

SSB 6566 - H COMM AMD

By Committee on Early Learning & Human Services

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

3 "Sec. 1. RCW 9.68A.050 and 2017 c 126 s 3 are each amended to
4 read as follows:

5 (1)(a) Except as provided in subsections (3) and (4) of this
6 section, a person commits the crime of dealing in depictions of a
7 minor engaged in sexually explicit conduct in the first degree when
8 he or she:

9 (i) Knowingly develops, duplicates, publishes, prints,
10 disseminates, exchanges, finances, attempts to finance, or sells a
11 visual or printed matter that depicts a minor engaged in an act of
12 sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through
13 (e); or

14 (ii) Possesses with intent to develop, duplicate, publish, print,
15 disseminate, exchange, or sell any visual or printed matter that
16 depicts a minor engaged in an act of sexually explicit conduct as
17 defined in RCW 9.68A.011(4) (a) through (e).

18 (b) Dealing in depictions of a minor engaged in sexually explicit
19 conduct in the first degree is a class B felony punishable under
20 chapter 9A.20 RCW.

21 (c) For the purposes of determining the unit of prosecution under
22 this subsection, each depiction or image of visual or printed matter
23 constitutes a separate offense.

24 (2)(a) Except as provided in subsection (3) of this section, a
25 person commits the crime of dealing in depictions of a minor engaged
26 in sexually explicit conduct in the second degree when he or she:

27 (i) Knowingly develops, duplicates, publishes, prints,
28 disseminates, exchanges, finances, attempts to finance, or sells any
29 visual or printed matter that depicts a minor engaged in an act of
30 sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g);
31 or

1 (ii) Possesses with intent to develop, duplicate, publish, print,
2 disseminate, exchange, or sell any visual or printed matter that
3 depicts a minor engaged in an act of sexually explicit conduct as
4 defined in RCW 9.68A.011(4) (f) or (g).

5 (b) Dealing in depictions of a minor engaged in sexually explicit
6 conduct in the second degree is a class B felony punishable under
7 chapter 9A.20 RCW.

8 (c) For the purposes of determining the unit of prosecution under
9 this subsection, each incident of dealing in one or more depictions
10 or images of visual or printed matter constitutes a separate offense.

11 (3) This section shall not apply to a minor who (a) knowingly
12 develops, duplicates, publishes, or prints a visual or printed matter
13 that depicts any minor over the age of twelve engaged in an act of
14 sexually explicit conduct; (b) possesses any depiction of any minor
15 over the age of twelve engaged in an act of sexually explicit conduct
16 with the intent to develop, duplicate, publish, print, disseminate,
17 or exchange such depiction; or (c) knowingly distributes, transfers,
18 disseminates, or exchanges a visual or printed matter that depicts
19 themselves engaged in an act of sexually explicit conduct.

20 (4)(a) Any minor who knowingly distributes, transfers,
21 disseminates, or exchanges a visual or printed matter that depicts
22 any other minor over the age of twelve engaged in an act of sexually
23 explicit conduct as defined in RCW 9.68A.011(4) (f) or (g) shall be
24 guilty of a misdemeanor.

25 (b) Any minor who knowingly distributes, transfers, disseminates,
26 or exchanges a visual or printed matter that depicts any other minor
27 over the age of twelve engaged in an act of sexually explicit conduct
28 as defined in RCW 9.68A.011(4) (a) through (e) shall be guilty of a
29 gross misdemeanor.

30 **Sec. 2.** RCW 9.68A.060 and 2017 c 126 s 4 are each amended to
31 read as follows:

32 (1)(a) Except as provided in subsection (3) of this section, a
33 person commits the crime of sending or bringing into the state
34 depictions of a minor engaged in sexually explicit conduct in the
35 first degree when he or she knowingly sends or causes to be sent, or
36 brings or causes to be brought, into this state for sale or
37 distribution, a visual or printed matter that depicts a minor engaged
38 in sexually explicit conduct as defined in RCW 9.68A.011(4) (a)
39 through (e).

1 (b) Sending or bringing into the state depictions of a minor
2 engaged in sexually explicit conduct in the first degree is a class B
3 felony punishable under chapter 9A.20 RCW.

4 (c) For the purposes of determining the unit of prosecution under
5 this subsection, each depiction or image of visual or printed matter
6 constitutes a separate offense.

7 (2)(a) Except as provided in subsection (3) of this section, a
8 person commits the crime of sending or bringing into the state
9 depictions of a minor engaged in sexually explicit conduct in the
10 second degree when he or she knowingly sends or causes to be sent, or
11 brings or causes to be brought, into this state for sale or
12 distribution, any visual or printed matter that depicts a minor
13 engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)
14 (f) or (g).

15 (b) Sending or bringing into the state depictions of a minor
16 engaged in sexually explicit conduct in the second degree is a class
17 B felony punishable under chapter 9A.20 RCW.

18 (c) For the purposes of determining the unit of prosecution under
19 this subsection, each incident of sending or bringing into the state
20 one or more depictions or images of visual or printed matter
21 constitutes a separate offense.

22 (3) This section does not apply to a minor who knowingly sends or
23 causes to be sent, or brings or causes to be brought, into this state
24 for distribution, visual or printed matter depicting any minor over
25 the age of twelve engaged in sexually explicit conduct.

26 **Sec. 3.** RCW 9.68A.070 and 2017 c 126 s 2 are each amended to
27 read as follows:

28 (1)(a) Except as provided in subsection (3) of this section, a
29 person commits the crime of possession of depictions of a minor
30 engaged in sexually explicit conduct in the first degree when he or
31 she knowingly possesses a visual or printed matter depicting a minor
32 engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)
33 (a) through (e).

34 (b) Possession of depictions of a minor engaged in sexually
35 explicit conduct in the first degree is a class B felony punishable
36 under chapter 9A.20 RCW.

37 (c) For the purposes of determining the unit of prosecution under
38 this subsection, each depiction or image of visual or printed matter
39 constitutes a separate offense.

1 (2)(a) Except as provided in subsection (3) of this section, a
2 person commits the crime of possession of depictions of a minor
3 engaged in sexually explicit conduct in the second degree when he or
4 she knowingly possesses any visual or printed matter depicting a
5 minor engaged in sexually explicit conduct as defined in RCW
6 9.68A.011(4) (f) or (g).

7 (b) Possession of depictions of a minor engaged in sexually
8 explicit conduct in the second degree is a class B felony punishable
9 under chapter 9A.20 RCW.

10 (c) For the purposes of determining the unit of prosecution under
11 this subsection, each incident of possession of one or more
12 depictions or images of visual or printed matter constitutes a
13 separate offense.

14 (3) This section shall not apply to a minor's possession of
15 visual or printed matter depicting any minor over the age of twelve
16 engaged in sexually explicit conduct.

17 **Sec. 4.** RCW 9.68A.075 and 2010 c 227 s 7 are each amended to
18 read as follows:

19 (1) Except as provided in subsection (5) of this section, a
20 person who intentionally views over the internet visual or printed
21 matter depicting a minor engaged in sexually explicit conduct as
22 defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing
23 depictions of a minor engaged in sexually explicit conduct in the
24 first degree, a class B felony punishable under chapter 9A.20 RCW.

25 (2) Except as provided in subsection (5) of this section, a
26 person who intentionally views over the internet visual or printed
27 matter depicting a minor engaged in sexually explicit conduct as
28 defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing
29 depictions of a minor engaged in sexually explicit conduct in the
30 second degree, a class C felony punishable under chapter 9A.20 RCW.

31 (3) For the purposes of determining whether a person
32 intentionally viewed over the internet a visual or printed matter
33 depicting a minor engaged in sexually explicit conduct in subsection
34 (1) or (2) of this section, the trier of fact shall consider the
35 title, text, and content of the visual or printed matter, as well as
36 the internet history, search terms, thumbnail images, downloading
37 activity, expert computer forensic testimony, number of visual or
38 printed matter depicting minors engaged in sexually explicit conduct,
39 defendant's access to and control over the electronic device and its

1 contents upon which the visual or printed matter was found, or any
2 other relevant evidence. The state must prove beyond a reasonable
3 doubt that the viewing was initiated by the user of the computer
4 where the viewing occurred.

5 (4) For the purposes of this section, each separate internet
6 session of intentionally viewing over the internet visual or printed
7 matter depicting a minor engaged in sexually explicit conduct
8 constitutes a separate offense.

9 (5) This section shall not apply to a minor who intentionally
10 views over the internet visual or printed matter depicting a minor
11 over the age of twelve engaged in sexually explicit conduct.

12 **Sec. 5.** RCW 13.40.070 and 2017 c 292 s 2 are each amended to
13 read as follows:

14 (1) Complaints referred to the juvenile court alleging the
15 commission of an offense shall be referred directly to the
16 prosecutor. The prosecutor, upon receipt of a complaint, shall screen
17 the complaint to determine whether:

18 (a) The alleged facts bring the case within the jurisdiction of
19 the court; and

20 (b) On a basis of available evidence there is probable cause to
21 believe that the juvenile did commit the offense.

22 (2) If the identical alleged acts constitute an offense under
23 both the law of this state and an ordinance of any city or county of
24 this state, state law shall govern the prosecutor's screening and
25 charging decision for both filed and diverted cases.

26 (3) If the requirements of subsections (1)(a) and (b) of this
27 section are met, the prosecutor shall either file an information in
28 juvenile court or divert the case, as set forth in subsections (5),
29 (6), and (8) of this section. If the prosecutor finds that the
30 requirements of subsection (1)(a) and (b) of this section are not
31 met, the prosecutor shall maintain a record, for one year, of such
32 decision and the reasons therefor. In lieu of filing an information
33 or diverting an offense a prosecutor may file a motion to modify
34 community supervision where such offense constitutes a violation of
35 community supervision.

36 (4) An information shall be a plain, concise, and definite
37 written statement of the essential facts constituting the offense
38 charged. It shall be signed by the prosecuting attorney and conform
39 to chapter 10.37 RCW.

1 (5) Except as provided in RCW 13.40.213 and subsection (7) of
2 this section, where a case is legally sufficient, the prosecutor
3 shall file an information with the juvenile court if:

4 (a) An alleged offender is accused of a class A felony, a class B
5 felony, an attempt to commit a class B felony, a class C felony
6 listed in RCW 9.94A.411(2) as a crime against persons or listed in
7 RCW 9A.46.060 as a crime of harassment, or a class C felony that is a
8 violation of RCW 9.41.080 or 9.41.040(2)(a)(iv); or

9 (b) An alleged offender is accused of a felony and has a criminal
10 history of any felony, or at least two gross misdemeanors, or at
11 least two misdemeanors; or

12 (c) An alleged offender has previously been committed to the
13 department; or

14 (d) An alleged offender has been referred by a diversion unit for
15 prosecution or desires prosecution instead of diversion; or

16 (e) An alleged offender has three or more diversion agreements on
17 the alleged offender's criminal history; or

18 (f) A special allegation has been filed that the offender or an
19 accomplice was armed with a firearm when the offense was committed.

20 (6) Where a case is legally sufficient the prosecutor shall
21 divert the case if the alleged offense is a misdemeanor or gross
22 misdemeanor or violation and the alleged offense is the offender's
23 first offense or violation. If the alleged offender is charged with a
24 related offense that must or may be filed under subsections (5) and
25 (8) of this section, a case under this subsection may also be filed.

26 (7) Where a case is legally sufficient to charge an alleged
27 offender with:

28 (a) Either prostitution or prostitution loitering and the alleged
29 offense is the offender's first prostitution or prostitution
30 loitering offense, the prosecutor shall divert the case; ((or))

31 (b) A distribution, transfer, dissemination, or exchange of
32 sexually explicit images of other minors over the age of twelve is a
33 violation as provided in RCW 9.68A.050(4) and the alleged offense is
34 the offender's first violation of RCW 9.68A.050(4), the prosecutor
35 shall divert the case; or

36 (c) Voyeurism in the second degree, the offender is under
37 seventeen years of age, and the alleged offense is the offender's
38 first voyeurism in the second degree offense, the prosecutor shall
39 divert the case, unless the offender has received two diversions for
40 any offense in the previous two years.

1 (8) Where a case is legally sufficient and falls into neither
2 subsection (5) nor (6) of this section, it may be filed or diverted.
3 In deciding whether to file or divert an offense under this section
4 the prosecutor shall be guided only by the length, seriousness, and
5 recency of the alleged offender's criminal history and the
6 circumstances surrounding the commission of the alleged offense.

7 (9) Whenever a juvenile is placed in custody or, where not placed
8 in custody, referred to a diversion interview, the parent or legal
9 guardian of the juvenile shall be notified as soon as possible
10 concerning the allegation made against the juvenile and the current
11 status of the juvenile. Where a case involves victims of crimes
12 against persons or victims whose property has not been recovered at
13 the time a juvenile is referred to a diversion unit, the victim shall
14 be notified of the referral and informed how to contact the unit.

15 (10) The responsibilities of the prosecutor under subsections (1)
16 through (9) of this section may be performed by a juvenile court
17 probation counselor for any complaint referred to the court alleging
18 the commission of an offense which would not be a felony if committed
19 by an adult, if the prosecutor has given sufficient written notice to
20 the juvenile court that the prosecutor will not review such
21 complaints.

22 (11) The prosecutor, juvenile court probation counselor, or
23 diversion unit may, in exercising their authority under this section
24 or RCW 13.40.080, refer juveniles to mediation or victim offender
25 reconciliation programs. Such mediation or victim offender
26 reconciliation programs shall be voluntary for victims.

27 **Sec. 6.** RCW 13.40.080 and 2015 c 265 s 25 are each amended to
28 read as follows:

29 (1) A diversion agreement shall be a contract between a juvenile
30 accused of an offense and a diversion unit whereby the juvenile
31 agrees to fulfill certain conditions in lieu of prosecution. Such
32 agreements may be entered into only after the prosecutor, or
33 probation counselor pursuant to this chapter, has determined that
34 probable cause exists to believe that a crime has been committed and
35 that the juvenile committed it. Such agreements shall be entered into
36 as expeditiously as possible.

37 (2) A diversion agreement shall be limited to one or more of the
38 following:

1 (a) Community restitution not to exceed one hundred fifty hours,
2 not to be performed during school hours if the juvenile is attending
3 school;

4 (b) Restitution limited to the amount of actual loss incurred by
5 any victim;

6 (c) Attendance at up to ten hours of counseling and/or up to
7 twenty hours of educational or informational sessions at a community
8 agency. The educational or informational sessions may include
9 sessions relating to respect for self, others, and authority; victim
10 awareness; accountability; self-worth; responsibility; work ethics;
11 good citizenship; literacy; and life skills. If an assessment
12 identifies mental health or chemical dependency needs, a youth may
13 access up to thirty hours of counseling. The counseling sessions may
14 include services demonstrated to improve behavioral health and reduce
15 recidivism. For purposes of this section, "community agency" may also
16 mean a community-based nonprofit organization, a physician, a
17 counselor, a school, or a treatment provider, if approved by the
18 diversion unit. The state shall not be liable for costs resulting
19 from the diversion unit exercising the option to permit diversion
20 agreements to mandate attendance at up to thirty hours of counseling
21 and/or up to twenty hours of educational or informational sessions;

22 (d) Requirements to remain during specified hours at home,
23 school, or work, and restrictions on leaving or entering specified
24 geographical areas; and

25 (e) Upon request of any victim or witness, requirements to
26 refrain from any contact with victims or witnesses of offenses
27 committed by the juvenile.

28 (3) Notwithstanding the provisions of subsection (2) of this
29 section, youth courts are not limited to the conditions imposed by
30 subsection (2) of this section in imposing sanctions on juveniles
31 pursuant to RCW 13.40.630.

32 (4) In assessing periods of community restitution to be performed
33 and restitution to be paid by a juvenile who has entered into a
34 diversion agreement, the court officer to whom this task is assigned
35 shall consult with the juvenile's custodial parent or parents or
36 guardian. To the extent possible, the court officer shall advise the
37 victims of the juvenile offender of the diversion process, offer
38 victim impact letter forms and restitution claim forms, and involve
39 members of the community. Such members of the community shall meet
40 with the juvenile and advise the court officer as to the terms of the

1 diversion agreement and shall supervise the juvenile in carrying out
2 its terms.

3 (5)(a) A diversion agreement may not exceed a period of six
4 months and may include a period extending beyond the eighteenth
5 birthday of the diverttee.

6 (b) If additional time is necessary for the juvenile to complete
7 restitution to a victim, the time period limitations of this
8 subsection may be extended by an additional six months.

9 (c) If the juvenile has not paid the full amount of restitution
10 by the end of the additional six-month period, then the juvenile
11 shall be referred to the juvenile court for entry of a civil order
12 establishing the amount of restitution still owed to the victim. In
13 this order, the court shall also determine the terms and conditions
14 of the restitution, including a payment plan extending up to ten
15 years if the court determines that the juvenile does not have the
16 means to make full restitution over a shorter period. For the
17 purposes of this subsection (5)(c), the juvenile shall remain under
18 the court's jurisdiction for a maximum term of ten years after the
19 juvenile's eighteenth birthday. Prior to the expiration of the
20 initial ten-year period, the juvenile court may extend the judgment
21 for restitution an additional ten years. The court may relieve the
22 juvenile of the requirement to pay full or partial restitution if the
23 juvenile reasonably satisfies the court that he or she does not have
24 the means to make full or partial restitution and could not
25 reasonably acquire the means to pay the restitution over a ten-year
26 period. If the court relieves the juvenile of the requirement to pay
27 full or partial restitution, the court may order an amount of
28 community restitution that the court deems appropriate. The county
29 clerk shall make disbursements to victims named in the order. The
30 restitution to victims named in the order shall be paid prior to any
31 payment for other penalties or monetary assessments. A juvenile under
32 obligation to pay restitution may petition the court for modification
33 of the restitution order.

34 (6) The juvenile shall retain the right to be referred to the
35 court at any time prior to the signing of the diversion agreement.

36 (7) Diverttees and potential diverttees shall be afforded due
37 process in all contacts with a diversion unit regardless of whether
38 the juveniles are accepted for diversion or whether the diversion
39 program is successfully completed. Such due process shall include,
40 but not be limited to, the following:

1 (a) A written diversion agreement shall be executed stating all
2 conditions in clearly understandable language;

3 (b) Violation of the terms of the agreement shall be the only
4 grounds for termination;

5 (c) No divertee may be terminated from a diversion program
6 without being given a court hearing, which hearing shall be preceded
7 by:

8 (i) Written notice of alleged violations of the conditions of the
9 diversion program; and

10 (ii) Disclosure of all evidence to be offered against the
11 divertee;

12 (d) The hearing shall be conducted by the juvenile court and
13 shall include:

14 (i) Opportunity to be heard in person and to present evidence;

15 (ii) The right to confront and cross-examine all adverse
16 witnesses;

17 (iii) A written statement by the court as to the evidence relied
18 on and the reasons for termination, should that be the decision; and

19 (iv) Demonstration by evidence that the divertee has
20 substantially violated the terms of his or her diversion agreement;

21 (e) The prosecutor may file an information on the offense for
22 which the divertee was diverted:

23 (i) In juvenile court if the divertee is under eighteen years of
24 age; or

25 (ii) In superior court or the appropriate court of limited
26 jurisdiction if the divertee is eighteen years of age or older.

27 (8) The diversion unit shall, subject to available funds, be
28 responsible for providing interpreters when juveniles need
29 interpreters to effectively communicate during diversion unit
30 hearings or negotiations.

31 (9) The diversion unit shall be responsible for advising a
32 divertee of his or her rights as provided in this chapter.

33 (10) The diversion unit may refer a juvenile to a restorative
34 justice program, community-based counseling, or treatment programs.

35 (11) The right to counsel shall inure prior to the initial
36 interview for purposes of advising the juvenile as to whether he or
37 she desires to participate in the diversion process or to appear in
38 the juvenile court. The juvenile may be represented by counsel at any
39 critical stage of the diversion process, including intake interviews
40 and termination hearings. The juvenile shall be fully advised at the

1 intake of his or her right to an attorney and of the relevant
2 services an attorney can provide. For the purpose of this section,
3 intake interviews mean all interviews regarding the diversion
4 agreement process.

5 The juvenile shall be advised that a diversion agreement shall
6 constitute a part of the juvenile's criminal history as defined by
7 RCW 13.40.020(8). A signed acknowledgment of such advisement shall be
8 obtained from the juvenile, and the document shall be maintained by
9 the diversion unit together with the diversion agreement, and a copy
10 of both documents shall be delivered to the prosecutor if requested
11 by the prosecutor. The supreme court shall promulgate rules setting
12 forth the content of such advisement in simple language.

13 (12) When a juvenile enters into a diversion agreement, the
14 juvenile court may receive only the following information for
15 dispositional purposes:

- 16 (a) The fact that a charge or charges were made;
- 17 (b) The fact that a diversion agreement was entered into;
- 18 (c) The juvenile's obligations under such agreement;
- 19 (d) Whether the alleged offender performed his or her obligations
20 under such agreement; and
- 21 (e) The facts of the alleged offense.

22 (13) A diversion unit may refuse to enter into a diversion
23 agreement with a juvenile. When a diversion unit refuses to enter a
24 diversion agreement with a juvenile, it shall immediately refer such
25 juvenile to the court for action and shall forward to the court the
26 criminal complaint and a detailed statement of its reasons for
27 refusing to enter into a diversion agreement. The diversion unit
28 shall also immediately refer the case to the prosecuting attorney for
29 action if such juvenile violates the terms of the diversion
30 agreement.

31 (14) A diversion unit may, in instances where it determines that
32 the act or omission of an act for which a juvenile has been referred
33 to it involved no victim, or where it determines that the juvenile
34 referred to it has no prior criminal history and is alleged to have
35 committed an illegal act involving no threat of or instance of actual
36 physical harm and involving not more than fifty dollars in property
37 loss or damage and that there is no loss outstanding to the person or
38 firm suffering such damage or loss, counsel and release or release
39 such a juvenile without entering into a diversion agreement. A
40 diversion unit's authority to counsel and release a juvenile under

1 this subsection includes the authority to refer the juvenile to
2 community-based counseling or treatment programs or a restorative
3 justice program. Any juvenile released under this subsection shall be
4 advised that the act or omission of any act for which he or she had
5 been referred shall constitute a part of the juvenile's criminal
6 history as defined by RCW 13.40.020(8). A signed acknowledgment of
7 such advisement shall be obtained from the juvenile, and the document
8 shall be maintained by the unit, and a copy of the document shall be
9 delivered to the prosecutor if requested by the prosecutor. The
10 supreme court shall promulgate rules setting forth the content of
11 such advisement in simple language. A juvenile determined to be
12 eligible by a diversion unit for release as provided in this
13 subsection shall retain the same right to counsel and right to have
14 his or her case referred to the court for formal action as any other
15 juvenile referred to the unit.

16 (15) A diversion unit may supervise the fulfillment of a
17 diversion agreement entered into before the juvenile's eighteenth
18 birthday and which includes a period extending beyond the divertee's
19 eighteenth birthday.

20 (16) If restitution required by a diversion agreement cannot
21 reasonably be paid due to a change of circumstance, the diversion
22 agreement may be modified at the request of the divertee and with the
23 concurrence of the diversion unit to convert unpaid restitution into
24 community restitution. The modification of the diversion agreement
25 shall be in writing and signed by the divertee and the diversion
26 unit. The number of hours of community restitution in lieu of a
27 monetary penalty shall be converted at the rate of the prevailing
28 state minimum wage per hour.

29 (17) Consistent with the requirements provided in this section, a
30 juvenile diversion unit entering into a diversion agreement with a
31 juvenile for distribution, transfer, dissemination, or exchange of
32 sexually explicit images of other minors over the age of twelve as
33 provided in RCW 9.68A.050(4) shall:

34 (a) Conduct an assessment of the factors and behaviors that led
35 to the alleged offense; and

36 (b) Develop a treatment plan that addresses those factors.

37 NEW SECTION. Sec. 7. A new section is added to chapter 13.40
38 RCW to read as follows:

1 (1) The legislature finds that exchange of intimate images by
2 minors is increasingly common, and that such actions may lead to harm
3 and long-term consequences. The legislature intends to develop age-
4 appropriate prevention and interventions to prevent harm and to hold
5 accountable youth who harm others through exchange of intimate
6 images.

7 (2) The Washington coalition of sexual assault programs, in
8 consultation with the office of the superintendent of public
9 instruction, the Washington association for the treatment of sexual
10 abusers, the department of children, youth, and families, the
11 Washington association of prosecuting attorneys, representatives from
12 public defense, and other relevant stakeholders, shall convene a work
13 group to make recommendations to the legislature regarding age-
14 appropriate prevention and intervention strategies to address
15 potential harms caused by exchange of intimate images by minors.

16 (3) By November 1, 2018, the work group shall make a report to
17 the legislature identifying education, prevention, and other
18 responses to the harms that may be associated with exchange of
19 intimate images by minors.

20 (4) This section expires July 1, 2019.

21 **Sec. 8.** RCW 9.94A.030 and 2016 c 81 s 16 are each amended to
22 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (c) The determination of a defendant's criminal history is
39 distinct from the determination of an offender score. A prior
40 conviction that was not included in an offender score calculated

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

3 (12) "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 (13) "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
16 the criminal street gang.

17 (14) "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
22 is 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,
25 prestige, 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
38 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
39 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
40 9.68 RCW).

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

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

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

11 (18) "Determinate sentence" means a sentence that states with
12 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 (19) "Disposable earnings" means that part of the earnings of an
20 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
23 personal services, whether denominated as wages, salary, commission,
24 bonuses, or otherwise, and, notwithstanding any other provision of
25 law making the payments exempt from garnishment, attachment, or other
26 process to satisfy a court-ordered legal financial obligation,
27 specifically includes periodic payments pursuant to pension or
28 retirement programs, or insurance policies of any type, but does not
29 include payments made under Title 50 RCW, except as provided in RCW
30 50.40.020 and 50.40.050, or Title 74 RCW.

31 (20) "Domestic violence" has the same meaning as defined in RCW
32 10.99.020 and 26.50.010.

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

37 (22) "Drug offense" means:

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

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

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

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

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

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

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

22 (25) "Escape" means:

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

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

32 (26) "Felony traffic offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (b) Assault in the second degree;

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Promoting prostitution in the first degree;

21 (n) Rape in the third degree;

22 (o) Robbery in the second degree;

23 (p) Sexual exploitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (xxiii) Reckless Endangerment (RCW 9A.36.050);

2 (xxiv) Coercion (RCW 9A.36.070);

3 (xxv) Harassment (RCW 9A.46.020); or

4 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

7 (c) That the most recent committed offense listed in (a) of this
8 subsection occurred within three years of a prior offense listed in
9 (a) of this subsection; and

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

13 (38) "Persistent offender" is an offender who:

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

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

24 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
25 of a child in the first degree, child molestation in the first
26 degree, rape in the second degree, rape of a child in the second
27 degree, or indecent liberties by forcible compulsion; (B) any of the
28 following offenses with a finding of sexual motivation: Murder in the
29 first degree, murder in the second degree, homicide by abuse,
30 kidnapping in the first degree, kidnapping in the second degree,
31 assault in the first degree, assault in the second degree, assault of
32 a child in the first degree, assault of a child in the second degree,
33 or burglary in the first degree; or (C) an attempt to commit any
34 crime listed in this subsection (38)(b)(i); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (45) "Serious traffic offense" means:

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

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

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

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

32 (ii) Homicide by abuse;

33 (iii) Murder in the second degree;

34 (iv) Manslaughter in the first degree;

35 (v) Assault in the first degree;

36 (vi) Kidnapping in the first degree;

37 (vii) Rape in the first degree;

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

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

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

4 (47) "Sex offense" means:

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

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

8 (iii) A felony that is a violation of chapter 9.68A RCW other
9 than RCW 9.68A.050(4) and 9.68A.080;

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

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

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

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

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

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

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

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

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

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

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

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

10 (55) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.68A
15 RCW to read as follows:

16 A minor who possesses any depiction or depictions of any other
17 minor engaged in an act of sexually explicit conduct shall be deemed
18 to forfeit any right to continued possession of the depiction or
19 depictions and shall be ordered by a court of competent jurisdiction
20 to forfeit possession of the depiction or depictions to the custody
21 of law enforcement.

22 NEW SECTION. **Sec. 10.** A new section is added to chapter 9A.86
23 RCW to read as follows:

24 A minor who possesses any image of any other minor which
25 constitutes an intimate image as defined in RCW 9A.86.010 shall be
26 deemed to forfeit any right to continued possession of the image and
27 shall be ordered by a court of competent jurisdiction to forfeit
28 possession of the image to the custody of law enforcement. This
29 section does not limit a court's authority under other law or court
30 rule to order forfeiture of any intimate image as defined by RCW
31 9A.86.010."

32 Correct the title.

EFFECT: Makes the following changes:

(1) Narrows the simple misdemeanor offense for minors who knowingly distribute, transfer, disseminate, or exchange a visual or printed matter that depicts any other minor over the age of twelve engaged in an act of sexually explicit conduct depending on the type of conduct that is depicted.

(2) Creates a gross misdemeanor offense for minors who knowingly distribute, transfer, disseminate, or exchange a visual or printed matter that depicts any other minor over the age of twelve engaged in an act of sexually explicit conduct for different types of conduct depicted than the simple misdemeanor offense.

(3) Restores current law, that a juvenile may receive no more than three diversions.

(4) Requires that juvenile diversion units entering into a diversion with a youth for distribution, transfer, dissemination, or exchange of sexually explicit images of other minors over the age of 12 do the following: (a) Conduct an assessment of factors and behaviors that led to the alleged offense; and (b) develop a treatment plan that addresses those factors.

(5) Specifies that courts shall, instead of may, order the forfeiture of intimate images of minors or depictions of any other minor in an act of sexually explicit conduct in the possession of another minor.

(6) Specifies that intimate images of other minors shall be forfeited to the custody of law enforcement.

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