

E2SSB 5036 - H COMM AMD

By Committee on Public Safety

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

3 **"Sec. 1.** RCW 9.94A.030 and 2020 c 296 s 2, 2020 c 252 s 4, and
4 2020 c 137 s 1 are each reenacted and amended to read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

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

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

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

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

1 (7) "Community restitution" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender.

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

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

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

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

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

24 (b) A conviction may be removed from a defendant's criminal
25 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
26 9.95.240, or a similar out-of-state statute, or if the conviction has
27 been vacated pursuant to a governor's pardon. However, when a
28 defendant is charged with a recidivist offense, "criminal history"
29 includes a vacated prior conviction for the sole purpose of
30 establishing that such vacated prior conviction constitutes an
31 element of the present recidivist offense as provided in RCW
32 9.94A.640(3)(b) and 9.96.060(6)(c).

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

38 (12) "Criminal street gang" means any ongoing organization,
39 association, or group of three or more persons, whether formal or
40 informal, having a common name or common identifying sign or symbol,

1 having as one of its primary activities the commission of criminal
2 acts, and whose members or associates individually or collectively
3 engage in or have engaged in a pattern of criminal street gang
4 activity. This definition does not apply to employees engaged in
5 concerted activities for their mutual aid and protection, or to the
6 activities of labor and bona fide nonprofit organizations or their
7 members or agents.

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

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

- 18 (a) To gain admission, prestige, or promotion within the gang;
- 19 (b) To increase or maintain the gang's size, membership,
20 prestige, dominance, or control in any geographical area;
- 21 (c) To exact revenge or retribution for the gang or any member of
22 the gang;
- 23 (d) To obstruct justice, or intimidate or eliminate any witness
24 against the gang or any member of the gang;
- 25 (e) To directly or indirectly cause any benefit, aggrandizement,
26 gain, profit, or other advantage for the gang, its reputation,
27 influence, or membership; or
- 28 (f) To provide the gang with any advantage in, or any control or
29 dominance over any criminal market sector, including, but not limited
30 to, manufacturing, delivering, or selling any controlled substance
31 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
32 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
33 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
34 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
35 9.68 RCW).

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

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

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

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

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

27 (20) "Domestic violence" has the same meaning as defined in RCW
28 10.99.020 and 26.50.010.

29 (21) "Drug offender sentencing alternative" is a sentencing
30 option available to persons convicted of a felony offense who are
31 eligible for the option under RCW 9.94A.660.

32 (22) "Drug offense" means:

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

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

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

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

6 (24) "Electronic monitoring" means tracking the location of an
7 individual through the use of technology that is capable of
8 determining or identifying the monitored individual's presence or
9 absence at a particular location including, but not limited to:

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

15 (b) Active or passive global positioning system technology, which
16 detects the location of the monitored individual and notifies the
17 monitoring agency of the monitored individual's location and which
18 may also include electronic monitoring with victim notification
19 technology that is capable of notifying a victim or protected party,
20 either directly or through a monitoring agency, if the monitored
21 individual enters within the restricted distance of a victim or
22 protected party, or within the restricted distance of a designated
23 location.

24 (25) "Escape" means:

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

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

34 (26) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
37 run injury-accident (RCW 46.52.020(4)), felony driving while under
38 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
39 or felony physical control of a vehicle while under the influence of
40 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) "Most serious offense" means any of the following felonies
2 or a felony attempt to commit any of the following felonies:

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

6 (b) Assault in the second degree;

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

8 (d) Child molestation in the second degree;

9 (e) Controlled substance homicide;

10 (f) Extortion in the first degree;

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

12 (h) Indecent liberties;

13 (i) Kidnapping in the second degree;

14 (j) Leading organized crime;

15 (k) Manslaughter in the first degree;

16 (l) Manslaughter in the second degree;

17 (m) Promoting prostitution in the first degree;

18 (n) Rape in the third degree;

19 (o) Sexual exploitation;

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

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

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

30 (s) Any other felony with a deadly weapon verdict under RCW
31 9.94A.825;

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

37 (u) (i) A prior conviction for indecent liberties under RCW
38 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
39 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
40 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (vii) Hate Crime (RCW 9A.36.080);

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

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

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

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

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

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

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

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

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

31 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
32 9A.56.070);

33 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
34 9A.56.075);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
23 of a child in the first degree, child molestation in the first
24 degree, rape in the second degree, rape of a child in the second
25 degree, or indecent liberties by forcible compulsion; (B) any of the
26 following offenses with a finding of sexual motivation: Murder in the
27 first degree, murder in the second degree, homicide by abuse,
28 kidnapping in the first degree, kidnapping in the second degree,
29 assault in the first degree, assault in the second degree, assault of
30 a child in the first degree, assault of a child in the second degree,
31 or burglary in the first degree; or (C) an attempt to commit any
32 crime listed in this subsection (37) (b) (i); and

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

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

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

29 (39) "Private school" means a school regulated under chapter
30 28A.195 or 28A.205 RCW.

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

32 (41) "Recidivist offense" means a felony offense where a prior
33 conviction of the same offense or other specified offense is an
34 element of the crime including, but not limited to:

35 (a) Assault in the fourth degree where domestic violence is
36 pleaded and proven, RCW 9A.36.041(3);

37 (b) Cyberstalking, RCW 9.61.260(3)(a);

38 (c) Harassment, RCW 9A.46.020(2)(b)(i);

39 (d) Indecent exposure, RCW 9A.88.010(2)(c);

40 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

1 (f) Telephone harassment, RCW 9.61.230(2)(a); and

2 (g) Violation of a no-contact or protection order, RCW
3 26.50.110(5).

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

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

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

9 (iii) Domestic violence violation of a protection order under
10 chapter 26.09, (~~(26.10,)~~) 26.26A, 26.26B, or 26.50 RCW that is not a
11 felony offense;

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

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

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

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

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

28 (45) "Serious traffic offense" means:

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

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

37 (46) "Serious violent offense" is a subcategory of violent
38 offense and means:

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

40 (ii) Homicide by abuse;

1 (iii) Murder in the second degree;
2 (iv) Manslaughter in the first degree;
3 (v) Assault in the first degree;
4 (vi) Kidnapping in the first degree;
5 (vii) Rape in the first degree;
6 (viii) Assault of a child in the first degree; or
7 (ix) An attempt, criminal solicitation, or criminal conspiracy to
8 commit one of these felonies; or

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

12 (47) "Sex offense" means:

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

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

16 (iii) A felony that is a violation of chapter 9.68A RCW other
17 than RCW 9.68A.080;

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

21 (v) A felony violation of RCW 9A.44.132(1) (failure to register
22 as a sex offender) if the person has been convicted of violating RCW
23 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
24 prior to June 10, 2010, on at least one prior occasion;

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

28 (c) A felony with a finding of sexual motivation under RCW
29 9.94A.835 or 13.40.135; or

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

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

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

38 (50) "Statutory maximum sentence" means the maximum length of
39 time for which an offender may be confined as punishment for a crime
40 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute

1 defining the crime, or other statute defining the maximum penalty for
2 a crime.

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

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

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

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

18 (55) "Violent offense" means:

19 (a) Any of the following felonies:

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

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

24 (iii) Manslaughter in the first degree;

25 (iv) Manslaughter in the second degree;

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

27 (vi) Kidnapping in the second degree;

28 (vii) Arson in the second degree;

29 (viii) Assault in the second degree;

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

31 (x) Extortion in the first degree;

32 (xi) Robbery in the second degree;

33 (xii) Drive-by shooting;

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

38 (xiv) Vehicular homicide, when proximately caused by the driving
39 of any vehicle by any person while under the influence of

1 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
2 the operation of any vehicle in a reckless manner;

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

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

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

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

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

22 **Sec. 2.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to
23 read as follows:

24 (1) The department shall supervise the following (~~offenders~~)
25 individuals who are sentenced to probation in superior court,
26 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

27 (a) (~~Offenders~~) Individuals convicted of:

28 (i) Sexual misconduct with a minor second degree;

29 (ii) Custodial sexual misconduct second degree;

30 (iii) Communication with a minor for immoral purposes; and

31 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

32 (b) (~~Offenders~~) Individuals who have:

33 (i) A current conviction for a repetitive domestic violence
34 offense where domestic violence has been pleaded and proven after
35 August 1, 2011; and

36 (ii) A prior conviction for a repetitive domestic violence
37 offense or domestic violence felony offense where domestic violence
38 has been pleaded and proven after August 1, 2011.

1 (2) (~~Misdemeanor~~) Individuals convicted of misdemeanor and
2 gross misdemeanor (~~offenders~~) offenses supervised by the department
3 pursuant to this section shall be placed on community custody.

4 (3) The department shall supervise every individual convicted of
5 a felony (~~offender~~) and sentenced to community custody pursuant to
6 RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the
7 (~~offender~~) individual as one who is at a high risk to reoffend.

8 (4) Notwithstanding any other provision of this section, the
9 department shall supervise an (~~offender~~) individual sentenced to
10 community custody regardless of risk classification if the
11 (~~offender~~) individual:

12 (a) Has a current conviction for a sex offense or a serious
13 violent offense and was sentenced to a term of community custody
14 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

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

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

19 (d) Has a current conviction for violating RCW 9A.44.132(1)
20 (failure to register) and was sentenced to a term of community
21 custody pursuant to RCW 9.94A.701;

22 (e)(i) Has a current conviction for a domestic violence felony
23 offense where domestic violence has been pleaded and proven after
24 August 1, 2011, and a prior conviction for a repetitive domestic
25 violence offense or domestic violence felony offense where domestic
26 violence was pleaded and proven after August 1, 2011. This subsection
27 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

28 (ii) Has a current conviction for a domestic violence felony
29 offense where domestic violence was pleaded and proven. The state and
30 its officers, agents, and employees shall not be held criminally or
31 civilly liable for its supervision of an (~~offender~~) individual
32 under this subsection (4)(e)(ii) unless the state and its officers,
33 agents, and employees acted with gross negligence;

34 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
35 9.94A.670, or 9.94A.711;

36 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

37 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
38 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)
39 (felony DUI), or RCW 46.61.504(6) (felony physical control).

1 (5) The department shall supervise any (~~offender who is~~)
2 individual released by the indeterminate sentence review board
3 (~~and~~) who was sentenced to community custody or subject to
4 community custody under the terms of release.

5 (6) The department shall supervise any individual granted
6 conditional commutation pursuant to RCW 9.94A.885.

7 (7) The department is not authorized to, and may not, supervise
8 any (~~offender~~) individual sentenced to a term of community custody
9 or any probationer unless the (~~offender~~) individual or probationer
10 is one for whom supervision is required under this section (~~or RCW~~
11 ~~9.94A.5011~~)).

12 (~~(7)~~) (8) The department shall conduct a risk assessment for
13 every individual convicted of a felony (~~offender~~) and sentenced to
14 a term of community custody who may be subject to supervision under
15 this section (~~or RCW 9.94A.5011~~)).

16 (~~(8)~~) (9) The period of time the department is authorized to
17 supervise an (~~offender~~) individual under this section may not
18 exceed the duration of community custody specified under RCW
19 9.94B.050, 9.94A.701 (1) through (8), or 9.94A.702, except in cases
20 where the court has imposed an exceptional term of community custody
21 under RCW 9.94A.535.

22 (~~(9)~~) (10) The period of time the department is authorized to
23 supervise an (~~offender~~) individual under this section may be
24 reduced by the earned award of supervision compliance credit pursuant
25 to RCW 9.94A.717.

26 **Sec. 3.** RCW 9.94A.565 and 1994 c 1 s 5 are each amended to read
27 as follows:

28 (1) Nothing in this chapter (~~(1, Laws of 1994)~~) or chapter 10.95
29 RCW shall ever be interpreted or construed as to reduce or eliminate
30 the power of the governor to grant a pardon or clemency to any
31 (~~offender~~) individual on an individual case-by-case basis. However,
32 the people recommend that (~~any offender~~):

33 (a) Any individual subject to total confinement for life without
34 the possibility of parole not be considered for release until the
35 (~~offender~~) individual has (~~reached the age of at least sixty years~~
36 ~~old and has~~) been judged to (~~be~~) no longer be a threat to
37 society (~~(. The people further recommend that sex offenders)~~) and has
38 served at least 20 years in total confinement or 25 years in total

1 confinement if the individual was sentenced pursuant to chapter 10.95
2 RCW;

3 (b) Individuals who have been convicted of a sex offense be held
4 to the utmost scrutiny under this subsection regardless of age; and

5 (c) Release take the form of a conditional commutation that
6 includes a period of law-abiding behavior in the community.

7 (2) Nothing in this section shall ever be interpreted or
8 construed to grant any release for the purpose of reducing prison
9 overcrowding. Furthermore, the governor shall provide twice yearly
10 reports on the activities and progress of ~~((offenders))~~ individuals
11 subject to total confinement for life without the possibility of
12 parole who are released through executive action during his or her
13 tenure. These reports shall continue for not less than ~~((ten))~~ 10
14 years after the release of the ~~((offender))~~ individual or upon the
15 death of the released ~~((offender))~~ individual.

16 **Sec. 4.** RCW 9.94A.633 and 2012 1st sp.s. c 6 s 2 are each
17 amended to read as follows:

18 (1) (a) An ~~((offender))~~ individual who violates any condition or
19 requirement of a sentence may be sanctioned by the court with up to
20 ~~((sixty))~~ 60 days' confinement for each violation or by the
21 department with up to ~~((thirty))~~ 30 days' confinement as provided in
22 RCW 9.94A.737.

23 (b) In lieu of confinement, an ~~((offender))~~ individual may be
24 sanctioned with work release, home detention with electronic
25 monitoring, work crew, community restitution, inpatient treatment,
26 daily reporting, curfew, educational or counseling sessions,
27 supervision enhanced through electronic monitoring, or any other
28 community-based sanctions.

29 (2) If an ~~((offender))~~ individual was under community custody
30 pursuant to one of the following statutes, the ~~((offender))~~
31 individual may be sanctioned as follows:

32 (a) If the ~~((offender))~~ individual was transferred to community
33 custody in lieu of earned early release in accordance with RCW
34 9.94A.728, the ~~((offender))~~ individual may be transferred to a more
35 restrictive confinement status to serve up to the remaining portion
36 of the sentence, less credit for any period actually spent in
37 community custody or in detention awaiting disposition of an alleged
38 violation.

1 (b) If the ((~~offender~~)) individual was sentenced under the drug
2 offender sentencing alternative set out in RCW 9.94A.660, the
3 ((~~offender~~)) individual may be sanctioned in accordance with that
4 section.

5 (c) If the ((~~offender~~)) individual was sentenced under the
6 parenting sentencing alternative set out in RCW 9.94A.655, the
7 ((~~offender~~)) individual may be sanctioned in accordance with that
8 section.

9 (d) If the ((~~offender~~)) individual was sentenced under the
10 special sex offender sentencing alternative set out in RCW 9.94A.670,
11 the suspended sentence may be revoked and the ((~~offender~~)) individual
12 committed to serve the original sentence of confinement.

13 (e) If the ((~~offender~~)) individual was sentenced to a work ethic
14 camp pursuant to RCW 9.94A.690, the ((~~offender~~)) individual may be
15 reclassified to serve the unexpired term of his or her sentence in
16 total confinement.

17 (f) If ((a)) an individual convicted of a sex ((~~offender~~))
18 offense was sentenced pursuant to RCW 9.94A.507, the ((~~offender~~))
19 individual may be transferred to a more restrictive confinement
20 status to serve up to the remaining portion of the sentence, less
21 credit for any period actually spent in community custody or in
22 detention awaiting disposition of an alleged violation.

23 (g) If the individual was granted conditional commutation
24 pursuant to RCW 9.94A.885, the individual may be transferred to a
25 more restrictive confinement status to serve up to the remaining
26 portion of the sentence, less credit for any period actually spent in
27 community custody or in detention awaiting disposition of an alleged
28 violation.

29 (3) If a probationer is being supervised by the department
30 pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may
31 be sanctioned pursuant to subsection (1) of this section. The
32 department shall have authority to issue a warrant for the arrest of
33 an ((~~offender~~)) individual who violates a condition of community
34 custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed
35 by the department pursuant to RCW 9.94A.737. Nothing in this
36 subsection is intended to limit the power of the sentencing court to
37 respond to a probationer's violation of conditions.

38 (4) The parole or probation of an ((~~offender~~)) individual who is
39 charged with a new felony offense may be suspended and the

1 ((offender)) individual placed in total confinement pending
2 disposition of the new criminal charges if:

3 (a) The ((offender)) individual is on parole pursuant to RCW
4 9.95.110(1); or

5 (b) The ((offender)) individual is being supervised pursuant to
6 RCW 9.94A.745 and is on parole or probation pursuant to the laws of
7 another state.

8 **Sec. 5.** RCW 9.94A.728 and 2018 c 166 s 2 are each amended to
9 read as follows:

10 (1) No ((~~person~~)) individual serving a sentence imposed pursuant
11 to this chapter and committed to the custody of the department shall
12 leave the confines of the correctional facility or be released prior
13 to the expiration of the sentence except as follows:

14 (a) An ((offender)) individual may earn early release time as
15 authorized by RCW 9.94A.729;

16 (b) An ((offender)) individual may leave a correctional facility
17 pursuant to an authorized furlough or leave of absence. In addition,
18 ((offenders)) individuals may leave a correctional facility when in
19 the custody of a corrections officer or officers;

20 (c)(i) The secretary may authorize an extraordinary medical
21 placement for an ((offender)) individual when all of the following
22 conditions exist:

23 (A) The ((offender)) individual has a medical condition that is
24 chronic or serious and is expected to require costly care or
25 treatment;

26 (B) The ((~~offender poses a~~)) individual has been assessed as low
27 risk to the community ((~~because he or she is currently physically~~
28 ~~incapacitated due to age or the medical condition or is expected to~~
29 ~~be so~~)) at the time of release; and

30 (C) It is expected that granting the extraordinary medical
31 placement will result in a cost savings to the state.

32 (ii) An ((offender)) individual sentenced to death or to life
33 imprisonment without the possibility of release or parole is not
34 eligible for an extraordinary medical placement.

35 (iii) The secretary shall require electronic monitoring for all
36 ((offenders)) individuals in extraordinary medical placement unless
37 the electronic monitoring equipment is detrimental to the
38 individual's health, interferes with the function of the
39 ((offender's)) individual's medical equipment, or results in the loss

1 of funding for the (~~offender's~~) individual's medical care, in which
2 case, an alternative type of monitoring shall be utilized. The
3 secretary shall specify who shall provide the monitoring services and
4 the terms under which the monitoring shall be performed. The
5 requirement for electronic monitoring shall be waived if the medical
6 condition as certified by the individual's treating physician
7 prevents the individual from being independently mobile.

8 (iv) The secretary may revoke an extraordinary medical placement
9 under this subsection (1)(c) at any time.

10 (v) Persistent offenders are not eligible for extraordinary
11 medical placement;

12 (d) The governor, upon recommendation from the clemency and
13 pardons board, may grant (~~an extraordinary~~):

14 (i) Extraordinary release for reasons of serious health problems,
15 senility, advanced age, extraordinary meritorious acts, or other
16 extraordinary circumstances; or

17 (ii) Conditional commutation pursuant to section 8 of this act;

18 (e) No more than the final (~~twelve~~) 12 months of the
19 (~~offender's~~) individual's term of confinement may be served in
20 partial confinement for aiding the (~~offender~~) individual with:
21 Finding work as part of the work release program under chapter 72.65
22 RCW; or reestablishing himself or herself in the community as part of
23 the parenting program in RCW 9.94A.6551. This is in addition to that
24 period of earned early release time that may be exchanged for partial
25 confinement pursuant to RCW 9.94A.729(5)(d);

26 (f) No more than the final six months of the (~~offender's~~)
27 individual's term of confinement may be served in partial confinement
28 as home detention as part of the graduated reentry program developed
29 by the department under RCW 9.94A.733;

30 (g) The governor may pardon any (~~offender~~) individual;

31 (h) The department may release an (~~offender~~) individual from
32 confinement any time within (~~ten~~) 10 days before a release date
33 calculated under this section;

34 (i) An (~~offender~~) individual may leave a correctional facility
35 prior to completion of his or her sentence if the sentence has been
36 reduced as provided in RCW 9.94A.870;

37 (j) Notwithstanding any other provisions of this section, an
38 (~~offender~~) individual sentenced for a felony crime listed in RCW
39 9.94A.540 as subject to a mandatory minimum sentence of total
40 confinement shall not be released from total confinement before the

1 completion of the listed mandatory minimum sentence for that felony
2 crime of conviction unless allowed under RCW 9.94A.540; and

3 (k) Any ~~((person))~~ individual convicted of one or more crimes
4 committed prior to the person's ~~((eighteenth))~~ 18th birthday may be
5 released from confinement pursuant to RCW 9.94A.730.

6 (2) ~~((Offenders))~~ Individuals residing in a juvenile correctional
7 facility placement pursuant to RCW 72.01.410(1)(a) are not subject to
8 the limitations in this section.

9 **Sec. 6.** RCW 9.94A.880 and 2011 c 336 s 335 are each amended to
10 read as follows:

11 (1) The clemency and pardons board is established as a board
12 within the office of the governor. The board consists of ~~((five))~~ 10
13 members appointed by the governor, subject to confirmation by the
14 senate.

15 (2) Board membership must consist of the following:

16 (a) A representative of a statewide or local organization
17 representing communities of color or race equity;

18 (b) A representative of an agency representing crime victims;

19 (c) A representative of an association, community organization,
20 or advocacy group with experience or interest in the formerly
21 incarcerated with successful community reentry;

22 (d) A representative of a faith-based organization with interest
23 and experience in successful community reentry;

24 (e) A representative of a statewide organization representing
25 criminal defense lawyers;

26 (f) A law enforcement professional;

27 (g) A representative of a statewide organization representing
28 prosecuting attorneys;

29 (h) A person with experience and interest in tribal affairs;

30 (i) A behavioral health professional; and

31 (j) A retired superior court judge.

32 (3) Board members must understand the principles of racial equity
33 and restorative justice. Board members must also be knowledgeable
34 about the impact of crime upon victims and communities.

35 (4) Members of the board shall serve terms of ~~((four))~~ five years
36 ~~((and)),~~ but may serve more than one term until their successors are
37 appointed and confirmed. ~~((However, the))~~ The governor shall stagger
38 the initial terms ~~((by appointing one of the initial members for a~~
39 ~~term of one year, one for a term of two years, one for a term of~~

1 ~~three years, and two for terms of four years)) so that no more than~~
2 three members are up for appointment in any given year.

3 ~~((3))~~ (5) The board shall elect a chair from among its members
4 and shall adopt bylaws governing the operation of the board.

5 ~~((4))~~ (6) Members of the board shall ~~((receive no compensation~~
6 ~~but shall be reimbursed for travel expenses as provided in RCW~~
7 ~~43.03.050 and 43.03.060 as now existing or hereafter amended))~~ each
8 severally receive salaries fixed by the governor in accordance with
9 the provisions of RCW 43.03.040, unless waived by the member. All
10 members shall receive travel expenses incurred in the discharge of
11 their official duties in accordance with RCW 43.03.050 and 43.03.060.

12 (7) The board shall be funded adequate personnel to implement and
13 maintain functional operations such as support, records, victim
14 liaisons, and information technology.

15 ~~((5))~~ (8) The attorney general shall provide ~~((a staff as~~
16 ~~needed for the operation of))~~ legal counsel to the board.

17 **Sec. 7.** RCW 9.94A.885 and 2009 c 325 s 6 and 2009 c 138 s 4 are
18 each reenacted and amended to read as follows:

19 (1) The clemency and pardons board shall receive petitions from
20 individuals, organizations, and the department and make
21 recommendations to the governor for ~~((review and commutation))~~:

22 (a) Commutation of sentences and pardoning of ~~((offenders))~~
23 individuals in extraordinary cases ~~((r))~~; and ~~((shall make~~
24 ~~recommendations thereon to the governor))~~

25 (b) Conditional commutation of sentences pursuant to section 8 of
26 this act.

27 (2) The board shall receive petitions from individuals or
28 organizations for the restoration of civil rights lost by operation
29 of state law as a result of convictions for federal offenses or out-
30 of-state felonies. The board may issue certificates of restoration
31 limited to engaging in political office. Any certifications granted
32 by the board must be filed with the secretary of state to be
33 effective. In all other cases, the board shall make recommendations
34 to the governor.

35 (3) The board shall not recommend that the governor grant
36 clemency or conditional commutation under subsection (1) of this
37 section until a public hearing has been held on the petition. The
38 board shall consider statements of victims and survivors of victims
39 presented as set forth in RCW 7.69.032, as well as any statements

1 from the law enforcement agency or agencies that conducted the
2 investigation.

3 (4) (a) The prosecuting attorney of the county where the
4 conviction was obtained shall be notified at least ~~((thirty))~~ 90 days
5 prior to the scheduled hearing that a petition has been filed and the
6 date and place at which the hearing on the petition will be held. The
7 board may waive the ~~((thirty-day))~~ 90-day notice requirement in cases
8 where it determines that waiver is necessary to permit timely action
9 on the petition. A copy of the petition shall be sent to the
10 prosecuting attorney. ~~((The prosecuting attorney shall make
11 reasonable efforts to notify victims, survivors of victims,
12 witnesses, and the law enforcement agency or agencies that conducted
13 the investigation, of the date and place of the hearing.))~~

14 (b) To facilitate victim and survivor of victim involvement,
15 county prosecutor's offices shall make reasonable efforts to ensure
16 that any victim impact statements and known contact information for
17 victims of record and survivors of victims are forwarded as part of
18 the judgment and sentence. In the event that no known victim or
19 survivor of the victim is known or identified for the panel, the
20 county prosecutor's office shall be given reasonable time to certify
21 to the panel that it has exhausted all reasonable efforts in locating
22 and providing contact information to the panel. Information regarding
23 victims, survivors of victims, or witnesses receiving this notice are
24 confidential and shall not be available to the ~~((offender))~~
25 individual seeking clemency or commutation. ~~((The board shall
26 consider statements presented as set forth in RCW 7.69.032.))~~

27 (c) This subsection is intended solely for the guidance of the
28 board. Nothing in this section is intended or may be relied upon to
29 create a right or benefit, substantive or procedural, enforceable at
30 law by any person.

31 (5) (a) The board may recommend conditions of commutation for any
32 individual released pursuant to this section, including a term of
33 community custody up to the length of the court-imposed term of
34 incarceration, partial confinement up to six months, restrictions on
35 travel, no contact with certain persons or classes of persons,
36 restrictions on the type of employment and any other restrictions
37 that the board determines to be reasonable and appropriate, or any
38 other condition which provides for community protection from the
39 released individual.

1 (b) The department shall monitor the released individual's
2 compliance with conditions of community custody imposed by the court
3 or recommended by the board. Any violation of conditions of community
4 custody is subject to the provisions of this chapter.

5 (6) Once granted, the governor may not revoke an order granting
6 conditional commutation.

7 (7) Members of the board are not civilly liable for decisions
8 made while performing their duties.

9 NEW SECTION. Sec. 8. A new section is added to chapter 9.94A
10 RCW to read as follows:

11 (1) Notwithstanding any other provision of this chapter, an
12 individual may petition the board for conditional commutation if the
13 individual:

14 (a) Is not subject to the jurisdiction of the indeterminate
15 sentence review board pursuant to RCW 9.94A.730 or 9.94A.507, or the
16 individual's offense was committed prior to July 1, 1984;

17 (b) Has served at least 20 consecutive years of total confinement
18 except:

19 (i) An individual who was sentenced as a persistent offender that
20 included a conviction for robbery in the second degree as their third
21 conviction towards being designated as a persistent offender may
22 petition after serving 15 consecutive years of total confinement; and

23 (ii) An individual sentenced pursuant to chapter 10.95 RCW may
24 petition only after serving 25 consecutive years of total
25 confinement;

26 (c) Consents to a review of all of his or her medical, mental
27 health, and department files by the board; and

28 (d) Does not have any current appeals pending or collateral
29 attacks pending on the case for which the individual is seeking
30 conditional commutation.

31 (2) No later than five years prior to the date the individual
32 will be eligible to petition for release, the department shall:

33 (a) Notify the individual regarding his or her eligibility under
34 this section; and

35 (b) Conduct an assessment of the individual and identify
36 programming and services that would be appropriate to prepare the
37 individual for return to the community. To the extent possible, the
38 department shall make programming available as identified by the
39 assessment.

1 (3) If the individual has a prior known or diagnosed decreased
2 cognitive function or developmental disability, or a decreased
3 cognitive function or developmental disability is determined during
4 the assessment process as outlined in subsection (2)(b) of this
5 section, the department shall assist the individual with the process
6 of applying for review by the board or refer to additional services
7 for such assistance.

8 (4) No later than 180 days from the date that the individual
9 submits his or her petition for conditional commutation to the board,
10 the department shall conduct, and the individual shall participate
11 in, an examination of the individual, incorporating methodologies
12 that are evidence-based, normed on the specific gender of the
13 individual, and recognized by experts in the prediction of
14 dangerousness, and including a prediction of the probability that the
15 individual will engage in future criminal behavior if released on
16 conditions to be set by the board. The board may consider an
17 individual's failure to participate in an evaluation under this
18 subsection in determining whether to release the individual.

19 (5) The board shall recommend the individual be released under
20 such affirmative and other conditions as the panel determines
21 appropriate, unless the panel determines by a preponderance of the
22 evidence that, despite such conditions, it is more likely than not
23 that the individual will commit new criminal law violations if
24 released.

25 (6) The board may take any of the following actions: Deny a
26 petition without a hearing because the individual does not meet the
27 initial criteria for filing a petition; or conduct a hearing in
28 accordance with RCW 9.94A.885 to consider additional information, and
29 then deny the petition or recommend conditional commutation to the
30 governor.

31 (7) In making its decision, the board shall consider, if
32 available, the following factors and information:

33 (a) Public safety;

34 (b) The individual's criminal history;

35 (c) The nature and circumstances of the offenses committed,
36 including the current and past offenses;

37 (d) The individual's social and medical history;

38 (e) The individual's acceptance of responsibility, remorse, and
39 atonement. If the individual submitted an Alford plea, the impact
40 that may have on an individual's ability to provide evidence of

1 remorse, atonement, and self-reflection in relation to the offense
2 committed;

3 (f) Evidence of the individual's rehabilitation, including
4 behavior while incarcerated, job history, education participation in
5 available rehabilitative program and treatment, and infraction
6 history;

7 (g) Statements of correctional staff, program supervisors, and
8 volunteer facilitators regarding the individual;

9 (h) Input from the victims of the crime;

10 (i) Input from the police and prosecutors in the jurisdictions
11 where the individual's crimes were committed;

12 (j) Input from persons in the community pledging their support of
13 the individual, if released;

14 (k) The available resources in the community to help the
15 individual transition to life outside of prison;

16 (l) A risk assessment and psychological evaluation provided by
17 the department;

18 (m) The sentencing judge's analysis in imposing an exceptional
19 sentence, if any; and

20 (n) Any other relevant factors.

21 (8) Further, the board shall consider a release plan presented by
22 the individual showing where the individual will reside and how he or
23 she will support himself or herself during the first year after his
24 or her release. The department shall independently review the
25 proposed release plan and make an independent evaluation to ensure
26 the individual is not released to an area where the victim resides or
27 that impacts community safety.

28 (9) If the board recommends commutation or denies the petition,
29 it shall specify the reasons for the decision.

30 (10) The conditions for conditional commutation may include:
31 Partial confinement for up to six months, regular drug and/or alcohol
32 testing, no violations of law, restrictions on travel, no contact
33 with certain individuals or classes of individuals, restrictions on
34 the type of employment and any other restrictions that the board
35 determines to be reasonable and appropriate, or any other condition
36 which provides for community protection from the released individual.

37 (11) An individual whose petition for conditional commutation is
38 denied may file a new petition for conditional commutation three
39 years from the date of denial or at an earlier date as may be set by
40 the board.

1 (12) The individual does not have a right to appointed counsel.
2 Both lawyers and nonlawyers may assist the individual in the
3 preparation of his or her petition and at the hearing.

4 (13) All information contained in a petition or that is submitted
5 to the board is subject to public disclosure.

6 (14) The board may adopt rules setting out criteria and
7 procedures for the review of petitions under this section and RCW
8 9.94A.885 as appropriate.

9 (15) For purposes of this section, "board" means the clemency and
10 pardons board.

11 NEW SECTION. **Sec. 9.** (1) Chapter 187, Laws of 2019 removed
12 robbery in the second degree as a most serious offense in sentencing
13 an individual as a persistent offender. At that time, the legislature
14 declined to require resentencing of individuals serving a life
15 sentence as the result of a conviction for robbery in the second
16 degree. The legislature recognizes the need to balance considerations
17 that may have gone into the original charging decision and the
18 inequities that may have resulted from including robbery in the
19 second degree as a third strike offense.

20 (2) In exercising its duties under RCW 9.94A.885 and section 8 of
21 this act, the clemency and pardons board shall give priority
22 consideration to individuals who petition for conditional commutation
23 and who have a current or past conviction for robbery in the second
24 degree that was used as a basis for a finding that the individual was
25 a persistent offender.

26 (3) This section expires December 31, 2024."

27 Correct the title.

EFFECT: Replaces references to "incarcerated individual" with
"individual" throughout the bill, thereby restoring the applicability
of certain provisions to individuals who are not incarcerated.
Modifies the Sentencing Reform Act to provide that the term
"individual" has the same meaning as—and can be used
interchangeably with—the term "offender," unless the context
indicates otherwise. Requires appointed members of the Clemency and
Pardons Board to be knowledgeable about the impact of crime upon
victims and communities.

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