18 at the time of the offense. If no jury is had, the court shall make a
19 finding of fact as to whether the victim was under the age of fifteen
20 at the time of the offense.

21 (3) The prosecuting attorney shall not withdraw a special
22 allegation filed under this section without the approval of the court
23 through an order of dismissal of the allegation. The court may not
24 dismiss the special allegation unless it finds that the order is
25 necessary to correct an error in the initial charging decision or that
26 there are evidentiary problems that make proving the special allegation
27 doubtful.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A RCW
29 to read as follows:

30 (1) In a prosecution for rape in the first degree, rape in the
31 second degree with forcible compulsion, indecent liberties with
32 forcible compulsion, or kidnapping in the first degree with sexual
33 motivation, the prosecuting attorney shall file a special allegation
34 that the victim of the offense was, at the time of the offense,
35 developmentally disabled, mentally disordered, or a frail elder or
36 vulnerable adult, whenever sufficient admissible evidence exists,
37 which, when considered with the most plausible, reasonably foreseeable

1 defense that could be raised under the evidence, would justify a
2 finding by a reasonable and objective fact-finder that the victim was,
3 at the time of the offense, developmentally disabled, mentally
4 disordered, or a frail elder or vulnerable adult, unless the
5 prosecuting attorney determines, after consulting with a victim, that
6 filing a special allegation under this section is likely to interfere
7 with the ability to obtain a conviction.

8 (2) Once a special allegation has been made under this section, the
9 state has the burden to prove beyond a reasonable doubt that the victim
10 was, at the time of the offense, developmentally disabled, mentally
11 disordered, or a frail elder or vulnerable adult. If a jury is had,
12 the jury shall, if it finds the defendant guilty, also find a special
13 verdict as to whether the victim was, at the time of the offense,
14 developmentally disabled, mentally disordered, or a frail elder or
15 vulnerable adult. If no jury is had, the court shall make a finding of
16 fact as to whether the victim was, at the time of the offense,
17 developmentally disabled, mentally disordered, or a frail elder or
18 vulnerable adult.

19 (3) The prosecuting attorney shall not withdraw a special
20 allegation filed under this section without the approval of the court
21 through an order of dismissal of the allegation. The court may not
22 dismiss the special allegation unless it finds that the order is
23 necessary to correct an error in the initial charging decision or that
24 there are evidentiary problems that make proving the special allegation
25 doubtful.

26 (4) For purposes of this section, "developmentally disabled,"
27 "mentally disordered," and "frail elder or vulnerable adult" have the
28 same meaning as in RCW 9A.44.010.

29 **Sec. 4.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read
30 as follows:

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

33 (a) Is convicted of:

34 (i) Rape in the first degree, rape in the second degree, rape of a
35 child in the first degree, child molestation in the first degree, rape
36 of a child in the second degree, or indecent liberties by forcible
37 compulsion;

1 (ii) Any of the following offenses with a finding of sexual
2 motivation: Murder in the first degree, murder in the second degree,
3 homicide by abuse, kidnapping in the first degree, kidnapping in the
4 second degree, assault in the first degree, assault in the second
5 degree, assault of a child in the first degree, or burglary in the
6 first degree; or

7 (iii) An attempt to commit any crime listed in this subsection
8 (1)(a);
9 committed on or after September 1, 2001; or

10 (b) Has a prior conviction for an offense listed in RCW
11 9.94A.030(33)(b), and is convicted of any sex offense which was
12 committed after September 1, 2001.

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

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

19 (3)(a) Upon a finding that the offender is subject to sentencing
20 under this section, the court shall impose a sentence to a maximum term
21 (~~consisting of the statutory maximum sentence for the offense~~) and a
22 minimum term (~~either within the standard sentence range for the
23 offense, or outside the standard sentence range pursuant to RCW
24 9.94A.535, if the offender is otherwise eligible for such a sentence~~).

25 (b) The maximum term shall consist of the statutory maximum
26 sentence for the offense.

27 (c)(i) Except as provided in (c)(ii) of this subsection, the
28 minimum term shall be either within the standard sentence range for the
29 offense, or outside the standard sentence range pursuant to RCW
30 9.94A.535, if the offender is otherwise eligible for such a sentence.

31 (ii) If the offense that caused the offender to be sentenced under
32 this section was rape of a child in the first degree, rape of a child
33 in the second degree, or child molestation in the first degree, and
34 there has been a finding that the offense was predatory under section
35 1 of this act, the minimum term shall be either the maximum of the
36 standard sentence range for the offense or twenty-five years, whichever
37 is greater. If the offense that caused the offender to be sentenced
38 under this section was rape in the first degree, rape in the second

1 degree, indecent liberties by forcible compulsion, or kidnapping in the
2 first degree with sexual motivation, and there has been a finding that
3 the victim was under the age of fifteen at the time of the offense
4 under section 2 of this act, the minimum term shall be either the
5 maximum of the standard sentence range for the offense or twenty-five
6 years, whichever is greater. If the offense that caused the offender
7 to be sentenced under this section is rape in the first degree, rape in
8 the second degree with forcible compulsion, indecent liberties with
9 forcible compulsion, or kidnapping in the first degree with sexual
10 motivation, and there has been a finding under section 3 of this act
11 that the victim was, at the time of the offense, developmentally
12 disabled, mentally disordered, or a frail elder or vulnerable adult,
13 the minimum sentence shall be either the maximum of the standard
14 sentence range for the offense or twenty-five years, whichever is
15 greater.

16 (d) The minimum terms in (c)(ii) of this subsection do not apply to
17 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v).
18 The minimum term for such a juvenile shall be imposed under (c)(i) of
19 this subsection.

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

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

29 (6)(a)(i) Unless a condition is waived by the court, the conditions
30 of community custody shall include those provided for in RCW
31 9.94A.700(4). The conditions may also include those provided for in
32 RCW 9.94A.700(5). The court may also order the offender to participate
33 in rehabilitative programs or otherwise perform affirmative conduct
34 reasonably related to the circumstances of the offense, the offender's
35 risk of reoffending, or the safety of the community, and the department
36 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
37 9.95.425, and 9.95.430.

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

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

10 **Sec. 5.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
11 as follows:

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

14 (a) Is convicted of:

15 (i) Rape in the first degree, rape in the second degree, rape of a
16 child in the first degree, child molestation in the first degree, rape
17 of a child in the second degree, or indecent liberties by forcible
18 compulsion;

19 (ii) Any of the following offenses with a finding of sexual
20 motivation: Murder in the first degree, murder in the second degree,
21 homicide by abuse, kidnapping in the first degree, kidnapping in the
22 second degree, assault in the first degree, assault in the second
23 degree, assault of a child in the first degree, or burglary in the
24 first degree; or

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

27 committed on or after September 1, 2001; or

28 (b) Has a prior conviction for an offense listed in RCW
29 9.94A.030(32)(b), and is convicted of any sex offense which was
30 committed after September 1, 2001.

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

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

1 (3)(a) Upon a finding that the offender is subject to sentencing
2 under this section, the court shall impose a sentence to a maximum term
3 (~~consisting of the statutory maximum sentence for the offense~~) and a
4 minimum term (~~either within the standard sentence range for the~~
5 ~~offense, or outside the standard sentence range pursuant to RCW~~
6 ~~9.94A.535, if the offender is otherwise eligible for such a sentence~~).

7 **(b) The maximum term shall consist of the statutory maximum**
8 **sentence for the offense.**

9 **(c)(i) Except as provided in (c)(ii) of this subsection, the**
10 **minimum term shall be either within the standard sentence range for the**
11 **offense, or outside the standard sentence range pursuant to RCW**
12 **9.94A.535, if the offender is otherwise eligible for such a sentence.**

13 **(ii) If the offense that caused the offender to be sentenced under**
14 **this section was rape of a child in the first degree, rape of a child**
15 **in the second degree, or child molestation in the first degree, and**
16 **there has been a finding that the offense was predatory under section**
17 **1 of this act, the minimum term shall be either the maximum of the**
18 **standard sentence range for the offense or twenty-five years, whichever**
19 **is greater. If the offense that caused the offender to be sentenced**
20 **under this section was rape in the first degree, rape in the second**
21 **degree, indecent liberties by forcible compulsion, or kidnapping in the**
22 **first degree with sexual motivation, and there has been a finding that**
23 **the victim was under the age of fifteen at the time of the offense**
24 **under section 2 of this act, the minimum term shall be either the**
25 **maximum of the standard sentence range for the offense or twenty-five**
26 **years, whichever is greater. If the offense that caused the offender**
27 **to be sentenced under this section is rape in the first degree, rape in**
28 **the second degree with forcible compulsion, indecent liberties with**
29 **forcible compulsion, or kidnapping in the first degree with sexual**
30 **motivation, and there has been a finding under section 3 of this act**
31 **that the victim was, at the time of the offense, developmentally**
32 **disabled, mentally disordered, or a frail elder or vulnerable adult,**
33 **the minimum sentence shall be either the maximum of the standard**
34 **sentence range for the offense or twenty-five years, whichever is**
35 **greater.**

36 **(d) The minimum terms in (c)(ii) of this subsection do not apply to**
37 **a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v).**

1 The minimum term for such a juvenile shall be imposed under (c)(i) of
2 this subsection.

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

6 (5) When a court sentences a person to the custody of the
7 department under this section, the court shall, in addition to the
8 other terms of the sentence, sentence the offender to community custody
9 under the supervision of the department and the authority of the board
10 for any period of time the person is released from total confinement
11 before the expiration of the maximum sentence.

12 (6)(a) Unless a condition is waived by the court, the conditions of
13 community custody shall include those provided for in RCW 9.94A.700(4).
14 The conditions may also include those provided for in RCW 9.94A.700(5).
15 The court may also order the offender to participate in rehabilitative
16 programs or otherwise perform affirmative conduct reasonably related to
17 the circumstances of the offense, the offender's risk of reoffending,
18 or the safety of the community, and the department and the board shall
19 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
20 9.95.430.

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

24 **Sec. 6.** RCW 9.94A.030 and 2005 c 436 s 1 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 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) "Predatory" means: (a) The perpetrator of the crime was a
32 stranger to the victim, as defined in this section; (b) the perpetrator
33 established or promoted a relationship with the victim prior to the
34 offense and the victimization of the victim was a significant reason
35 the perpetrator established or promoted the relationship; or (c) the
36 perpetrator was: (i) A teacher, counselor, volunteer, or other person
37 in authority in any public or private school and the victim was a
38 student of the school under his or her authority or supervision. For

1 purposes of this subsection, "school" does not include home-based
2 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
3 volunteer, or other person in authority in any recreational activity
4 and the victim was a participant in the activity under his or her
5 authority or supervision; or (iii) a pastor, elder, volunteer, or other
6 person in authority in any church or religious organization, and the
7 victim was a member or participant of the organization under his or her
8 authority.

9 (36) "Private school" means a school regulated under chapter
10 28A.195 or 28A.205 RCW.

11 ~~((36))~~ (37) "Public school" has the same meaning as in RCW
12 28A.150.010.

13 ~~((37))~~ (38) "Restitution" means a specific sum of money ordered
14 by the sentencing court to be paid by the offender to the court over a
15 specified period of time as payment of damages. The sum may include
16 both public and private costs.

17 ~~((38))~~ (39) "Risk assessment" means the application of an
18 objective instrument supported by research and adopted by the
19 department for the purpose of assessing an offender's risk of
20 reoffense, taking into consideration the nature of the harm done by the
21 offender, place and circumstances of the offender related to risk, the
22 offender's relationship to any victim, and any information provided to
23 the department by victims. The results of a risk assessment shall not
24 be based on unconfirmed or unconfirmable allegations.

25 ~~((39))~~ (40) "Serious traffic offense" means:

26 (a) Driving while under the influence of intoxicating liquor or any
27 drug (RCW 46.61.502), actual physical control while under the influence
28 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
29 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
30 or

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

34 ~~((40))~~ (41) "Serious violent offense" is a subcategory of violent
35 offense and means:

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

37 (ii) Homicide by abuse;

38 (iii) Murder in the second degree;

1 (iv) Manslaughter in the first degree;
2 (v) Assault in the first degree;
3 (vi) Kidnapping in the first degree;
4 (vii) Rape in the first degree;
5 (viii) Assault of a child in the first degree; or
6 (ix) An attempt, criminal solicitation, or criminal conspiracy to
7 commit one of these felonies; or
8 (b) 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 serious
10 violent offense under (a) of this subsection.
11 ~~((41))~~ (42) "Sex offense" means:
12 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
13 RCW 9A.44.130(11);
14 (ii) A violation of RCW 9A.64.020;
15 (iii) A felony that is a violation of chapter 9.68A RCW other than
16 RCW 9.68A.070 or 9.68A.080; or
17 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
18 criminal solicitation, or criminal conspiracy to commit such crimes;
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 sex
21 offense in (a) of this subsection;
22 (c) A felony with a finding of sexual motivation under RCW
23 9.94A.835 or 13.40.135; or
24 (d) Any federal or out-of-state conviction for an offense that
25 under the laws of this state would be a felony classified as a sex
26 offense under (a) of this subsection.
27 ~~((42))~~ (43) "Sexual motivation" means that one of the purposes
28 for which the defendant committed the crime was for the purpose of his
29 or her sexual gratification.
30 ~~((43))~~ (44) "Standard sentence range" means the sentencing
31 court's discretionary range in imposing a nonappealable sentence.
32 ~~((44))~~ (45) "Statutory maximum sentence" means the maximum length
33 of time for which an offender may be confined as punishment for a crime
34 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
35 the crime, or other statute defining the maximum penalty for a crime.
36 ~~((45))~~ (46) "Stranger" means that the victim did not know the
37 offender twenty-four hours before the offense.

1 (47) "Total confinement" means confinement inside the physical
2 boundaries of a facility or institution operated or utilized under
3 contract by the state or any other unit of government for twenty-four
4 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 ~~((46))~~ (48) "Transition training" means written and verbal
6 instructions and assistance provided by the department to the offender
7 during the two weeks prior to the offender's successful completion of
8 the work ethic camp program. The transition training shall include
9 instructions in the offender's requirements and obligations during the
10 offender's period of community custody.

11 ~~((47))~~ (49) "Victim" means any person who has sustained
12 emotional, psychological, physical, or financial injury to person or
13 property as a direct result of the crime charged.

14 ~~((48))~~ (50) "Violent offense" means:

15 (a) Any of the following felonies:

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

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

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

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

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

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

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

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

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

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

7 (~~(49)~~) (51) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 that complies with RCW 9.94A.725.

10 (~~(50)~~) (52) "Work ethic camp" means an alternative incarceration
11 program as provided in RCW 9.94A.690 designed to reduce recidivism and
12 lower the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 (~~(51)~~) (53) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

20 **Sec. 7.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
21 as follows:

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

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

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

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

35 (4) "Community corrections officer" means an employee of the
36 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

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

13 (6) "Community custody range" means the minimum and maximum period
14 of community custody included as part of a sentence under RCW
15 9.94A.715, as established by the commission or the legislature under
16 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

24 (8) "Community restitution" means compulsory service, without
25 compensation, performed for the benefit of the community by the
26 offender.

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

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

1 (11) "Conviction" means an adjudication of guilt pursuant to Titles
2 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
3 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

37 (17) "Determinate sentence" means a sentence that states with
38 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the
2 number of actual hours or days of community restitution work, or
3 dollars or terms of a legal financial obligation. The fact that an
4 offender through earned release can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

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

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

23 (20) "Drug offense" means:

24 (a) Any felony violation of chapter 69.50 RCW except possession of
25 a controlled substance (RCW 69.50.4013) or forged prescription for a
26 controlled substance (RCW 69.50.403);

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

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

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

35 (22) "Escape" means:

36 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
37 first degree (RCW 9A.76.110), escape in the second degree (RCW
38 9A.76.120), willful failure to return from furlough (RCW 72.66.060),

1 willful failure to return from work release (RCW 72.65.070), or willful
2 failure to be available for supervision by the department while in
3 community custody (RCW 72.09.310); or

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

7 (23) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
10 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

1 (a) Any felony defined under any law as a class A felony or
2 criminal solicitation of or criminal conspiracy to commit a class A
3 felony;

4 (b) Assault in the second degree;

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

6 (d) Child molestation in the second degree;

7 (e) Controlled substance homicide;

8 (f) Extortion in the first degree;

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

10 (h) Indecent liberties;

11 (i) Kidnapping in the second degree;

12 (j) Leading organized crime;

13 (k) Manslaughter in the first degree;

14 (l) Manslaughter in the second degree;

15 (m) Promoting prostitution in the first degree;

16 (n) Rape in the third degree;

17 (o) Robbery in the second degree;

18 (p) Sexual exploitation;

19 (q) Vehicular assault, when caused by the operation or driving of
20 a vehicle by a person while under the influence of intoxicating liquor
21 or any drug or by the operation or driving of a vehicle in a reckless
22 manner;

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

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

29 (t) Any other felony with a deadly weapon verdict under RCW
30 9.94A.602;

31 (u) Any felony offense in effect at any time prior to December 2,
32 1993, that is comparable to a most serious offense under this
33 subsection, or any federal or out-of-state conviction for an offense
34 that under the laws of this state would be a felony classified as a
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.

1 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
2 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
3 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

4 (ii) A prior conviction for indecent liberties under RCW
5 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
6 if: (A) The crime was committed against a child under the age of
7 fourteen; or (B) the relationship between the victim and perpetrator is
8 included in the definition of indecent liberties under RCW
9 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
10 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
11 through July 27, 1997.

12 (29) "Nonviolent offense" means an offense which is not a violent
13 offense.

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

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

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

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

32 (ii) Has, before the commission of the offense under (a) of this
33 subsection, been convicted as an offender on at least two separate
34 occasions, whether in this state or elsewhere, of felonies that under
35 the laws of this state would be considered most serious offenses and
36 would be included in the offender score under RCW 9.94A.525; provided
37 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted; or

3 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
4 of a child in the first degree, child molestation in the first degree,
5 rape in the second degree, rape of a child in the second degree, or
6 indecent liberties by forcible compulsion; (B) any of the following
7 offenses with a finding of sexual motivation: Murder in the first
8 degree, murder in the second degree, homicide by abuse, kidnapping in
9 the first degree, kidnapping in the second degree, assault in the first
10 degree, assault in the second degree, assault of a child in the first
11 degree, or burglary in the first degree; or (C) an attempt to commit
12 any crime listed in this subsection (32)(b)(i); and

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

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

27 (34) "Predatory" means: (a) The perpetrator of the crime was a
28 stranger to the victim, as defined in this section; (b) the perpetrator
29 established or promoted a relationship with the victim prior to the
30 offense and the victimization of the victim was a significant reason
31 the perpetrator established or promoted the relationship; or (c) the
32 perpetrator was: (i) A teacher, counselor, volunteer, or other person
33 in authority in any public or private school and the victim was a
34 student of the school under his or her authority or supervision. For
35 purposes of this subsection, "school" does not include home-based
36 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
37 volunteer, or other person in authority in any recreational activity
38 and the victim was a participant in the activity under his or her

1 authority or supervision; or (iii) a pastor, elder, volunteer, or other
2 person in authority in any church or religious organization, and the
3 victim was a member or participant of the organization under his or her
4 authority.

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

9 (~~(35)~~) (36) "Risk assessment" means the application of an
10 objective instrument supported by research and adopted by the
11 department for the purpose of assessing an offender's risk of
12 reoffense, taking into consideration the nature of the harm done by the
13 offender, place and circumstances of the offender related to risk, the
14 offender's relationship to any victim, and any information provided to
15 the department by victims. The results of a risk assessment shall not
16 be based on unconfirmed or unconfirmable allegations.

17 (~~(36)~~) (37) "Serious traffic offense" means:

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

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

26 (~~(37)~~) (38) "Serious violent offense" is a subcategory of violent
27 offense and means:

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

29 (ii) Homicide by abuse;

30 (iii) Murder in the second degree;

31 (iv) Manslaughter in the first degree;

32 (v) Assault in the first degree;

33 (vi) Kidnapping in the first degree;

34 (vii) Rape in the first degree;

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

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

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

4 (~~(38)~~) (39) "Sex offense" means:

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

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

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

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

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

15 (c) A felony with a finding of sexual motivation under RCW
16 9.94A.835 or 13.40.135; or

17 (d) 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 sex
19 offense under (a) of this subsection.

20 (~~(39)~~) (40) "Sexual motivation" means that one of the purposes
21 for which the defendant committed the crime was for the purpose of his
22 or her sexual gratification.

23 (~~(40)~~) (41) "Standard sentence range" means the sentencing
24 court's discretionary range in imposing a nonappealable sentence.

25 (~~(41)~~) (42) "Statutory maximum sentence" means the maximum length
26 of time for which an offender may be confined as punishment for a crime
27 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
28 the crime, or other statute defining the maximum penalty for a crime.

29 (~~(42)~~) (43) "Stranger" means that the victim did not know the
30 offender twenty-four hours before the offense.

31 (44) "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)~~) (45) "Transition training" means written and verbal
36 instructions and assistance provided by the department to the offender
37 during the two weeks prior to the offender's successful completion of

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

4 ~~((44))~~ (46) "Victim" means any person who has sustained
5 emotional, psychological, physical, or financial injury to person or
6 property as a direct result of the crime charged.

7 ~~((45))~~ (47) "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))~~ (48) "Work crew" means a program of partial confinement

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

3 ~~((47))~~ (49) "Work ethic camp" means an alternative incarceration
4 program as provided in RCW 9.94A.690 designed to reduce recidivism and
5 lower 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))~~ (50) "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. 8.** Sections 4 and 6 of this act expire July 1,
14 2006.

15 NEW SECTION. **Sec. 9.** Sections 5 and 7 of this act take effect
16 July 1, 2006.

17 NEW SECTION. **Sec. 10.** Sections 1 through 4 and 6 of this act are
18 necessary for the immediate preservation of the public peace, health,
19 or safety, or support of the state government and its existing public
20 institutions, and take effect immediately.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.