

ESSB 5288 - H COMM AMD  
By Committee on Ways & Means

ADOPTED AS AMENDED 04/21/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read  
4 as follows:

5 (1) ~~((When the department performs a risk assessment pursuant to  
6 RCW 9.94A.500, or to determine a person's conditions of supervision,  
7 the risk assessment shall classify the offender or a probationer  
8 sentenced in superior court into one of at least four risk categories.~~

9 ~~(2) The department shall supervise every offender sentenced to a  
10 term of community custody, community placement, or community  
11 supervision and every misdemeanor and gross misdemeanor probationer  
12 ordered by a superior court to probation under the supervision of the  
13 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:~~

14 ~~(a) Whose risk assessment places that offender or probationer in  
15 one of the two highest risk categories; or~~

16 ~~(b) Regardless of the offender's or probationer's risk category if:~~

17 ~~(i) The offender's or probationer's current conviction is for:~~

18 ~~(A) A sex offense;~~

19 ~~(B) A violent offense;~~

20 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~

21 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

22 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~

23 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to  
24 violate, RCW 69.50.401 by manufacture or delivery or possession with  
25 intent to deliver methamphetamine; or~~

26 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to  
27 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

28 ~~(ii) The offender or probationer has a prior conviction for:~~

29 ~~(A) A sex offense;~~

30 ~~(B) A violent offense;~~

1 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~  
2 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~  
3 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~  
4 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
5 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
6 ~~intent to deliver methamphetamine; or~~  
7 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
8 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~  
9 ~~(iii) The conditions of the offender's community custody, community~~  
10 ~~placement, or community supervision or the probationer's supervision~~  
11 ~~include chemical dependency treatment;~~  
12 ~~(iv) The offender))~~ The department shall supervise every offender  
13 convicted of a misdemeanor or gross misdemeanor offense who is  
14 sentenced to probation in superior court, pursuant to RCW 9.92.060,  
15 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this  
16 subsection. The superior court shall order probation for:  
17 (a) Offenders convicted of fourth degree assault, violation of a  
18 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,  
19 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,  
20 and who also have a prior conviction for one or more of the following:  
21 (i) A violent offense;  
22 (ii) A sex offense;  
23 (iii) A crime against a person as provided in RCW 9.94A.411;  
24 (iv) Fourth degree assault; or  
25 (v) Violation of a domestic violence court order; and  
26 (b) Offenders convicted of:  
27 (i) Sexual misconduct with a minor second degree;  
28 (ii) Custodial sexual misconduct second degree;  
29 (iii) Communication with a minor for immoral purposes; or  
30 (iv) Failure to register pursuant to RCW 9A.44.130.  
31 (c) Misdemeanor and gross misdemeanor offenders supervised by the  
32 department pursuant to this section shall be placed on community  
33 custody.  
34 (2) The department shall supervise every felony offender sentenced  
35 to community custody whose risk assessment, conducted pursuant to  
36 subsection (5) of this section, places the offender in one of the two  
37 highest risk categories.

1 (3) Notwithstanding any other provision of this section, the  
2 department shall supervise an offender sentenced to community custody  
3 regardless of risk classification if the offender:

4 (a) Has a current conviction for a sex offense;

5 (b) Has been identified by the department as a dangerous mentally  
6 ill offender pursuant to RCW 72.09.370;

7 (c) Has an indeterminate sentence and is subject to parole pursuant  
8 to RCW 9.95.017;

9 (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

10 ~~((v) The offender))~~ (e) Is subject to supervision pursuant to RCW  
11 9.94A.745.

12 ~~((3))~~ (4) The department is not authorized to, and may not,  
13 supervise any offender sentenced to a term of community custody,  
14 community placement, or community supervision or any probationer unless  
15 the offender or probationer is one for whom supervision is required  
16 under subsection (1), (2), or (3) of this section.

17 ~~((4) This section expires July 1, 2010))~~ (5) The department shall  
18 conduct a risk assessment for every felony offender sentenced to a term  
19 of community custody, community placement, or community supervision who  
20 may be subject to supervision under this section.

21 **Sec. 2.** RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read  
22 as follows:

23 ~~(1) ((When the department performs a risk assessment pursuant to~~  
24 ~~RCW 9.94A.500, or to determine a person's conditions of supervision,~~  
25 ~~the risk assessment shall classify the offender or a probationer~~  
26 ~~sentenced in superior court into one of at least four risk categories.~~

27 ~~(2) The department shall supervise every offender sentenced to a~~  
28 ~~term of community custody and every misdemeanor and gross misdemeanor~~  
29 ~~probationer ordered by a superior court to probation under the~~  
30 ~~supervision of the department pursuant to RCW 9.92.060, 9.95.204, or~~  
31 ~~9.95.210;~~

32 ~~(a) Whose risk assessment places that offender or probationer in~~  
33 ~~one of the two highest risk categories; or~~

34 ~~(b) Regardless of the offender's or probationer's risk category if:~~

35 ~~(i) The offender's or probationer's current conviction is for:~~

36 ~~(A) A sex offense;~~

37 ~~(B) A violent offense;~~

1 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~  
2 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~  
3 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~  
4 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
5 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
6 ~~intent to deliver methamphetamine; or~~  
7 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
8 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~  
9 ~~(ii) The offender or probationer has a prior conviction for:~~  
10 ~~(A) A sex offense;~~  
11 ~~(B) A violent offense;~~  
12 ~~(C) A crime against persons as defined in RCW 9.94A.411;~~  
13 ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~  
14 ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~  
15 ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
16 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
17 ~~intent to deliver methamphetamine; or~~  
18 ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
19 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~  
20 ~~(iii) The conditions of the offender's community custody or the~~  
21 ~~probationer's supervision include chemical dependency treatment;~~  
22 ~~(iv) The offender))~~ The department shall supervise every offender  
23 convicted of a misdemeanor or gross misdemeanor offense who is  
24 sentenced to probation in superior court, pursuant to RCW 9.92.060,  
25 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this  
26 subsection. The superior court shall order probation for:  
27 (a) Offenders convicted of fourth degree assault, violation of a  
28 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,  
29 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,  
30 and who also have a prior conviction for one or more of the following:  
31 (i) A violent offense;  
32 (ii) A sex offense;  
33 (iii) A crime against a person as provided in RCW 9.94A.411;  
34 (iv) Fourth degree assault; or  
35 (v) Violation of a domestic violence court order; and  
36 (b) Offenders convicted of:  
37 (i) Sexual misconduct with a minor second degree;  
38 (ii) Custodial sexual misconduct second degree;

1 (iii) Communication with a minor for immoral purposes; or

2 (iv) Failure to register pursuant to RCW 9A.44.130.

3 (c) Misdemeanor and gross misdemeanor offenders supervised by the  
4 department pursuant to this section shall be placed on community  
5 custody.

6 (2) The department shall supervise every felony offender sentenced  
7 to community custody whose risk assessment, conducted pursuant to  
8 subsection (5) of this section, classifies the offender as one who is  
9 at a high risk to reoffend.

10 (3) Notwithstanding any other provision of this section, the  
11 department shall supervise an offender sentenced to community custody  
12 regardless of risk classification if the offender:

13 (a) Has a current conviction for a sex offense;

14 (b) Has been identified by the department as a dangerous mentally  
15 ill offender pursuant to RCW 72.09.370;

16 (c) Has an indeterminate sentence and is subject to parole pursuant  
17 to RCW 9.95.017;

18 (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

19 ~~((v) The offender))~~ (e) Is subject to supervision pursuant to RCW  
20 9.94A.745.

21 ~~((3))~~ (4) The department is not authorized to, and may not,  
22 supervise any offender sentenced to a term of community custody or any  
23 probationer unless the offender or probationer is one for whom  
24 supervision is required under subsection (1), (2), or (3) of this  
25 section.

26 ~~((4) This section expires July 1, 2010))~~ (5) The department shall  
27 conduct a risk assessment for every felony offender sentenced to a term  
28 of community custody who may be subject to supervision under this  
29 section.

30 **Sec. 3.** RCW 9.94A.030 and 2008 c 276 s 309 and 2008 c 7 s 1 are  
31 each reenacted and amended to read as follows:

32 Unless the context clearly requires otherwise, the definitions in  
33 this section apply throughout this chapter.

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

36 (2) "Collect," or any derivative thereof, "collect and remit," or  
37 "collect and deliver," when used with reference to the department,

1 means that the department, either directly or through a collection  
2 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
3 and enforcing the offender's sentence with regard to the legal  
4 financial obligation, receiving payment thereof from the offender, and,  
5 consistent with current law, delivering daily the entire payment to the  
6 superior court clerk without depositing it in a departmental account.

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

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

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

23 (6) "Community custody range" means the minimum and maximum period  
24 of community custody included as part of a sentence under RCW  
25 9.94A.715, as established by the commission or the legislature under  
26 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

37 (9) "Community restitution" means compulsory service, without

1 compensation, performed for the benefit of the community by the  
2 offender.

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

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

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

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

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

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

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

35 (c) The determination of a defendant's criminal history is distinct  
36 from the determination of an offender score. A prior conviction that  
37 was not included in an offender score calculated pursuant to a former

1 version of the sentencing reform act remains part of the defendant's  
2 criminal history.

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

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

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

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

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

26 (c) To exact revenge or retribution for the gang or any member of  
27 the gang;

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

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

33 (f) To provide the gang with any advantage in, or any control or  
34 dominance over any criminal market sector, including, but not limited  
35 to, manufacturing, delivering, or selling any controlled substance  
36 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
37 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88



1 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
2 (chapter 9.68 RCW).

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

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

12 (20) "Department" means the department of corrections.

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

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

33 (23) "Drug offender sentencing alternative" is a sentencing option  
34 available to persons convicted of a felony offense other than a violent  
35 offense or a sex offense and who are eligible for the option under RCW  
36 9.94A.660.

37 (24) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of  
2 a controlled substance (RCW 69.50.4013) or forged prescription for a  
3 controlled substance (RCW 69.50.403);

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

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

10 (25) "Earned release" means earned release from confinement as  
11 provided in RCW 9.94A.728.

12 (26) "Escape" means:

13 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
14 first degree (RCW 9A.76.110), escape in the second degree (RCW  
15 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
16 willful failure to return from work release (RCW 72.65.070), or willful  
17 failure to be available for supervision by the department while in  
18 community custody (RCW 72.09.310); or

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

22 (27) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
24 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
25 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
26 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
27 felony physical control of a vehicle while under the influence of  
28 intoxicating liquor or any drug (RCW 46.61.504(6)); 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 (28) "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 (29) "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 (30) "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 (31) "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 (32) "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 (w) Any out-of-state conviction for a felony offense with a finding  
32 of sexual motivation if the minimum sentence imposed was ten years or  
33 more; provided that the out-of-state felony offense must be comparable  
34 to a felony offense under Title 9 or 9A RCW and the out-of-state  
35 definition of sexual motivation must be comparable to the definition of  
36 sexual motivation contained in this section.

37 (33) "Nonviolent offense" means an offense which is not a violent  
38 offense.

1 (34) "Offender" means a person who has committed a felony  
2 established by state law and is eighteen years of age or older or is  
3 less than eighteen years of age but whose case is under superior court  
4 jurisdiction under RCW 13.04.030 or has been transferred by the  
5 appropriate juvenile court to a criminal court pursuant to RCW  
6 13.40.110. Throughout this chapter, the terms "offender" and  
7 "defendant" are used interchangeably.

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

16 (36) "Pattern of criminal street gang activity" means:

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

20 (i) Any "serious violent" felony offense as defined in ((RCW  
21 ~~9.94A.030~~)) this section, excluding Homicide by Abuse (RCW 9A.32.055)  
22 and Assault of a Child 1 (RCW 9A.36.120);

23 (ii) Any "violent" offense as defined by ((RCW ~~9.94A.030~~)) this  
24 section, excluding Assault of a Child 2 (RCW 9A.36.130);

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

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

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

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

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

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

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

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

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

1 (xii) Burglary 2 (RCW 9A.52.030);  
2 (xiii) Malicious Mischief 1 (RCW 9A.48.070);  
3 (xiv) Malicious Mischief 2 (RCW 9A.48.080);  
4 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);  
5 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
6 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);  
7 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
8 9A.56.075);  
9 (xix) Extortion 1 (RCW 9A.56.120);  
10 (xx) Extortion 2 (RCW 9A.56.130);  
11 (xxi) Intimidating a Witness (RCW 9A.72.110);  
12 (xxii) Tampering with a Witness (RCW 9A.72.120);  
13 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
14 (xxiv) Coercion (RCW 9A.36.070);  
15 (xxv) Harassment (RCW 9A.46.020); or  
16 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
17 (b) That at least one of the offenses listed in (a) of this  
18 subsection shall have occurred after July 1, 2008;  
19 (c) That the most recent committed offense listed in (a) of this  
20 subsection occurred within three years of a prior offense listed in (a)  
21 of this subsection; and  
22 (d) Of the offenses that were committed in (a) of this subsection,  
23 the offenses occurred on separate occasions or were committed by two or  
24 more persons.  
25 (37) "Persistent offender" is an offender who:  
26 (a)(i) Has been convicted in this state of any felony considered a  
27 most serious offense; and  
28 (ii) Has, before the commission of the offense under (a) of this  
29 subsection, been convicted as an offender on at least two separate  
30 occasions, whether in this state or elsewhere, of felonies that under  
31 the laws of this state would be considered most serious offenses and  
32 would be included in the offender score under RCW 9.94A.525; provided  
33 that of the two or more previous convictions, at least one conviction  
34 must have occurred before the commission of any of the other most  
35 serious offenses for which the offender was previously convicted; or  
36 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
37 of a child in the first degree, child molestation in the first degree,  
38 rape in the second degree, rape of a child in the second degree, or

1 indecent liberties by forcible compulsion; (B) any of the following  
2 offenses with a finding of sexual motivation: Murder in the first  
3 degree, murder in the second degree, homicide by abuse, kidnapping in  
4 the first degree, kidnapping in the second degree, assault in the first  
5 degree, assault in the second degree, assault of a child in the first  
6 degree, assault of a child in the second degree, or burglary in the  
7 first degree; or (C) an attempt to commit any crime listed in this  
8 subsection (37)(b)(i); and

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

21 (38) "Postrelease supervision" is that portion of an offender's  
22 community placement that is not community custody.

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

1 (40) "Private school" means a school regulated under chapter  
2 28A.195 or 28A.205 RCW.

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

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

8 (43) "Risk assessment" means the application of ~~((an objective))~~  
9 the risk instrument ~~((supported by research and adopted by))~~  
10 recommended to the department ~~((for the purpose of assessing an~~  
11 ~~offender's risk of reoffense, taking into consideration the nature of~~  
12 ~~the harm done by the offender, place and circumstances of the offender~~  
13 ~~related to risk, the offender's relationship to any victim, and any~~  
14 ~~information provided to the department by victims. The results of a~~  
15 ~~risk assessment shall not be based on unconfirmed or unconfirmable~~  
16 ~~allegations))~~ by the Washington state institute for public policy as  
17 having the highest degree of predictive accuracy for assessing an  
18 offender's risk of reoffense.

19 (44) "Serious traffic offense" means:

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

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

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

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

31 (ii) Homicide by abuse;

32 (iii) Murder in the second degree;

33 (iv) Manslaughter in the first degree;

34 (v) Assault in the first degree;

35 (vi) Kidnapping in the first degree;

36 (vii) Rape in the first degree;

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



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

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

6 (46) "Sex offense" means:

7 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
8 RCW 9A.44.130(12);

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

27 (49) "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 (50) "Stranger" means that the victim did not know the offender  
32 twenty-four hours before the offense.

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

37 (52) "Transition training" means written and verbal instructions  
38 and assistance provided by the department to the offender during the

1 two weeks prior to the offender's successful completion of the work  
2 ethic camp program. The transition training shall include instructions  
3 in the offender's requirements and obligations during the offender's  
4 period of community custody.

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

8 (54) "Violent offense" means:

9 (a) Any of the following felonies:

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

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

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

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

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

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

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

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

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

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

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

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

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

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

14 **Sec. 4.** RCW 9.94A.030 and 2009 c 28 s 4 are each amended to read  
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in  
17 this section apply throughout this chapter.

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

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

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

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

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

1           (6) (~~"Community custody range" means the minimum and maximum~~  
2 ~~period of community custody included as part of a sentence under RCW~~  
3 ~~9.94A.701, as established by the commission or the legislature under~~  
4 ~~RCW 9.94A.850.~~

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

8           ~~((8))~~ (7) "Community restitution" means compulsory service,  
9 without compensation, performed for the benefit of the community by the  
10 offender.

11           ~~((9))~~ (8) "Confinement" means total or partial confinement.

12           ~~((10))~~ (9) "Conviction" means an adjudication of guilt pursuant  
13 to Title 10 or 13 RCW and includes a verdict of guilty, a finding of  
14 guilty, and acceptance of a plea of guilty.

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

22           ~~((12))~~ (11) "Criminal history" means the list of a defendant's  
23 prior convictions and juvenile adjudications, whether in this state, in  
24 federal court, or elsewhere.

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

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

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

1           (~~(13)~~)   (12) "Criminal street gang" means any ongoing  
2 organization, association, or group of three or more persons, whether  
3 formal or informal, having a common name or common identifying sign or  
4 symbol, having as one of its primary activities the commission of  
5 criminal acts, and whose members or associates individually or  
6 collectively engage in or have engaged in a pattern of criminal street  
7 gang activity. This definition does not apply to employees engaged in  
8 concerted activities for their mutual aid and protection, or to the  
9 activities of labor and bona fide nonprofit organizations or their  
10 members or agents.

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

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

- 21           (a) To gain admission, prestige, or promotion within the gang;
- 22           (b) To increase or maintain the gang's size, membership, prestige,  
23 dominance, or control in any geographical area;
- 24           (c) To exact revenge or retribution for the gang or any member of  
25 the gang;
- 26           (d) To obstruct justice, or intimidate or eliminate any witness  
27 against the gang or any member of the gang;
- 28           (e) To directly or indirectly cause any benefit, aggrandizement,  
29 gain, profit, or other advantage for the gang, its reputation,  
30 influence, or membership; or
- 31           (f) To provide the gang with any advantage in, or any control or  
32 dominance over any criminal market sector, including, but not limited  
33 to, manufacturing, delivering, or selling any controlled substance  
34 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
35 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
36 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
37 (chapter 9.68 RCW).

1       (~~(16)~~) (15) "Day fine" means a fine imposed by the sentencing  
2 court that equals the difference between the offender's net daily  
3 income and the reasonable obligations that the offender has for the  
4 support of the offender and any dependents.

5       (~~(17)~~) (16) "Day reporting" means a program of enhanced  
6 supervision designed to monitor the offender's daily activities and  
7 compliance with sentence conditions, and in which the offender is  
8 required to report daily to a specific location designated by the  
9 department or the sentencing court.

10       (~~(18)~~) (17) "Department" means the department of corrections.

11       (~~(19)~~) (18) "Determinate sentence" means a sentence that states  
12 with exactitude the number of actual years, months, or days of total  
13 confinement, of partial confinement, of community custody, the number  
14 of actual hours or days of community restitution work, or dollars or  
15 terms of a legal financial obligation. The fact that an offender  
16 through earned release can reduce the actual period of confinement  
17 shall not affect the classification of the sentence as a determinate  
18 sentence.

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

31       (~~(21)~~) (20) "Drug offender sentencing alternative" is a  
32 sentencing option available to persons convicted of a felony offense  
33 other than a violent offense or a sex offense and who are eligible for  
34 the option under RCW 9.94A.660.

35       (~~(22)~~) (21) "Drug offense" means:

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

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

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

7 ~~((+23+))~~ (22) "Earned release" means earned release from  
8 confinement as provided in RCW 9.94A.728.

9 ~~((+24+))~~ (23) "Escape" means:

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

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

19 ~~((+25+))~~ (24) "Felony traffic offense" means:

20 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
21 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
22 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
23 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
24 felony physical control of a vehicle while under the influence of  
25 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

29 ~~((+26+))~~ (25) "Fine" means a specific sum of money ordered by the  
30 sentencing court to be paid by the offender to the court over a  
31 specific period of time.

32 ~~((+27+))~~ (26) "First-time offender" means any person who has no  
33 prior convictions for a felony and is eligible for the first-time  
34 offender waiver under RCW 9.94A.650.

35 ~~((+28+))~~ (27) "Home detention" means a program of partial  
36 confinement available to offenders wherein the offender is confined in  
37 a private residence subject to electronic surveillance.

1       (~~(+29+)~~) (28) "Legal financial obligation" means a sum of money  
2 that is ordered by a superior court of the state of Washington for  
3 legal financial obligations which may include restitution to the  
4 victim, statutorily imposed crime victims' compensation fees as  
5 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
6 drug funds, court-appointed attorneys' fees, and costs of defense,  
7 fines, and any other financial obligation that is assessed to the  
8 offender as a result of a felony conviction. Upon conviction for  
9 vehicular assault while under the influence of intoxicating liquor or  
10 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
11 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
12 legal financial obligations may also include payment to a public agency  
13 of the expense of an emergency response to the incident resulting in  
14 the conviction, subject to RCW 38.52.430.

15       (~~(+30+)~~) (29) "Most serious offense" means any of the following  
16 felonies or a felony attempt to commit any of the following felonies:

17       (a) Any felony defined under any law as a class A felony or  
18 criminal solicitation of or criminal conspiracy to commit a class A  
19 felony;

20       (b) Assault in the second degree;

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

22       (d) Child molestation in the second degree;

23       (e) Controlled substance homicide;

24       (f) Extortion in the first degree;

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

26       (h) Indecent liberties;

27       (i) Kidnapping in the second degree;

28       (j) Leading organized crime;

29       (k) Manslaughter in the first degree;

30       (l) Manslaughter in the second degree;

31       (m) Promoting prostitution in the first degree;

32       (n) Rape in the third degree;

33       (o) Robbery in the second degree;

34       (p) Sexual exploitation;

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



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

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

7 (t) Any other felony with a deadly weapon verdict under RCW  
8 9.94A.602;

9 (u) Any felony offense in effect at any time prior to December 2,  
10 1993, that is comparable to a most serious offense under this  
11 subsection, or any federal or out-of-state conviction for an offense  
12 that under the laws of this state would be a felony classified as a  
13 most serious offense under this subsection;

14 (v)(i) A prior conviction for indecent liberties under RCW  
15 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
16 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
17 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
18 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

19 (ii) A prior conviction for indecent liberties under RCW  
20 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
21 if: (A) The crime was committed against a child under the age of  
22 fourteen; or (B) the relationship between the victim and perpetrator is  
23 included in the definition of indecent liberties under RCW  
24 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
25 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
26 through July 27, 1997;

27 (w) Any out-of-state conviction for a felony offense with a finding  
28 of sexual motivation if the minimum sentence imposed was ten years or  
29 more; provided that the out-of-state felony offense must be comparable  
30 to a felony offense under Title 9 or 9A RCW and the out-of-state  
31 definition of sexual motivation must be comparable to the definition of  
32 sexual motivation contained in this section.

33 (~~(+31+)~~) (30) "Nonviolent offense" means an offense which is not a  
34 violent offense.

35 (~~(+32+)~~) (31) "Offender" means a person who has committed a felony  
36 established by state law and is eighteen years of age or older or is  
37 less than eighteen years of age but whose case is under superior court  
38 jurisdiction under RCW 13.04.030 or has been transferred by the

1 appropriate juvenile court to a criminal court pursuant to RCW  
2 13.40.110. In addition, for the purpose of community custody  
3 requirements under this chapter, "offender" also means a misdemeanor or  
4 gross misdemeanor probationer convicted of an offense included in RCW  
5 9.94A.501(1) and ordered by a superior court to probation under the  
6 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or  
7 9.95.210. Throughout this chapter, the terms "offender" and  
8 "defendant" are used interchangeably.

9 ((+33)) (32) "Partial confinement" means confinement for no more  
10 than one year in a facility or institution operated or utilized under  
11 contract by the state or any other unit of government, or, if home  
12 detention or work crew has been ordered by the court, in an approved  
13 residence, for a substantial portion of each day with the balance of  
14 the day spent in the community. Partial confinement includes work  
15 release, home detention, work crew, and a combination of work crew and  
16 home detention.

17 ((+34)) (33) "Pattern of criminal street gang activity" means:

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

21 (i) Any "serious violent" felony offense as defined in ((RCW  
22 9.94A.030)) this section, excluding Homicide by Abuse (RCW 9A.32.055)  
23 and Assault of a Child 1 (RCW 9A.36.120);

24 (ii) Any "violent" offense as defined by ((RCW 9.94A.030)) this  
25 section, excluding Assault of a Child 2 (RCW 9A.36.130);

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

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

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

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

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

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

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

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

- 1 (xi) Residential Burglary (RCW 9A.52.025);
- 2 (xii) Burglary 2 (RCW 9A.52.030);
- 3 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
- 4 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
- 5 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
- 6 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
- 7 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
- 8 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
- 9 9A.56.075);
- 10 (xix) Extortion 1 (RCW 9A.56.120);
- 11 (xx) Extortion 2 (RCW 9A.56.130);
- 12 (xxi) Intimidating a Witness (RCW 9A.72.110);
- 13 (xxii) Tampering with a Witness (RCW 9A.72.120);
- 14 (xxiii) Reckless Endangerment (RCW 9A.36.050);
- 15 (xxiv) Coercion (RCW 9A.36.070);
- 16 (xxv) Harassment (RCW 9A.46.020); or
- 17 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

18 (b) That at least one of the offenses listed in (a) of this  
19 subsection shall have occurred after July 1, 2008;

20 (c) That the most recent committed offense listed in (a) of this  
21 subsection occurred within three years of a prior offense listed in (a)  
22 of this subsection; and

23 (d) Of the offenses that were committed in (a) of this subsection,  
24 the offenses occurred on separate occasions or were committed by two or  
25 more persons.

26 (~~(+35+)~~) (34) "Persistent offender" is an offender who:

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

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

37 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
38 of a child in the first degree, child molestation in the first degree,

1 rape in the second degree, rape of a child in the second degree, or  
2 indecent liberties by forcible compulsion; (B) any of the following  
3 offenses with a finding of sexual motivation: Murder in the first  
4 degree, murder in the second degree, homicide by abuse, kidnapping in  
5 the first degree, kidnapping in the second degree, assault in the first  
6 degree, assault in the second degree, assault of a child in the first  
7 degree, assault of a child in the second degree, or burglary in the  
8 first degree; or (C) an attempt to commit any crime listed in this  
9 subsection (~~(+35+)~~) (34)(b)(i); and

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

22 (~~(+36+)~~) (35) "Predatory" means: (a) The perpetrator of the crime  
23 was a stranger to the victim, as defined in this section; (b) the  
24 perpetrator established or promoted a relationship with the victim  
25 prior to the offense and the victimization of the victim was a  
26 significant reason the perpetrator established or promoted the  
27 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
28 volunteer, or other person in authority in any public or private school  
29 and the victim was a student of the school under his or her authority  
30 or supervision. For purposes of this subsection, "school" does not  
31 include home-based instruction as defined in RCW 28A.225.010; (ii) a  
32 coach, trainer, volunteer, or other person in authority in any  
33 recreational activity and the victim was a participant in the activity  
34 under his or her authority or supervision; or (iii) a pastor, elder,  
35 volunteer, or other person in authority in any church or religious  
36 organization, and the victim was a member or participant of the  
37 organization under his or her authority.

1 ((+37+)) (36) "Private school" means a school regulated under  
2 chapter 28A.195 or 28A.205 RCW.

3 ((+38+)) (37) "Public school" has the same meaning as in RCW  
4 28A.150.010.

5 ((+39+)) (38) "Restitution" means a specific sum of money ordered  
6 by the 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 ((+40+)) (39) "Risk assessment" means the application of ((an  
10 objective)) the risk instrument ((supported by research and adopted  
11 by)) recommended to the department ((for the purpose of assessing an  
12 offender's risk of reoffense, taking into consideration the nature of  
13 the harm done by the offender, place and circumstances of the offender  
14 related to risk, the offender's relationship to any victim, and any  
15 information provided to the department by victims. The results of a  
16 risk assessment shall not be based on unconfirmed or unconfirmable  
17 allegations)) by the Washington state institute for public policy as  
18 having the highest degree of predictive accuracy for assessing an  
19 offender's risk of reoffense.

20 ((+41+)) (40) "Serious traffic offense" means:

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

26 (b) Any federal, out-of-state, county, or municipal conviction 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 ((+42+)) (41) "Serious violent offense" is a subcategory of violent  
30 offense and means:

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

32 (ii) Homicide by abuse;

33 (iii) Murder in the second degree;

34 (iv) Manslaughter in the first degree;

35 (v) Assault in the first degree;

36 (vi) Kidnapping in the first degree;

37 (vii) Rape in the first degree;

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

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 (~~(43)~~) (42) "Sex offense" means:

7 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
8 RCW 9A.44.130(12);

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.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 (~~(44)~~) (43) "Sexual motivation" means that one of the purposes  
23 for which the defendant committed the crime was for the purpose of his  
24 or her sexual gratification.

25 (~~(45)~~) (44) "Standard sentence range" means the sentencing  
26 court's discretionary range in imposing a nonappealable sentence.

27 (~~(46)~~) (45) "Statutory maximum sentence" means the maximum length  
28 of time for which an offender may be confined as punishment for a crime  
29 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
30 the crime, or other statute defining the maximum penalty for a crime.

31 (~~(47)~~) (46) "Stranger" means that the victim did not know the  
32 offender twenty-four hours before the offense.

33 (~~(48)~~) (47) "Total confinement" means confinement inside the  
34 physical boundaries of a facility or institution operated or utilized  
35 under contract by the state or any other unit of government for twenty-  
36 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

37 (~~(49)~~) (48) "Transition training" means written and verbal  
38 instructions and assistance provided by the department to the offender

1 during the two weeks prior to the offender's successful completion of  
2 the work ethic camp program. The transition training shall include  
3 instructions in the offender's requirements and obligations during the  
4 offender's period of community custody.

5 ~~((+50+))~~ (49) "Victim" means any person who has sustained  
6 emotional, psychological, physical, or financial injury to person or  
7 property as a direct result of the crime charged.

8 ~~((+51+))~~ (50) "Violent offense" means:

9 (a) Any of the following felonies:

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

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

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

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

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

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

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

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

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

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

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

1        ~~((+52))~~ (51) "Work crew" means a program of partial confinement  
2 consisting of civic improvement tasks for the benefit of the community  
3 that complies with RCW 9.94A.725.

4        ~~((+53))~~ (52) "Work ethic camp" means an alternative incarceration  
5 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
6 lower the cost of corrections by requiring offenders to complete a  
7 comprehensive array of real-world job and vocational experiences,  
8 character-building work ethics training, life management skills  
9 development, substance abuse rehabilitation, counseling, literacy  
10 training, and basic adult education.

11        ~~((+54))~~ (53) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school.

14        **Sec. 5.** RCW 9.94A.701 and 2009 c 28 s 10 are each amended to read  
15 as follows:

16        (1) If an offender is sentenced to the custody of the department  
17 for one of the following crimes, the court shall ~~((impose a term of~~  
18 ~~community custody for the community custody range established under RCW~~  
19 ~~9.94A.850 or up to the period of earned release awarded pursuant to RCW~~  
20 ~~9.94A.728 (1) and (2), whichever is longer)), in addition to the other~~  
21 ~~terms of the sentence, sentence the offender to community custody for~~  
22 three years:

23        (a) A sex offense not sentenced under RCW 9.94A.507;

24        (b) A serious violent offense; or

25        (c) ~~((A crime against persons under RCW 9.94A.411(2));~~

26        ~~(d) An offense involving the unlawful possession of a firearm under~~  
27 ~~RCW 9.41.040, where the offender is a criminal street gang member or~~  
28 ~~associate;~~

29        ~~(e) A felony offender under chapter 69.50 or 69.52 RCW)) A~~  
30 violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006,  
31 when a court sentences the person to a term of confinement of one year  
32 or less.

33        (2) ~~((If an offender is sentenced to a term of confinement of one~~  
34 ~~year or less for a violation of RCW 9A.44.130(11)(a), the court shall~~  
35 ~~impose a term of community custody for the community custody range~~  
36 ~~established under RCW 9.94A.850 or up to the period of earned release~~  
37 ~~awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer)) A~~



1 court shall, in addition to the other terms of the sentence, sentence  
2 an offender to community custody for eighteen months when the court  
3 sentences the person to the custody of the department for a violent  
4 offense that is not considered a serious violent offense.

5 (3) A court shall, in addition to the other terms of the sentence,  
6 sentence an offender to community custody for one year when the court  
7 sentences the person to the custody of the department for:

8 (a) Any crime against persons under RCW 9.94A.411(2);

9 (b) An offense involving the unlawful possession of a firearm under  
10 RCW 9.41.040, where the offender is a criminal street gang member or  
11 associate; or

12 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed on  
13 or after July 1, 2000.

14 ~~((+3))~~ (4) If an offender is sentenced under the drug offender  
15 sentencing alternative, the court shall impose community custody as  
16 provided in RCW 9.94A.660.

17 ~~((+4))~~ (5) If an offender is sentenced under the special sexual  
18 offender sentencing alternative, the court shall impose community  
19 custody as provided in RCW 9.94A.670.

20 ~~((+5))~~ (6) If an offender is sentenced to a work ethic camp, the  
21 court shall impose community custody as provided in RCW 9.94A.690.

22 ~~((+6))~~ (7) If a sex offender is sentenced as a nonpersistent  
23 offender pursuant to RCW 9.94A.507, the court shall impose community  
24 custody as provided in that section.

25 ~~((+7) If the offender is a criminal street gang associate or member~~  
26 ~~and is found guilty of unlawful possession of a firearm under RCW~~  
27 ~~9.41.040, the court shall impose a term of community custody under~~  
28 ~~subsection (1)(d) of this section))~~ (8) The term of community custody  
29 specified by this section shall be reduced by the court whenever an  
30 offender's standard range term of confinement in combination with the  
31 term of community custody exceeds the statutory maximum for the crime  
32 as provided in RCW 9A.20.021.

33 **Sec. 6.** RCW 9.94A.704 and 2009 c 28 s 12 are each amended to read  
34 as follows:

35 (1) Every person who is sentenced to a period of community custody  
36 shall report to and be placed under the supervision of the department,  
37 subject to RCW 9.94A.501.

1 (2)(a) The department shall assess the offender's risk of reoffense  
2 and may establish and modify additional conditions of community custody  
3 based upon the risk to community safety.

4 (b) Within the funds available for community custody, the  
5 department shall determine conditions (~~and duration of community~~  
6 ~~eustody~~) on the basis of risk to community safety, and shall supervise  
7 offenders during community custody on the basis of risk to community  
8 safety and conditions imposed by the court. The secretary shall adopt  
9 rules to implement the provisions of this subsection (2)(b).

10 (3) If the offender is supervised by the department, the department  
11 shall at a minimum instruct the offender to:

12 (a) Report as directed to a community corrections officer;

13 (b) Remain within prescribed geographical boundaries;

14 (c) Notify the community corrections officer of any change in the  
15 offender's address or employment;

16 (d) Pay the supervision fee assessment; and

17 (e) Disclose the fact of supervision to any mental health or  
18 chemical dependency treatment provider, as required by RCW 9.94A.722.

19 (4) The department may require the offender to participate in  
20 rehabilitative programs, or otherwise perform affirmative conduct, and  
21 to obey all laws.

22 (5) If the offender was sentenced pursuant to a conviction for a  
23 sex offense, the department may impose electronic monitoring. Within  
24 the resources made available by the department for this purpose, the  
25 department shall carry out any electronic monitoring using the most  
26 appropriate technology given the individual circumstances of the  
27 offender. As used in this section, "electronic monitoring" means the  
28 monitoring of an offender using an electronic offender tracking system  
29 including, but not limited to, a system using radio frequency or active  
30 or passive global positioning system technology.

31 (6) The department may not impose conditions that are contrary to  
32 those ordered by the court and may not contravene or decrease court-  
33 imposed conditions.

34 (7)(a) The department shall notify the offender in writing of any  
35 additional conditions or modifications.

36 (b) By the close of the next business day after receiving notice of  
37 a condition imposed or modified by the department, an offender may  
38 request an administrative review under rules adopted by the department.

1 The condition shall remain in effect unless the reviewing officer finds  
2 that it is not reasonably related to the crime of conviction, the  
3 offender's risk of reoffending, or the safety of the community.

4 (8) The department may require offenders to pay for special  
5 services rendered including electronic monitoring, day reporting, and  
6 telephone reporting, dependent on the offender's ability to pay. The  
7 department may pay for these services for offenders who are not able to  
8 pay.

9 (9)(a) When a sex offender has been sentenced pursuant to RCW  
10 9.94A.507, the department shall assess the offender's risk of  
11 recidivism and shall recommend to the board any additional or modified  
12 conditions based upon the offender's risk to community safety and may  
13 recommend affirmative conduct or electronic monitoring consistent with  
14 subsections (4) through (6) of this section.

15 (b) The board may impose conditions in addition to court-ordered  
16 conditions. The board must consider and may impose department-  
17 recommended conditions.

18 (c) By the close of the next business day, after receiving notice  
19 of a condition imposed by the board or the department, an offender may  
20 request an administrative hearing under rules adopted by the board.  
21 The condition shall remain in effect unless the hearing examiner finds  
22 that it is not reasonably related to any of the following:

- 23 (i) The crime of conviction;
- 24 (ii) The offender's risk of reoffending;
- 25 (iii) The safety of the community.

26 (d) If the department finds that an emergency exists requiring the  
27 immediate imposition of additional conditions in order to prevent the  
28 offender from committing a crime, the department may impose such  
29 conditions. The department may not impose conditions that are contrary  
30 to those set by the board or the court and may not contravene or  
31 decrease court-imposed or board-imposed conditions. Conditions imposed  
32 under this subsection shall take effect immediately after notice to the  
33 offender by personal service, but shall not remain in effect longer  
34 than seven working days unless approved by the board.

35 (10) In setting, modifying, and enforcing conditions of community  
36 custody, the department shall be deemed to be performing a  
37 quasi-judicial function.

1       **Sec. 7.** RCW 9.94A.707 and 2008 c 231 s 12 are each amended to read  
2 as follows:

3       (1) Community custody shall begin: (a) Upon completion of the term  
4 of confinement; or (b) ~~((at such time as the offender is transferred to~~  
5 ~~community custody in lieu of earned release in accordance with RCW~~  
6 ~~9.94A.728 (1) or (2); or (c))~~) at the time of sentencing if no term of  
7 confinement is ordered.

8       (2) When an offender is sentenced to community custody, the  
9 offender is subject to the conditions of community custody as of the  
10 date of sentencing, unless otherwise ordered by the court.

11       ~~((3) When an offender is sentenced to a community custody range~~  
12 ~~pursuant to RCW 9.94A.701 (1) or (2), the department shall discharge~~  
13 ~~the offender from community custody on a date determined by the~~  
14 ~~department, which the department may modify, based on risk and~~  
15 ~~performance of the offender, within the range or at the end of the~~  
16 ~~period of earned release, whichever is later.))~~

17       **Sec. 8.** RCW 9.94A.850 and 2009 c 28 s 17 are each amended to read  
18 as follows:

19       (1) A sentencing guidelines commission is established as an agency  
20 of state government.

21       (2) The legislature finds that the commission, having accomplished  
22 its original statutory directive to implement this chapter, and having  
23 expertise in sentencing practice and policies, shall:

24       (a) Evaluate state sentencing policy, to include whether the  
25 sentencing ranges and standards are consistent with and further:

26       (i) The purposes of this chapter as defined in RCW 9.94A.010; and

27       (ii) The intent of the legislature to emphasize confinement for the  
28 violent offender and alternatives to confinement for the nonviolent  
29 offender.

30       The commission shall provide the governor and the legislature with  
31 its evaluation and recommendations under this subsection not later than  
32 December 1, 1996, and every two years thereafter;

33       (b) Recommend to the legislature revisions or modifications to the  
34 standard sentence ranges, state sentencing policy, prosecuting  
35 standards, and other standards. If implementation of the revisions or  
36 modifications would result in exceeding the capacity of correctional

1 facilities, then the commission shall accompany its recommendation with  
2 an additional list of standard sentence ranges which are consistent  
3 with correction capacity;

4 (c) Study the existing criminal code and from time to time make  
5 recommendations to the legislature for modification;

6 (d)(i) Serve as a clearinghouse and information center for the  
7 collection, preparation, analysis, and dissemination of information on  
8 state and local adult and juvenile sentencing practices; (ii) develop  
9 and maintain a computerized adult and juvenile sentencing information  
10 system by individual superior court judge consisting of offender,  
11 offense, history, and sentence information entered from judgment and  
12 sentence forms for all adult felons; and (iii) conduct ongoing research  
13 regarding adult and juvenile sentencing guidelines, use of total  
14 confinement and alternatives to total confinement, plea bargaining, and  
15 other matters relating to the improvement of the adult criminal justice  
16 system and the juvenile justice system;

17 (e) Assume the powers and duties of the juvenile disposition  
18 standards commission after June 30, 1996;

19 (f) Evaluate the effectiveness of existing disposition standards  
20 and related statutes in implementing policies set forth in RCW  
21 13.40.010 generally, specifically review the guidelines relating to the  
22 confinement of minor and first-time offenders as well as the use of  
23 diversion, and review the application of current and proposed juvenile  
24 sentencing standards and guidelines for potential adverse impacts on  
25 the sentencing outcomes of racial and ethnic minority youth;

26 (g) Solicit the comments and suggestions of the juvenile justice  
27 community concerning disposition standards, and make recommendations to  
28 the legislature regarding revisions or modifications of the standards.  
29 The evaluations shall be submitted to the legislature on December 1 of  
30 each odd-numbered year. The department of social and health services  
31 shall provide the commission with available data concerning the  
32 implementation of the disposition standards and related statutes and  
33 their effect on the performance of the department's responsibilities  
34 relating to juvenile offenders, and with recommendations for  
35 modification of the disposition standards. The administrative office  
36 of the courts shall provide the commission with available data on  
37 diversion, including the use of youth court programs, and dispositions  
38 of juvenile offenders under chapter 13.40 RCW; and

1 (h) Not later than December 1, 1997, and at least every two years  
2 thereafter, based on available information, report to the governor and  
3 the legislature on:

4 (i) Racial disproportionality in juvenile and adult sentencing,  
5 and, if available, the impact that diversions, such as youth courts,  
6 have on racial disproportionality in juvenile prosecution,  
7 adjudication, and sentencing;

8 (ii) The capacity of state and local juvenile and adult facilities  
9 and resources; and

10 (iii) Recidivism information on adult and juvenile offenders.

11 (3) Each of the commission's recommended standard sentence ranges  
12 shall include one or more of the following: Total confinement, partial  
13 confinement, community supervision, community restitution, and a fine.

14 (4) The standard sentence ranges of total and partial confinement  
15 under this chapter, except as provided in RCW 9.94A.517, are subject to  
16 the following limitations:

17 (a) If the maximum term in the range is one year or less, the  
18 minimum term in the range shall be no less than one-third of the  
19 maximum term in the range, except that if the maximum term in the range  
20 is ninety days or less, the minimum term may be less than one-third of  
21 the maximum;

22 (b) If the maximum term in the range is greater than one year, the  
23 minimum term in the range shall be no less than seventy-five percent of  
24 the maximum term in the range, except that for murder in the second  
25 degree in seriousness level XIV under RCW 9.94A.510, the minimum term  
26 in the range shall be no less than fifty percent of the maximum term in  
27 the range; and

28 (c) The maximum term of confinement in a range may not exceed the  
29 statutory maximum for the crime as provided in RCW 9A.20.021.

30 ~~(5)((a) Not later than December 31 of each year, the commission~~  
31 ~~may propose modifications to the community custody ranges to be~~  
32 ~~included in sentences under RCW 9.94A.701. The ranges shall be based~~  
33 ~~on the principles in RCW 9.94A.010, and shall take into account the~~  
34 ~~funds available to the department for community custody. The minimum~~  
35 ~~term in each range shall not be less than one-half of the maximum term.~~

36 ~~(b) The legislature may, by enactment of a legislative bill, adopt~~  
37 ~~or modify the community custody ranges proposed by the commission. If~~  
38 ~~the legislature fails to adopt or modify the initial ranges in its next~~

1 ~~regular session after they are proposed, the proposed ranges shall take~~  
2 ~~effect without legislative approval for crimes committed on or after~~  
3 ~~July 1, 2000.~~

4 ~~(c) When the commission proposes modifications to ranges pursuant~~  
5 ~~to this subsection, the legislature may, by enactment of a bill, adopt~~  
6 ~~or modify the ranges proposed by the commission for crimes committed on~~  
7 ~~or after July 1 of the year after they were proposed. Unless the~~  
8 ~~legislature adopts or modifies the commission's proposal in its next~~  
9 ~~regular session, the proposed ranges shall not take effect.~~

10 (6)) The commission shall exercise its duties under this section  
11 in conformity with chapter 34.05 RCW.

12 NEW SECTION. **Sec. 9.** The department of corrections shall  
13 recalculate the term of community custody and reset the date that  
14 community custody will end for each offender currently in confinement  
15 or serving a term of community custody for a crime specified in RCW  
16 9.94A.701. The recalculation shall not extend a term of community  
17 custody beyond that to which an offender is currently subject.

18 **Sec. 10.** 2008 c 231 s 6 (uncodified) is amended to read as  
19 follows:

20 The existing sentencing reform act contains numerous provisions for  
21 supervision of different types of offenders. This duplication has  
22 caused great confusion for judges, lawyers, offenders, and the  
23 department of corrections, and often results in inaccurate sentences.  
24 The clarifications in this act are intended to support continued  
25 discussions by the sentencing guidelines commission with the courts and  
26 the criminal justice community to identify and propose policy changes  
27 that will further simplify and improve the sentencing reform act  
28 relating to the supervision of offenders. The sentencing guidelines  
29 commission shall submit policy change proposals to the legislature on  
30 or before December 1, 2008.

31 Sections 7 through 58 of this act are intended to simplify the  
32 supervision provisions of the sentencing reform act and increase the  
33 uniformity of its application. These sections are not intended to  
34 either increase or decrease the authority of sentencing courts or the  
35 department relating to supervision, except for those provisions  
36 instructing the court to apply the provisions of the current community

1 custody law to offenders sentenced after July 1, 2009, but who  
2 committed their crime prior to August 1, 2009, to the extent that such  
3 application is constitutionally permissible.

4 This will effect a change for offenders who committed their crimes  
5 prior to the offender accountability act, chapter 196, Laws of 1999.  
6 These offenders will be ordered to a term of community custody rather  
7 than community placement or community supervision. To the extent  
8 constitutionally permissible, the terms of the offender's supervision  
9 will be as provided in current law. With the exception of this change,  
10 the legislature does not intend to make, and no provision of sections  
11 7 through 58 of this act may be construed as making, a substantive  
12 change to the supervision provisions of the sentencing reform act.

13 ~~((It is the intent of the legislature to reaffirm that section 3,  
14 chapter 379, Laws of 2003, expires July 1, 2010.))~~

15 **Sec. 11.** RCW 9.95.220 and 1957 c 227 s 5 are each amended to read  
16 as follows:

17 (1) Except as provided in subsection (2) of this section, whenever  
18 the state parole officer or other officer under whose supervision the  
19 probationer has been placed shall have reason to believe such  
20 probationer is violating the terms of his or her probation, or engaging  
21 in criminal practices, or is abandoned to improper associates, or  
22 living a vicious life, he or she shall cause the probationer to be  
23 brought before the court wherein the probation was granted. For this  
24 purpose any peace officer or state parole officer may rearrest any such  
25 person without warrant or other process. The court may thereupon in  
26 its discretion without notice revoke and terminate such probation. In  
27 the event the judgment has been pronounced by the court and the  
28 execution thereof suspended, the court may revoke such suspension,  
29 whereupon the judgment shall be in full force and effect, and the  
30 defendant shall be delivered to the sheriff to be transported to the  
31 penitentiary or reformatory as the case may be. If the judgment has  
32 not been pronounced, the court shall pronounce judgment after such  
33 revocation of probation and the defendant shall be delivered to the  
34 sheriff to be transported to the penitentiary or reformatory, in  
35 accordance with the sentence imposed.

36 (2) If a probationer is being supervised by the department of  
37 corrections pursuant to RCW 9.95.204, the department shall have



1 authority to issue a warrant for the arrest of an offender who violates  
2 a condition of community custody, as provided in RCW 9.94A.716. Any  
3 sanctions shall be imposed by the department pursuant to RCW 9.94A.737.  
4 The department shall provide a copy of the violation hearing report to  
5 the sentencing court in a timely manner. Nothing in this subsection is  
6 intended to limit the power of the sentencing court to respond to a  
7 probationer's violation of conditions.

8 **Sec. 12.** RCW 9.94A.633 and 2009 c 28 s 7 are each amended to read  
9 as follows:

10 (1)(a) An offender who violates any condition or requirement of a  
11 sentence may be sanctioned with up to sixty days' confinement for each  
12 violation.

13 (b) In lieu of confinement, an offender may be sanctioned with work  
14 release, home detention with electronic monitoring, work crew,  
15 community restitution, inpatient treatment, daily reporting, curfew,  
16 educational or counseling sessions, supervision enhanced through  
17 electronic monitoring, or any other sanctions available in the  
18 community.

19 (2) If an offender was under community custody pursuant to one of  
20 the following statutes, the offender may be sanctioned as follows:

21 (a) If the offender was transferred to community custody in lieu of  
22 earned early release in accordance with RCW 9.94A.728(2), the offender  
23 may be transferred to a more restrictive confinement status to serve up  
24 to the remaining portion of the sentence, less credit for any period  
25 actually spent in community custody or in detention awaiting  
26 disposition of an alleged violation.

27 (b) If the offender was sentenced under the drug offender  
28 sentencing alternative set out in RCW 9.94A.660, the offender may be  
29 sanctioned in accordance with that section.

30 (c) If the offender was sentenced under the special sexual offender  
31 sentencing alternative set out in RCW 9.94A.670, the suspended sentence  
32 may be revoked and the offender committed to serve the original  
33 sentence of confinement.

34 (d) If the offender was sentenced to a work ethic camp pursuant to  
35 RCW 9.94A.690, the offender may be reclassified to serve the unexpired  
36 term of his or her sentence in total confinement.

1 (e) If a sex offender was sentenced pursuant to RCW 9.94A.507, the  
2 offender may be transferred to a more restrictive confinement status to  
3 serve up to the remaining portion of the sentence, less credit for any  
4 period actually spent in community custody or in detention awaiting  
5 disposition of an alleged violation.

6 (3) If a probationer is being supervised by the department pursuant  
7 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be  
8 sanctioned pursuant to subsection (1) of this section. The department  
9 shall have authority to issue a warrant for the arrest of an offender  
10 who violates a condition of community custody, as provided in RCW  
11 9.94A.716. Any sanctions shall be imposed by the department pursuant  
12 to RCW 9.94A.737. The department shall provide a copy of the violation  
13 hearing report to the sentencing court in a timely manner. Nothing in  
14 this subsection is intended to limit the power of the sentencing court  
15 to respond to a probationer's violation of conditions.

16 **Sec. 13.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to  
17 read as follows:

18 (1) If an offender violates any condition or requirement of  
19 community custody, the department may transfer the offender to a more  
20 restrictive confinement status to serve up to the remaining portion of  
21 the sentence, less credit for any period actually spent in community  
22 custody or in detention awaiting disposition of an alleged violation  
23 and subject to the limitations of subsection (3) of this section.

24 (2) If an offender has not completed his or her maximum term of  
25 total confinement and is subject to a third violation hearing for any  
26 violation of community custody and is found to have committed the  
27 violation, the department shall return the offender to total  
28 confinement in a state correctional facility to serve up to the  
29 remaining portion of his or her sentence, unless it is determined that  
30 returning the offender to a state correctional facility would  
31 substantially interfere with the offender's ability to maintain  
32 necessary community supports or to participate in necessary treatment  
33 or programming and would substantially increase the offender's  
34 likelihood of reoffending.

35 (3)(a) For a sex offender sentenced to a term of community custody  
36 under RCW 9.94A.670 who violates any condition of community custody,  
37 the department may impose a sanction of up to sixty days' confinement

1 in a local correctional facility for each violation. If the department  
2 imposes a sanction, the department shall submit within seventy-two  
3 hours a report to the court and the prosecuting attorney outlining the  
4 violation or violations and the sanctions imposed.

5 (b) For a sex offender sentenced to a term of community custody  
6 under RCW 9.94A.710 who violates any condition of community custody  
7 after having completed his or her maximum term of total confinement,  
8 including time served on community custody in lieu of earned release,  
9 the department may impose a sanction of up to sixty days in a local  
10 correctional facility for each violation.

11 (c) For an offender sentenced to a term of community custody under  
12 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,  
13 for a crime committed on or after July 1, 2000, who violates any  
14 condition of community custody after having completed his or her  
15 maximum term of total confinement, including time served on community  
16 custody in lieu of earned release, the department may impose a sanction  
17 of up to sixty days in total confinement for each violation. The  
18 department may impose sanctions such as work release, home detention  
19 with electronic monitoring, work crew, community restitution, inpatient  
20 treatment, daily reporting, curfew, educational or counseling sessions,  
21 supervision enhanced through electronic monitoring, or any other  
22 sanctions available in the community.

23 (d) For an offender sentenced to a term of community placement  
24 under RCW 9.94A.705 who violates any condition of community placement  
25 after having completed his or her maximum term of total confinement,  
26 including time served on community custody in lieu of earned release,  
27 the department may impose a sanction of up to sixty days in total  
28 confinement for each violation. The department may impose sanctions  
29 such as work release, home detention with electronic monitoring, work  
30 crew, community restitution, inpatient treatment, daily reporting,  
31 curfew, educational or counseling sessions, supervision enhanced  
32 through electronic monitoring, or any other sanctions available in the  
33 community.

34 (e) If a probationer is being supervised by the department pursuant  
35 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be  
36 sanctioned by the department pursuant to (c) of this subsection. The  
37 department shall have authority to issue a warrant for the arrest of an  
38 offender who violates a condition of community custody, as provided in

1 RCW 9.94A.740. The department shall provide a copy of the violation  
2 hearing report to the sentencing court in a timely manner. Nothing in  
3 this subsection is intended to limit the power of the sentencing court  
4 to respond to a probationer's violation of conditions.

5 (4) If an offender has been arrested for a new felony offense while  
6 under community supervision, community custody, or community placement,  
7 the department shall hold the offender in total confinement until a  
8 hearing before the department as provided in this section or until the  
9 offender has been formally charged for the new felony offense,  
10 whichever is earlier. Nothing in this subsection shall be construed as  
11 to permit the department to hold an offender past his or her maximum  
12 term of total confinement if the offender has not completed the maximum  
13 term of total confinement or to permit the department to hold an  
14 offender past the offender's term of community supervision, community  
15 custody, or community placement.

16 (5) The department shall be financially responsible for any portion  
17 of the sanctions authorized by this section that are served in a local  
18 correctional facility as the result of action by the department.

19 (6) If an offender is accused of violating any condition or  
20 requirement of community custody, he or she is entitled to a hearing  
21 before the department prior to the imposition of sanctions. The  
22 hearing shall be considered as offender disciplinary proceedings and  
23 shall not be subject to chapter 34.05 RCW. The department shall  
24 develop hearing procedures and a structure of graduated sanctions.

25 (7) The hearing procedures required under subsection (6) of this  
26 section shall be developed by rule and include the following:

27 (a) Hearing officers shall report through a chain of command  
28 separate from that of community corrections officers;

29 (b) The department shall provide the offender with written notice  
30 of the violation, the evidence relied upon, and the reasons the  
31 particular sanction was imposed. The notice shall include a statement  
32 of the rights specified in this subsection, and the offender's right to  
33 file a personal restraint petition under court rules after the final  
34 decision of the department;

35 (c) The hearing shall be held unless waived by the offender, and  
36 shall be electronically recorded. For offenders not in total  
37 confinement, the hearing shall be held within fifteen working days, but  
38 not less than twenty-four hours, after notice of the violation. For

1 offenders in total confinement, the hearing shall be held within five  
2 working days, but not less than twenty-four hours, after notice of the  
3 violation;

4 (d) The offender shall have the right to: (i) Be present at the  
5 hearing; (ii) have the assistance of a person qualified to assist the  
6 offender in the hearing, appointed by the hearing officer if the  
7 offender has a language or communications barrier; (iii) testify or  
8 remain silent; (iv) call witnesses and present documentary evidence;  
9 and (v) question witnesses who appear and testify; and

10 (e) The sanction shall take effect if affirmed by the hearing  
11 officer. Within seven days after the hearing officer's decision, the  
12 offender may appeal the decision to a panel of three reviewing officers  
13 designated by the secretary or by the secretary's designee. The  
14 sanction shall be reversed or modified if a majority of the panel finds  
15 that the sanction was not reasonably related to any of the following:  
16 (i) The crime of conviction; (ii) the violation committed; (iii) the  
17 offender's risk of reoffending; or (iv) the safety of the community.

18 (8) For purposes of this section, no finding of a violation of  
19 conditions may be based on unconfirmed or unconfirmable allegations.

20 (9) The department shall work with the Washington association of  
21 sheriffs and police chiefs to establish and operate an electronic  
22 monitoring program for low-risk offenders who violate the terms of  
23 their community custody. Between January 1, 2006, and December 31,  
24 2006, the department shall endeavor to place at least one hundred low-  
25 risk community custody violators on the electronic monitoring program  
26 per day if there are at least that many low-risk offenders who qualify  
27 for the electronic monitoring program.

28 (10) Local governments, their subdivisions and employees, the  
29 department and its employees, and the Washington association of  
30 sheriffs and police chiefs and its employees shall be immune from civil  
31 liability for damages arising from incidents involving low-risk  
32 offenders who are placed on electronic monitoring unless it is shown  
33 that an employee acted with gross negligence or bad faith.

34 **Sec. 14.** RCW 9.94A.6332 and 2009 c 28 s 8 are each amended to read  
35 as follows:

36 The procedure for imposing sanctions for violations of sentence  
37 conditions or requirements is as follows:

1 (1) If the offender was sentenced under the drug offender  
2 sentencing alternative, any sanctions shall be imposed by the  
3 department or the court pursuant to RCW 9.94A.660.

4 (2) If the offender was sentenced under the special sexual offender  
5 sentencing alternative, any sanctions shall be imposed by the  
6 department or the court pursuant to RCW 9.94A.670.

7 (3) If a sex offender was sentenced pursuant to RCW 9.94A.507, any  
8 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

9 (4) In any other case, if the offender is being supervised by the  
10 department, any sanctions shall be imposed by the department pursuant  
11 to RCW 9.94A.737. If a probationer is being supervised by the  
12 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon  
13 receipt of a violation hearing report from the department, the court  
14 retains any authority that those statutes provide to respond to a  
15 probationer's violation of conditions.

16 (5) If the offender is not being supervised by the department, any  
17 sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

18 NEW SECTION. Sec. 15. The legislature directs the sentencing  
19 guidelines commission to include in its biennial report to the  
20 legislature, as required by RCW 9.94A.850(2)(h)(iii), and due no later  
21 than December 1, 2011, an analysis of the impact on recidivism of the  
22 following:

23 (1) The supervision of offenders pursuant to sections 1 and 2 of  
24 this act;

25 (2) The department's authority to issue warrants for offenders  
26 under its supervision who are sentenced for misdemeanor and gross  
27 misdemeanor offenses in superior court; and

28 (3) The community custody terms of supervision pursuant to section  
29 5 of this act.

30 NEW SECTION. Sec. 16. The following acts or parts of acts are  
31 each repealed:

32 (1) RCW 9.95.206 (Misdemeanant probation services--Offender  
33 classification system--Supervision standards) and 1996 c 298 s 2; and

34 (2) RCW 9.95.212 (Standards for supervision of misdemeanant  
35 probationers) and 1998 c 245 s 2 & 1995 1st sp.s. c 19 s 31.

1        NEW SECTION.    **Sec. 17.**    2008 c 231 s 60 (uncodified) is repealed.

2        NEW SECTION.    **Sec. 18.**    (1) Sections 1, 3, 11, 13, 16, 17, and 20  
3 of this act are necessary for the immediate preservation of the public  
4 peace, health, or safety, or support of the state government and its  
5 existing public institutions, and take effect immediately.

6        (2) Sections 2, 4 through 10, 12, and 14 of this act take effect  
7 August 1, 2009.

8        NEW SECTION.    **Sec. 19.**    Sections 1, 3, and 13 of this act expire  
9 August 1, 2009.

10       NEW SECTION.    **Sec. 20.**    This act applies retroactively and  
11 prospectively regardless of whether the offender is currently on  
12 community custody or probation with the department, currently  
13 incarcerated with a term of community custody or probation with the  
14 department, or sentenced after the effective date of this section."

15       Correct the title.

--- END ---