

ESHB 1169 - S COMM AMD

By Committee on Law & Justice

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

3 **"Sec. 1.** RCW 9.94A.030 and 2021 c 237 s 1 are each amended to
4 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~~) 880 feet of the facilities and grounds of a public
30 or 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(4)(b) and 9.96.060(7)(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)~~) 24
13 hours a day, unless an absence from the residence is approved,
14 authorized, or otherwise permitted in the order by the court or other
15 supervising agency that ordered home detention, and the offender is
16 subject to 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 14;

13 (h) Indecent liberties;

14 (i) Kidnapping in the second degree;

15 (j) Leading organized crime;

16 (k) Manslaughter in the first degree;

17 (l) Manslaughter in the second degree;

18 (m) Promoting prostitution in the first degree;

19 (n) Rape in the third degree;

20 (o) Sexual exploitation;

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

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

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

31 (s) Any other felony with a deadly weapon verdict under RCW
32 9.94A.825;

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

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

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

4 (ii) A prior conviction for indecent liberties under RCW
5 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
6 if: (A) The crime was committed against a child under the age of
7 (~~fourteen~~) 14; or (B) the relationship between the victim and
8 perpetrator is included in the definition of indecent liberties under
9 RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
10 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
11 1993, through July 27, 1997;

12 (v) Any out-of-state conviction for a felony offense with a
13 finding of sexual motivation if the minimum sentence imposed was
14 (~~ten~~) 10 years or more; provided that the out-of-state felony
15 offense must be comparable to a felony offense under this title and
16 Title 9A RCW and the out-of-state definition of sexual motivation
17 must be comparable to the definition of sexual motivation contained
18 in this section.

19 (33) "Nonviolent offense" means an offense which is not a violent
20 offense.

21 (34) "Offender" means a person who has committed a felony
22 established by state law and is (~~eighteen~~) 18 years of age or older
23 or is less than (~~eighteen~~) 18 years of age but whose case is under
24 superior court jurisdiction under RCW 13.04.030 or has been
25 transferred by the appropriate juvenile court to a criminal court
26 pursuant to RCW 13.40.110. In addition, for the purpose of community
27 custody requirements under this chapter, "offender" also means a
28 misdemeanor or gross misdemeanor probationer ordered by a superior
29 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210
30 and supervised by the department pursuant to RCW 9.94A.501 and
31 9.94A.5011. Throughout this chapter, the terms "offender" and
32 "defendant" are used interchangeably.

33 (35) "Partial confinement" means confinement for no more than one
34 year in a facility or institution operated or utilized under contract
35 by the state or any other unit of government, or, if home detention,
36 electronic monitoring, or work crew has been ordered by the court or
37 home detention has been ordered by the department as part of the
38 parenting program or the graduated reentry program, in an approved
39 residence, for a substantial portion of each day with the balance of
40 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~~) 16 years of age or

1 older when the offender committed the offense. A conviction for rape
2 of a child in the second degree constitutes a conviction under (b) (i)
3 of this subsection only when the offender was (~~eighteen~~) 18 years
4 of age or 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, 26.26A, 26.26B, or 26.50 RCW that is not a felony
11 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)~~) 24 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-~~
8 ~~four)~~) 24 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) "Victim of domestic violence" means an intimate partner or
19 household member who has been subjected to the infliction of physical
20 harm or sexual and psychological abuse by an intimate partner or
21 household member as part of a pattern of assaultive, coercive, and
22 controlling behaviors directed at achieving compliance from or
23 control over that intimate partner or household member. Domestic
24 violence includes, but is not limited to, the offenses listed in RCW
25 10.99.020 and 26.50.010 committed by an intimate partner or household
26 member against a victim who is an intimate partner or household
27 member.

28 (56) "Victim of sex trafficking, prostitution, or commercial
29 sexual abuse of a minor" means a person who has been forced or
30 coerced to perform a commercial sex act including, but not limited
31 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
32 9.68A.101, and the trafficking victims protection act of 2000, 22
33 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
34 commercial sex act when they were less than 18 years of age including
35 but not limited to the offenses defined in chapter 9.68A RCW.

36 (57) "Victim of sexual assault" means any person who is a victim
37 of a sexual assault offense, nonconsensual sexual conduct, or
38 nonconsensual sexual penetration and as a result suffers physical,
39 emotional, financial, or psychological impacts. Sexual assault

1 offenses include, but are not limited to, the offenses defined in
2 chapter 9A.44 RCW.

3 (58) "Violent offense" means:

4 (a) Any of the following felonies:

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

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

9 (iii) Manslaughter in the first degree;

10 (iv) Manslaughter in the second degree;

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

12 (vi) Kidnapping in the second degree;

13 (vii) Arson in the second degree;

14 (viii) Assault in the second degree;

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

16 (x) Extortion in the first degree;

17 (xi) Robbery in the second degree;

18 (xii) Drive-by shooting;

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

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

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

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

33 (59) "Work crew" means a program of partial confinement
34 consisting of civic improvement tasks for the benefit of the
35 community that complies with RCW 9.94A.725.

36 (60) "Work ethic camp" means an alternative incarceration program
37 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
38 the cost of corrections by requiring offenders to complete a
39 comprehensive array of real-world job and vocational experiences,
40 character-building work ethics training, life management skills

1 development, substance abuse rehabilitation, counseling, literacy
2 training, and basic adult education.

3 (61) "Work release" means a program of partial confinement
4 available to offenders who are employed or engaged as a student in a
5 regular course of study at school.

6 **Sec. 2.** RCW 9.94A.030 and 2021 c 237 s 1 and 2021 c 215 s 97 are
7 each reenacted and amended to read as follows:

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

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

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

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

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

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

31 (6) "Community protection zone" means the area within (~~eight~~
32 ~~hundred eighty~~) 880 feet of the facilities and grounds of a public
33 or private school.

34 (7) "Community restitution" means compulsory service, without
35 compensation, performed for the benefit of the community by the
36 offender.

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

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

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

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

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

20 (b) A conviction may be removed from a defendant's criminal
21 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
22 9.95.240, or a similar out-of-state statute, or if the conviction has
23 been vacated pursuant to a governor's pardon. However, when a
24 defendant is charged with a recidivist offense, "criminal history"
25 includes a vacated prior conviction for the sole purpose of
26 establishing that such vacated prior conviction constitutes an
27 element of the present recidivist offense as provided in RCW
28 9.94A.640(4)(b) and 9.96.060(7)(c).

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

34 (12) "Criminal street gang" means any ongoing organization,
35 association, or group of three or more persons, whether formal or
36 informal, having a common name or common identifying sign or symbol,
37 having as one of its primary activities the commission of criminal
38 acts, and whose members or associates individually or collectively
39 engage in or have engaged in a pattern of criminal street gang
40 activity. This definition does not apply to employees engaged in

1 concerted activities for their mutual aid and protection, or to the
2 activities of labor and bona fide nonprofit organizations or their
3 members or agents.

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

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

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

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

17 (c) To exact revenge or retribution for the gang or any member of
18 the gang;

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

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

24 (f) To provide the gang with any advantage in, or any control or
25 dominance over any criminal market sector, including, but not limited
26 to, manufacturing, delivering, or selling any controlled substance
27 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
28 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
29 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
30 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
31 9.68 RCW).

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

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

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

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

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

22 (20)(a) "Domestic violence" has the same meaning as defined in
23 RCW 10.99.020.

24 (b) "Domestic violence" also means: (i) Physical harm, bodily
25 injury, assault, or the infliction of fear of imminent physical harm,
26 bodily injury, or assault, sexual assault, or stalking, as defined in
27 RCW 9A.46.110, of one intimate partner by another intimate partner as
28 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
29 assault, or the infliction of fear of imminent physical harm, bodily
30 injury, or assault, sexual assault, or stalking, as defined in RCW
31 9A.46.110, of one family or household member by another family or
32 household member as defined in RCW 10.99.020.

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

36 (22) "Drug offense" means:

37 (a) Any felony violation of chapter 69.50 RCW except possession
38 of a controlled substance (RCW 69.50.4013) or forged prescription for
39 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 through the use of technology that is capable of
11 determining or identifying the monitored individual's presence or
12 absence at a particular location including, but not limited to:

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

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

27 (25) "Escape" means:

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

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

37 (26) "Felony traffic offense" means:

38 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
39 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
40 run injury-accident (RCW 46.52.020(4)), felony driving while under

1 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
2 or felony physical control of a vehicle while under the influence of
3 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

13 (29) "Home detention" is a subset of electronic monitoring and
14 means a program of partial confinement available to offenders wherein
15 the offender is confined in a private residence (~~((twenty-four))~~ 24
16 hours a day, unless an absence from the residence is approved,
17 authorized, or otherwise permitted in the order by the court or other
18 supervising agency that ordered home detention, and the offender is
19 subject to electronic monitoring.

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

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

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

27 (c) A private residence where the individual stays as a transient
28 invitee.

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

1 the expense of an emergency response to the incident resulting in the
2 conviction, subject to RCW 38.52.430.

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

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

8 (b) Assault in the second degree;

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

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

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

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) Sexual exploitation;

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

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

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

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

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

1 (u)(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~~) 14; or (B) the relationship between the victim and
11 perpetrator is included in the definition of indecent liberties under
12 RCW 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 (v) Any out-of-state conviction for a felony offense with a
16 finding of sexual motivation if the minimum sentence imposed was
17 (~~ten~~) 10 years or more; provided that the out-of-state felony
18 offense must be comparable to a felony offense under this title and
19 Title 9A RCW and the out-of-state definition of sexual motivation
20 must be comparable to the definition of sexual motivation contained
21 in this section.

22 (33) "Nonviolent offense" means an offense which is not a violent
23 offense.

24 (34) "Offender" means a person who has committed a felony
25 established by state law and is (~~eighteen~~) 18 years of age or older
26 or is less than (~~eighteen~~) 18 years of age but whose case is under
27 superior court jurisdiction under RCW 13.04.030 or has been
28 transferred by the appropriate juvenile court to a criminal court
29 pursuant to RCW 13.40.110. In addition, for the purpose of community
30 custody requirements under this chapter, "offender" also means a
31 misdemeanor or gross misdemeanor probationer ordered by a superior
32 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210
33 and supervised by the department pursuant to RCW 9.94A.501 and
34 9.94A.5011. Throughout this chapter, the terms "offender" and
35 "defendant" are used interchangeably.

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

1 parenting program or the graduated reentry program, in an approved
2 residence, for a substantial portion of each day with the balance of
3 the day spent in the community. Partial confinement includes work
4 release, home detention, work crew, electronic monitoring, and a
5 combination of work crew, electronic monitoring, and home detention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
35 9A.56.070);

36 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
37 9A.56.075);

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

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

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

1 (xxii) Tampering with a Witness (RCW 9A.72.120);
2 (xxiii) Reckless Endangerment (RCW 9A.36.050);
3 (xxiv) Coercion (RCW 9A.36.070);
4 (xxv) Harassment (RCW 9A.46.020); or
5 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

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

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

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

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

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

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

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

1 listed in (b)(i) of this subsection. A conviction for rape of a child
2 in the first degree constitutes a conviction under (b)(i) of this
3 subsection only when the offender was (~~sixteen~~) 16 years of age or
4 older when the offender committed the offense. A conviction for rape
5 of a child in the second degree constitutes a conviction under (b)(i)
6 of this subsection only when the offender was (~~eighteen~~) 18 years
7 of age or older when the offender committed the offense.

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

32 (39) "Private school" means a school regulated under chapter
33 28A.195 or 28A.205 RCW.

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

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

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

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

1 (c) Harassment, RCW 9A.46.020(2)(b)(i);
2 (d) Indecent exposure, RCW 9A.88.010(2)(c);
3 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);
4 (f) Telephone harassment, RCW 9.61.230(2)(a); and
5 (g) Violation of a no-contact or protection order, RCW 7.105.450
6 or former RCW 26.50.110(5).

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

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

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

12 (iii) Domestic violence violation of a protection order under
13 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
14 violation of a domestic violence protection order under chapter 7.105
15 RCW, that is not a felony offense;

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

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

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

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

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

32 (45) "Serious traffic offense" means:

33 (a) Nonfelony driving while under the influence of intoxicating
34 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
35 while under the influence of intoxicating liquor or any drug (RCW
36 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
37 attended vehicle (RCW 46.52.020(5)); or

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

1 (46) "Serious violent offense" is a subcategory of violent
2 offense and means:

- 3 (a) (i) Murder in the first degree;
- 4 (ii) Homicide by abuse;
- 5 (iii) Murder in the second degree;
- 6 (iv) Manslaughter in the first degree;
- 7 (v) Assault in the first degree;
- 8 (vi) Kidnapping in the first degree;
- 9 (vii) Rape in the first degree;
- 10 (viii) Assault of a child in the first degree; or
- 11 (ix) An attempt, criminal solicitation, or criminal conspiracy to
- 12 commit one of these felonies; or
- 13 (b) Any federal or out-of-state conviction for an offense that
- 14 under the laws of this state would be a felony classified as a
- 15 serious violent offense under (a) of this subsection.

16 (47) "Sex offense" means:

- 17 (a) (i) A felony that is a violation of chapter 9A.44 RCW other
- 18 than RCW 9A.44.132;
- 19 (ii) A violation of RCW 9A.64.020;
- 20 (iii) A felony that is a violation of chapter 9.68A RCW other
- 21 than RCW 9.68A.080;
- 22 (iv) A felony that is, under chapter 9A.28 RCW, a criminal
- 23 attempt, criminal solicitation, or criminal conspiracy to commit such
- 24 crimes; or
- 25 (v) A felony violation of RCW 9A.44.132(1) (failure to register
- 26 as a sex offender) if the person has been convicted of violating RCW
- 27 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
- 28 prior to June 10, 2010, on at least one prior occasion;
- 29 (b) Any conviction for a felony offense in effect at any time
- 30 prior to July 1, 1976, that is comparable to a felony classified as a
- 31 sex offense in (a) of this subsection;
- 32 (c) A felony with a finding of sexual motivation under RCW
- 33 9.94A.835 or 13.40.135; or
- 34 (d) Any federal or out-of-state conviction for an offense that
- 35 under the laws of this state would be a felony classified as a sex
- 36 offense under (a) of this subsection.

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

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

3 (50) "Statutory maximum sentence" means the maximum length of
4 time for which an offender may be confined as punishment for a crime
5 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute
6 defining the crime, or other statute defining the maximum penalty for
7 a crime.

8 (51) "Stranger" means that the victim did not know the offender
9 (~~(twenty-four)~~) 24 hours before the offense.

10 (52) "Total confinement" means confinement inside the physical
11 boundaries of a facility or institution operated or utilized under
12 contract by the state or any other unit of government for (~~(twenty-~~
13 ~~four)~~) 24 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

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

23 (55) "Victim of domestic violence" means an intimate partner or
24 household member who has been subjected to the infliction of physical
25 harm or sexual and psychological abuse by an intimate partner or
26 household member as part of a pattern of assaultive, coercive, and
27 controlling behaviors directed at achieving compliance from or
28 control over that intimate partner or household member. Domestic
29 violence includes, but is not limited to, the offenses listed in RCW
30 10.99.020 and 26.50.010 committed by an intimate partner or household
31 member against a victim who is an intimate partner or household
32 member.

33 (56) "Victim of sex trafficking, prostitution, or commercial
34 sexual abuse of a minor" means a person who has been forced or
35 coerced to perform a commercial sex act including, but not limited
36 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
37 9.68A.101, and the trafficking victims protection act of 2000, 22
38 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
39 commercial sex act when they were less than 18 years of age including
40 but not limited to the offenses defined in chapter 9.68A RCW.

1 (57) "Victim of sexual assault" means any person who is a victim
2 of a sexual assault offense, nonconsensual sexual conduct, or
3 nonconsensual sexual penetration and as a result suffers physical,
4 emotional, financial, or psychological impacts. Sexual assault
5 offenses include, but are not limited to, the offenses defined in
6 chapter 9A.44 RCW.

7 (58) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

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

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

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

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

37 (59) "Work crew" means a program of partial confinement
38 consisting of civic improvement tasks for the benefit of the
39 community that complies with RCW 9.94A.725.

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

8 (61) "Work release" means a program of partial confinement
9 available to offenders who are employed or engaged as a student in a
10 regular course of study at school.

11 **Sec. 3.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are
12 each reenacted and amended to read as follows:

13 (1) The provisions of this section apply to the standard sentence
14 ranges determined by RCW 9.94A.510 or 9.94A.517.

15 (2) For persons convicted of the anticipatory offenses of
16 criminal attempt, solicitation, or conspiracy under chapter 9A.28
17 RCW, the standard sentence range is determined by locating the
18 sentencing grid sentence range defined by the appropriate offender
19 score and the seriousness level of the completed crime, and
20 multiplying the range by (~~seventy-five~~) 75 percent.

21 (3) The following additional times shall be added to the standard
22 sentence range for felony crimes committed after July 23, 1995, if
23 the offender or an accomplice was armed with a firearm as defined in
24 RCW 9.41.010 and the offender is being sentenced for one of the
25 crimes listed in this subsection as eligible for any firearm
26 enhancements based on the classification of the completed felony
27 crime. If the offender is being sentenced for more than one offense,
28 the firearm enhancement or enhancements must be added to the total
29 period of confinement for all offenses, regardless of which
30 underlying offense is subject to a firearm enhancement. If the
31 offender or an accomplice was armed with a firearm as defined in RCW
32 9.41.010 and the offender is being sentenced for an anticipatory
33 offense under chapter 9A.28 RCW to commit one of the crimes listed in
34 this subsection as eligible for any firearm enhancements, the
35 following additional times shall be added to the standard sentence
36 range determined under subsection (2) of this section based on the
37 felony crime of conviction as classified under RCW 9A.28.020:

1 (a) Five years for any felony defined under any law as a class A
2 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
3 years, or both, and not covered under (f) of this subsection;

4 (b) Three years for any felony defined under any law as a class B
5 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
6 both, and not covered under (f) of this subsection;

7 (c) Eighteen months for any felony defined under any law as a
8 class C felony or with a statutory maximum sentence of five years, or
9 both, and not covered under (f) of this subsection;

10 (d) If the offender is being sentenced for any firearm
11 enhancements under (a), (b), and/or (c) of this subsection and the
12 offender has previously been sentenced for any deadly weapon
13 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
14 subsection or subsection (4)(a), (b), and/or (c) of this section, or
15 both, all firearm enhancements under this subsection shall be twice
16 the amount of the enhancement listed;

17 (e) (i) Notwithstanding any other provision of law, all firearm
18 enhancements under this section are mandatory (~~, shall be served in~~
19 ~~total confinement, and shall run consecutively to all other~~
20 ~~sentencing provisions, including other firearm or deadly weapon~~
21 ~~enhancements, for all offenses sentenced under this chapter. However,~~
22 ~~whether~~). For any person sentenced to multiple firearm enhancements
23 on or after the effective date of this section, the court may order
24 the enhancements to run consecutively.

25 (ii) Whether or not a mandatory minimum term has expired, an
26 offender serving a sentence under this subsection may be:

27 (~~(i)~~) (A) Granted an extraordinary medical placement when
28 authorized under RCW 9.94A.728(1)(c); or

29 (~~(ii)~~) (B) Released under the provisions of RCW 9.94A.730;

30 (f) The firearm enhancements in this section shall apply to all
31 felony crimes except the following: Possession of a machine gun or
32 bump-fire stock, possessing a stolen firearm, drive-by shooting,
33 theft of a firearm, unlawful possession of a firearm in the first and
34 second degree, and use of a machine gun or bump-fire stock in a
35 felony;

36 (g) If the standard sentence range under this section exceeds the
37 statutory maximum sentence for the offense, the statutory maximum
38 sentence shall be the presumptive sentence unless the offender is a
39 persistent offender. (~~If the addition of a firearm enhancement~~
40 ~~increases the sentence so that it would exceed the statutory maximum~~

1 ~~for the offense, the portion of the sentence representing the~~
2 ~~enhancement may not be reduced.))~~

3 (4) The following additional times shall be added to the standard
4 sentence range for felony crimes committed after July 23, 1995, if
5 the offender or an accomplice was armed with a deadly weapon other
6 than a firearm as defined in RCW 9.41.010 and the offender is being
7 sentenced for one of the crimes listed in this subsection as eligible
8 for any deadly weapon enhancements based on the classification of the
9 completed felony crime. If the offender is being sentenced for more
10 than one offense, the deadly weapon enhancement or enhancements must
11 be added to the total period of confinement for all offenses,
12 regardless of which underlying offense is subject to a deadly weapon
13 enhancement. If the offender or an accomplice was armed with a deadly
14 weapon other than a firearm as defined in RCW 9.41.010 and the
15 offender is being sentenced for an anticipatory offense under chapter
16 9A.28 RCW to commit one of the crimes listed in this subsection as
17 eligible for any deadly weapon enhancements, the following additional
18 times shall be added to the standard sentence range determined under
19 subsection (2) of this section based on the felony crime of
20 conviction as classified under RCW 9A.28.020:

21 (a) Two years for any felony defined under any law as a class A
22 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
23 years, or both, and not covered under (f) of this subsection;

24 (b) One year for any felony defined under any law as a class B
25 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
26 both, and not covered under (f) of this subsection;

27 (c) Six months for any felony defined under any law as a class C
28 felony or with a statutory maximum sentence of five years, or both,
29 and not covered under (f) of this subsection;

30 (d) If the offender is being sentenced under (a), (b), and/or (c)
31 of this subsection for any deadly weapon enhancements and the
32 offender has previously been sentenced for any deadly weapon
33 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
34 subsection or subsection (3)(a), (b), and/or (c) of this section, or
35 both, all deadly weapon enhancements under this subsection shall be
36 twice the amount of the enhancement listed;

37 (e) (i) Notwithstanding any other provision of law, all deadly
38 weapon enhancements under this section are mandatory (~~, shall be~~
39 ~~served in total confinement, and shall run consecutively to all other~~
40 ~~sentencing provisions, including other firearm or deadly weapon~~

1 ~~enhancements, for all offenses sentenced under this chapter. However,~~
2 ~~whether)). For any person sentenced to multiple deadly weapon~~
3 ~~enhancements on or after the effective date of this section, the~~
4 ~~court may order the enhancements to run consecutively.~~

5 (ii) Whether or not a mandatory minimum term has expired, an
6 offender serving a sentence under this subsection may be:

7 ~~((i))~~ (A) Granted an extraordinary medical placement when
8 authorized under RCW 9.94A.728(1)(c); or

9 ~~((ii))~~ (B) Released under the provisions of RCW 9.94A.730;

10 (f) The deadly weapon enhancements in this section shall apply to
11 all felony crimes except the following: Possession of a machine gun
12 or bump-fire stock, possessing a stolen firearm, drive-by shooting,
13 theft of a firearm, unlawful possession of a firearm in the first and
14 second degree, and use of a machine gun or bump-fire stock in a
15 felony;

16 (g) If the standard sentence range under this section exceeds the
17 statutory maximum sentence for the offense, the statutory maximum
18 sentence shall be the presumptive sentence unless the offender is a
19 persistent offender. ~~((If the addition of a deadly weapon enhancement~~
20 ~~increases the sentence so that it would exceed the statutory maximum~~
21 ~~for the offense, the portion of the sentence representing the~~
22 ~~enhancement may not be reduced.))~~

23 (5) The following additional times shall be added to the standard
24 sentence range if the offender or an accomplice committed the offense
25 while in a county jail or state correctional facility and the
26 offender is being sentenced for one of the crimes listed in this
27 subsection. If the offender or an accomplice committed one of the
28 crimes listed in this subsection while in a county jail or state
29 correctional facility, and the offender is being sentenced for an
30 anticipatory offense under chapter 9A.28 RCW to commit one of the
31 crimes listed in this subsection, the following additional times
32 shall be added to the standard sentence range determined under
33 subsection (2) of this section:

34 (a) Eighteen months for offenses committed under RCW 69.50.401(2)

35 (a) or (b) or 69.50.410;

36 (b) Fifteen months for offenses committed under RCW 69.50.401(2)

37 (c), (d), or (e);

38 (c) Twelve months for offenses committed under RCW 69.50.4013.

1 For the purposes of this subsection, all of the real property of
2 a state correctional facility or county jail shall be deemed to be
3 part of that facility or county jail.

4 (6) An additional (~~(twenty-four)~~) 24 months shall be added to the
5 standard sentence range for any ranked offense involving a violation
6 of chapter 69.50 RCW if the offense was also a violation of RCW
7 (~~(69.50.435 or)~~) 9.94A.827. (~~(All enhancements under this subsection~~
8 ~~shall run consecutively to all other sentencing provisions, for all~~
9 ~~offenses sentenced under this chapter.)~~)

10 (7) An additional two years shall be added to the standard
11 sentence range for vehicular homicide committed while under the
12 influence of intoxicating liquor or any drug as defined by RCW
13 46.61.502 for each prior offense as defined in RCW 46.61.5055.

14 Notwithstanding any other provision of law, all impaired driving
15 enhancements under this subsection are mandatory(~~(, shall be served~~
16 ~~in total confinement,)~~) and shall run consecutively to all other
17 sentencing provisions, including other impaired driving enhancements,
18 for all offenses sentenced under this chapter. If the offender has
19 three or more prior offenses as defined in RCW 46.61.5055, all
20 enhancements in this subsection must be served in total confinement.

21 An offender serving a sentence under this subsection may be
22 granted an extraordinary medical placement when authorized under RCW
23 9.94A.728(1)(c).

24 (8)(a) The following additional times shall be added to the
25 standard sentence range for felony crimes committed on or after July
26 1, 2006, if the offense was committed with sexual motivation, as that
27 term is defined in RCW 9.94A.030. If the offender is being sentenced
28 for more than one offense, the sexual motivation enhancement must be
29 added to the total period of (~~(total)~~) confinement for all offenses,
30 regardless of which underlying offense is subject to a sexual
31 motivation enhancement. If the offender committed the offense with
32 sexual motivation and the offender is being sentenced for an
33 anticipatory offense under chapter 9A.28 RCW, the following
34 additional times shall be added to the standard sentence range
35 determined under subsection (2) of this section based on the felony
36 crime of conviction as classified under RCW 9A.28.020:

37 (i) Two years for any felony defined under the law as a class A
38 felony or with a statutory maximum sentence of at least (~~(twenty)~~) 20
39 years, or both;

1 (ii) Eighteen months for any felony defined under any law as a
2 class B felony or with a statutory maximum sentence of ~~((ten))~~ 10
3 years, or both;

4 (iii) One year for any felony defined under any law as a class C
5 felony or with a statutory maximum sentence of five years, or both;

6 (iv) If the offender is being sentenced for any sexual motivation
7 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
8 the offender has previously been sentenced for any sexual motivation
9 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
10 (iii) of this subsection, all sexual motivation enhancements under
11 this subsection shall be twice the amount of the enhancement listed;

12 (b) Notwithstanding any other provision of law, all sexual
13 motivation enhancements under this subsection are mandatory ~~((, shall~~
14 ~~be served in total confinement,))~~ and shall run consecutively to all
15 other sentencing provisions, including other sexual motivation
16 enhancements, for all offenses sentenced under this chapter. However,
17 whether or not a mandatory minimum term has expired, an offender
18 serving a sentence under this subsection may be:

19 (i) Granted an extraordinary medical placement when authorized
20 under RCW 9.94A.728(1)(c); or

21 (ii) Released under the provisions of RCW 9.94A.730;

22 (c) The sexual motivation enhancements in this subsection apply
23 to all felony crimes;

24 (d) If the standard sentence range under this subsection exceeds
25 the statutory maximum sentence for the offense, the statutory maximum
26 sentence shall be the presumptive sentence unless the offender is a
27 persistent offender ~~((, If the addition of a sexual motivation~~
28 ~~enhancement increases the sentence so that it would exceed the~~
29 ~~statutory maximum for the offense, the portion of the sentence~~
30 ~~representing the enhancement may not be reduced))~~;

31 ~~((The portion of the total confinement sentence which the~~
32 ~~offender must serve under this subsection shall be calculated before~~
33 ~~any earned early release time is credited to the offender;~~

34 ~~(f))~~ Nothing in this subsection prevents a sentencing court from
35 imposing a sentence outside the standard sentence range pursuant to
36 RCW 9.94A.535.

37 (9) An additional one-year enhancement shall be added to the
38 standard sentence range for the felony crimes of RCW 9A.44.073,
39 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
40 or after July 22, 2007, if the offender engaged, agreed, or offered

1 to engage the victim in the sexual conduct in return for a fee. If
2 the offender is being sentenced for more than one offense, the
3 one-year enhancement must be added to the total period of (~~total~~)
4 confinement for all offenses, regardless of which underlying offense
5 is subject to the enhancement. If the offender is being sentenced for
6 an anticipatory offense for the felony crimes of RCW 9A.44.073,
7 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
8 offender attempted, solicited another, or conspired to engage, agree,
9 or offer to engage the victim in the sexual conduct in return for a
10 fee, an additional one-year enhancement shall be added to the
11 standard sentence range determined under subsection (2) of this
12 section. For purposes of this subsection, "sexual conduct" means
13 sexual intercourse or sexual contact, both as defined in chapter
14 9A.44 RCW.

15 ~~(10) ((a) For a person age eighteen or older convicted of any~~
16 ~~criminal street gang-related felony offense for which the person~~
17 ~~compensated, threatened, or solicited a minor in order to involve the~~
18 ~~minor in the commission of the felony offense, the standard sentence~~
19 ~~range is determined by locating the sentencing grid sentence range~~
20 ~~defined by the appropriate offender score and the seriousness level~~
21 ~~of the completed crime, and multiplying the range by one hundred~~
22 ~~twenty-five percent. If the standard sentence range under this~~
23 ~~subsection exceeds the statutory maximum sentence for the offense,~~
24 ~~the statutory maximum sentence is the presumptive sentence unless the~~
25 ~~offender is a persistent offender.~~

26 ~~(b) This subsection does not apply to any criminal street gang-~~
27 ~~related felony offense for which involving a minor in the commission~~
28 ~~of the felony offense is an element of the offense.~~

29 ~~(c) The increased penalty specified in (a) of this subsection is~~
30 ~~unavailable in the event that the prosecution gives notice that it~~
31 ~~will seek an exceptional sentence based on an aggravating factor~~
32 ~~under RCW 9.94A.535.~~

33 ~~(11))~~ An additional (~~twelve~~) 12 months and one day shall be
34 added to the standard sentence range for a conviction of attempting
35 to elude a police vehicle as defined by RCW 46.61.024, if the
36 conviction included a finding by special allegation of endangering
37 one or more persons under RCW 9.94A.834.

38 ~~((12))~~ (11) An additional (~~twelve~~) 12 months shall be added
39 to the standard sentence range for an offense that is also a
40 violation of RCW 9.94A.831.

1 ~~((13))~~ (12) An additional ~~((twelve))~~ 12 months shall be added
2 to the standard sentence range for vehicular homicide committed while
3 under the influence of intoxicating liquor or any drug as defined by
4 RCW 46.61.520 or for vehicular assault committed while under the
5 influence of intoxicating liquor or any drug as defined by RCW
6 46.61.522, or for any felony driving under the influence (RCW
7 46.61.502(6)) or felony physical control under the influence (RCW
8 46.61.504(6)) for each child passenger under the age of ~~((sixteen))~~
9 16 who is an occupant in the defendant's vehicle. These enhancements
10 shall be mandatory~~((, shall be served in total confinement,))~~ and
11 shall run consecutively to all other sentencing provisions, including
12 other minor child enhancements, for all offenses sentenced under this
13 chapter. ~~((If the addition of a minor child enhancement increases the
14 sentence so that it would exceed the statutory maximum for the
15 offense, the portion of the sentence representing the enhancement
16 shall be mandatory, shall be served in total confinement, and shall
17 run consecutively to all other sentencing provisions.))~~ If the
18 defendant has three or more prior offenses as defined in RCW
19 46.61.5055, all enhancements in this subsection must be served in
20 total confinement.

21 ~~((14))~~ (13) An additional ~~((twelve))~~ 12 months shall be added
22 to the standard sentence range for an offense that is also a
23 violation of RCW 9.94A.832.

24 ~~((15))~~ (14) Regardless of any provisions in this section, if a
25 person is being sentenced in adult court for a crime committed under
26 age ~~((eighteen))~~ 18, the court has full discretion to depart from
27 mandatory sentencing enhancements and to take the particular
28 circumstances surrounding the defendant's youth into account.

29 **Sec. 4.** RCW 9.94A.599 and 1998 c 235 s 3 are each amended to
30 read as follows:

31 If the presumptive sentence duration given in the sentencing grid
32 exceeds the statutory maximum sentence for the offense, the statutory
33 maximum sentence shall be the presumptive sentence. ~~((If the addition
34 of a firearm or deadly weapon enhancement increases the sentence so
35 that it would exceed the statutory maximum for the offense, the
36 portion of the sentence representing the enhancement may not be
37 reduced.))~~

1 **Sec. 5.** RCW 9.94A.729 and 2020 c 330 s 2 are each amended to
2 read as follows:

3 (1)(a) The term of the sentence of an offender committed to a
4 correctional facility operated by the department may be reduced by
5 earned release time in accordance with procedures that shall be
6 developed and adopted by the correctional agency having jurisdiction
7 in which the offender is confined. The earned release time shall be
8 for good behavior and good performance, as determined by the
9 correctional agency having jurisdiction. The correctional agency
10 shall not credit the offender with earned release credits in advance
11 of the offender actually earning the credits.

12 (b) Any program established pursuant to this section shall allow
13 an offender to earn early release credits for presentence
14 incarceration. If an offender is transferred from a county jail to
15 the department, the administrator of a county jail facility shall
16 certify to the department the amount of time spent in custody at the
17 facility and the number of days of early release credits lost or not
18 earned. The department may approve a jail certification from a
19 correctional agency that calculates early release time based on the
20 actual amount of confinement time served by the offender before
21 sentencing when an erroneous calculation of confinement time served
22 by the offender before sentencing appears on the judgment and
23 sentence. The department must adjust an offender's rate of early
24 release listed on the jail certification to be consistent with the
25 rate applicable to offenders in the department's facilities. However,
26 the department is not authorized to adjust the number of presentence
27 early release days that the jail has certified as lost or not earned.

28 ~~(2) ((a) An offender who has been convicted of a felony committed~~
29 ~~after July 23, 1995, that involves any applicable deadly weapon~~
30 ~~enhancements under RCW 9.94A.533 (3) or (4), or both, shall not~~
31 ~~receive any good time credits or earned release time for that portion~~
32 ~~of his or her sentence that results from any deadly weapon~~
33 ~~enhancements.~~

34 ~~(b) An offender whose sentence includes any impaired driving~~
35 ~~enhancements under RCW 9.94A.533(7), minor child enhancements under~~
36 ~~RCW 9.94A.533(13), or both, shall not receive any good time credits~~
37 ~~or earned release time for any portion of his or her sentence that~~
38 ~~results from those enhancements.~~

39 ~~(3))~~ An offender may earn early release time as follows:

1 (a) In the case of an offender sentenced pursuant to RCW
2 10.95.030(3) or 10.95.035, the offender may not receive any earned
3 early release time during the minimum term of confinement imposed by
4 the court; for any remaining portion of the sentence served by the
5 offender, the aggregate earned release time may not exceed (~~ten~~) 10
6 percent of the sentence.

7 (b) In the case of an offender convicted of a serious violent
8 offense, or a sex offense that is a class A felony, committed on or
9 after July 1, 1990, and before July 1, 2003, the aggregate earned
10 release time may not exceed (~~fifteen~~) 15 percent of the sentence.

11 (c) In the case of an offender convicted of a serious violent
12 offense, or a sex offense that is a class A felony, committed on or
13 after July 1, 2003, the aggregate earned release time may not exceed
14 (~~ten~~) 10 percent of the sentence.

15 (d) An offender is qualified to earn up to (~~fifty~~) 50 percent
16 of aggregate earned release time if he or she:

17 (i) Is not classified as an offender who is at a high risk to
18 reoffend as provided in subsection (~~(4)~~) (3) of this section;

19 (ii) Is not confined pursuant to a sentence for:

20 (A) A sex offense;

21 (B) A violent offense;

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

23 (D) A felony that is domestic violence as defined in RCW
24 10.99.020;

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

26 (F) A violation of, or an attempt, solicitation, or conspiracy to
27 violate, RCW 69.50.401 by manufacture or delivery or possession with
28 intent to deliver methamphetamine; or

29 (G) A violation of, or an attempt, solicitation, or conspiracy to
30 violate, RCW 69.50.406 (delivery of a controlled substance to a
31 minor);

32 (iii) Has no prior conviction for the offenses listed in (d)(ii)
33 of this subsection;

34 (iv) Participates in programming or activities as directed by the
35 offender's individual reentry plan as provided under RCW 72.09.270 to
36 the extent that such programming or activities are made available by
37 the department; and

38 (v) Has not committed a new felony after July 22, 2007, while
39 under community custody.

1 (e) In no other case shall the aggregate earned release time
2 exceed one-third of the total sentence.

3 ~~((4))~~ (3) The department shall perform a risk assessment of
4 each offender who may qualify for earned early release under
5 subsection ~~((3))~~ (2)(d) of this section utilizing the risk
6 assessment tool recommended by the Washington state institute for
7 public policy. Subsection ~~((3))~~ (2)(d) of this section does not
8 apply to offenders convicted after July 1, 2010.

9 ~~((5))~~ (4)(a) A person who is eligible for earned early release
10 as provided in this section and who will be supervised by the
11 department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be
12 transferred to community custody in lieu of earned release time;

13 (b) The department shall, as a part of its program for release to
14 the community in lieu of earned release, require the offender to
15 propose a release plan that includes an approved residence and living
16 arrangement. All offenders with community custody terms eligible for
17 release to community custody in lieu of earned release shall provide
18 an approved residence and living arrangement prior to release to the
19 community;

20 (c) The department may deny transfer to community custody in lieu
21 of earned release time if the department determines an offender's
22 release plan, including proposed residence location and living
23 arrangements, may violate the conditions of the sentence or
24 conditions of supervision, place the offender at risk to violate the
25 conditions of the sentence, place the offender at risk to reoffend,
26 or present a risk to victim safety or community safety. The
27 department's authority under this section is independent of any
28 court-ordered condition of sentence or statutory provision regarding
29 conditions for community custody;

30 (d) If the department is unable to approve the offender's release
31 plan, the department may do one or more of the following:

32 (i) Transfer an offender to partial confinement in lieu of earned
33 early release for a period not to exceed three months. The three
34 months in partial confinement is in addition to that portion of the
35 offender's term of confinement that may be served in partial
36 confinement as provided in RCW 9.94A.728(1)(e);

37 (ii) Provide rental vouchers to the offender for a period not to
38 exceed three months if rental assistance will result in an approved
39 release plan.

1 A voucher must be provided in conjunction with additional
2 transition support programming or services that enable an offender to
3 participate in services including, but not limited to, substance
4 abuse treatment, mental health treatment, sex offender treatment,
5 educational programming, or employment programming;

6 (e) The department shall maintain a list of housing providers
7 that meets the requirements of RCW 72.09.285. If more than two
8 voucher recipients will be residing per dwelling unit, as defined in
9 RCW 59.18.030, rental vouchers for those recipients may only be paid
10 to a housing provider on the department's list;

11 (f) For each offender who is the recipient of a rental voucher,
12 the department shall gather data as recommended by the Washington
13 state institute for public policy in order to best demonstrate
14 whether rental vouchers are effective in reducing recidivism.

15 ~~((+6))~~ (5) An offender serving a term of confinement imposed
16 under RCW 9.94A.670(5)(a) is not eligible for earned release credits
17 under this section.

18 **Sec. 6.** RCW 10.01.210 and 2002 c 290 s 23 are each amended to
19 read as follows:

20 Any and all law enforcement agencies and personnel, criminal
21 justice attorneys, sentencing judges, and state and local
22 correctional facilities and personnel may, but are not required to,
23 give any and all offenders either written or oral notice, or both, of
24 the sanctions imposed and criminal justice changes regarding armed
25 offenders, including but not limited to the subjects of:

26 (1) Felony crimes involving any deadly weapon special verdict
27 under ~~((RCW 9.94A.602))~~ 9.94A.825;

28 (2) Any and all deadly weapon enhancements under RCW 9.94A.533
29 (3) or (4), or both, as well as any federal firearm, ammunition, or
30 other deadly weapon enhancements;

31 (3) Any and all felony crimes requiring the possession, display,
32 or use of any deadly weapon as well as the many increased penalties
33 for these crimes including the creation of theft of a firearm and
34 possessing a stolen firearm;

35 (4) New prosecuting standards established for filing charges for
36 all crimes involving any deadly weapons;

37 (5) ~~((Removal of good time for any and all deadly weapon
38 enhancements; and~~

1 ~~(6)~~) Providing the death penalty for those who commit first
2 degree murder: (a) To join, maintain, or advance membership in an
3 identifiable group; (b) as part of a drive-by shooting; or (c) to
4 avoid prosecution as a persistent offender as defined in RCW
5 9.94A.030.

6 **Sec. 7.** RCW 72.01.410 and 2019 c 322 s 2 are each amended to
7 read as follows:

8 (1) Whenever any person is convicted as an adult in the courts of
9 this state of a felony offense committed under the age of
10 (~~eighteen~~) 18, and is committed for a term of confinement, that
11 person shall be initially placed in a facility operated by the
12 department of children, youth, and families. The department of
13 corrections shall determine the person's earned release date.

14 (a) While in the custody of the department of children, youth,
15 and families, the person must have the same treatment, housing
16 options, transfer, and access to program resources as any other
17 person committed to that juvenile correctional facility or
18 institution pursuant to chapter 13.40 RCW. Except as provided under
19 (d) of this subsection, treatment, placement, and program decisions
20 shall be at the sole discretion of the department of children, youth,
21 and families. The person shall not be transferred to the custody of
22 the department of corrections without the approval of the department
23 of children, youth, and families until the person reaches the age of
24 (~~twenty-five~~) 25.

25 (b) If the person's sentence includes a term of community
26 custody, the department of children, youth, and families shall not
27 release the person to community custody until the department of
28 corrections has approved the person's release plan pursuant to RCW
29 9.94A.729(~~(+5)~~) (4)(b). If a person is held past his or her earned
30 release date pending release plan approval, the department of
31 children, youth, and families shall retain custody until a plan is
32 approved or the person completes the ordered term of confinement
33 prior to age (~~twenty-five~~) 25.

34 (c) If the department of children, youth, and families determines
35 that retaining custody of the person in a facility of the department
36 of children, youth, and families presents a significant safety risk,
37 the department of children, youth, and families may transfer the
38 person to the custody of the department of corrections.

1 (d) The department of corrections must retain authority over
2 custody decisions relating to a person whose earned release date is
3 on or after the person's (~~((twenty-fifth))~~) 25th birthday and who is
4 placed in a facility operated by the department of children, youth,
5 and families under this section, unless the person qualifies for
6 partial confinement under RCW 72.01.412, and must approve any leave
7 from the facility. When the person turns age (~~((twenty-five))~~) 25, he
8 or she must be transferred to the department of corrections, except
9 as described under RCW 72.01.412. The department of children, youth,
10 and families has all routine and day-to-day operations authority for
11 the person while the person is in its custody.

12 (2)(a) Except as provided in (b) and (c) of this subsection, a
13 person under the age of (~~((eighteen))~~) 18 who is transferred to the
14 custody of the department of corrections must be placed in a housing
15 unit, or a portion of a housing unit, that is separated from other
16 persons in custody who are (~~((eighteen))~~) 18 years of age or older,
17 until the person reaches the age of (~~((eighteen))~~) 18.

18 (b) A person who is transferred to the custody of the department
19 of corrections and reaches (~~((eighteen))~~) 18 years of age may remain in
20 a housing unit for persons under the age of (~~((eighteen))~~) 18 if the
21 secretary of corrections determines that: (i) The person's needs and
22 the rehabilitation goals for the person could continue to be better
23 met by the programs and housing environment that is separate from
24 other persons in custody who are (~~((eighteen))~~) 18 years of age and
25 older; and (ii) the programs or housing environment for persons under
26 the age of (~~((eighteen))~~) 18 will not be substantially affected by the
27 continued placement of the person in that environment. The person may
28 remain placed in a housing unit for persons under the age of
29 (~~((eighteen))~~) 18 until such time as the secretary of corrections
30 determines that the person's needs and goals are no longer better met
31 in that environment but in no case past the person's (~~((twenty-fifth))~~)
32 25th birthday.

33 (c) A person transferred to the custody of the department of
34 corrections who is under the age of (~~((eighteen))~~) 18 may be housed in
35 an intensive management unit or administrative segregation unit
36 containing offenders (~~((eighteen))~~) 18 years of age or older if it is
37 necessary for the safety or security of the offender or staff. In
38 these cases, the offender must be kept physically separate from other
39 offenders at all times.

1 (3) The department of children, youth, and families must review
2 the placement of a person over age (~~(twenty-one)~~) 21 in the custody
3 of the department of children, youth, and families under this section
4 to determine whether the person should be transferred to the custody
5 of the department of corrections. The department of children, youth,
6 and families may determine the frequency of the review required under
7 this subsection, but the review must occur at least once before the
8 person reaches age (~~(twenty-three)~~) 23 if the person's commitment
9 period in a juvenile institution extends beyond the person's
10 (~~(twenty-third)~~) 23rd birthday.

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

13 (1) For any offender who is currently serving a sentence imposed
14 prior to the effective date of this section involving multiple,
15 consecutive firearm or deadly weapon enhancements under RCW
16 9.94A.533, either the offender or the applicable county prosecuting
17 attorney may petition the sentencing court for resentencing on the
18 basis that the consecutive enhancements no longer advance the
19 interests of justice.

20 (2) The sentencing court may grant or deny a petition under this
21 section. If the court grants a petition, the court shall resentence
22 the offender in the same manner as if the offender had not previously
23 been sentenced, except: The court may, in its discretion, order the
24 firearm or deadly weapon enhancements to be served concurrently,
25 regardless of the date of the offense; and the new sentence, if any,
26 may not be greater than the initial sentence.

27 (3) If a resentencing hearing is scheduled pursuant to this
28 section, the prosecuting attorney shall make reasonable efforts to
29 notify victims and survivors of victims of the petition and the date
30 of hearing. The prosecuting attorney shall provide victims and
31 survivors of victims access to available victim advocates and other
32 related services. The court shall provide an opportunity for victims
33 and survivors of victims of any crimes for which the offender has
34 been convicted to present a statement personally or by
35 representation. The prosecuting attorney and the court shall comply
36 with the requirements set forth in chapter 7.69 RCW.

37 (4) A resentencing under this section does not reopen a
38 qualifying offender's conviction to challenges that would otherwise
39 be barred.

1 NEW SECTION. **Sec. 9.** RCW 69.50.435 (Violations committed in or
2 on certain public places or facilities—Additional penalty—Defenses—
3 Construction—Definitions) and 2015 c 265 s 37 & 2003 c 53 s 346 are
4 each repealed.

5 NEW SECTION. **Sec. 10.** (1) The changes to restrictions on
6 partial confinement and earned early release for sentencing
7 enhancements under sections 3 and 5 of this act apply retroactively
8 to offenders currently serving a sentence in any facility or
9 institution either operated by the state or utilized under contract.
10 Pursuant to RCW 9.94A.729, the department of corrections shall
11 recalculate the earned release date for any qualifying offender,
12 regardless of the date of sentencing or date of offense. For
13 offenders whose offense was committed prior to the effective date of
14 this section, the recalculation shall not extend a term of
15 incarceration beyond that to which an offender is currently subject.

16 (2) The department of corrections shall report to the legislature
17 a comprehensive list of all individuals released from confinement
18 under this section not less than annually beginning July 1, 2023.

19 NEW SECTION. **Sec. 11.** The legislature declares that section 10
20 of this act does not create any liberty interest. The department of
21 corrections' recalculations of earned release time do not create any
22 expectation that the percentage of earned release time will be
23 revised before the effective date of this section, and offenders have
24 no reason to conclude that the maximum percentage of earned release
25 time is an entitlement. The department of corrections has discretion
26 to implement the retroactive changes to earned early release for
27 qualifying offenders over a period of time not to exceed 12 months
28 following the effective date of this section.

29 NEW SECTION. **Sec. 12.** Section 1 of this act expires July 1,
30 2022.

31 NEW SECTION. **Sec. 13.** Section 2 of this act takes effect July
32 1, 2022.

33 NEW SECTION. **Sec. 14.** Section 8 of this act takes effect July
34 1, 2025."

1 On page 1, line 1 of the title, after "enhancements;" strike the
2 remainder of the title and insert "amending RCW 9.94A.030, 9.94A.599,
3 9.94A.729, 10.01.210, and 72.01.410; reenacting and amending RCW
4 9.94A.030 and 9.94A.533; adding a new section to chapter 9.94A RCW;
5 creating new sections; repealing RCW 69.50.435; prescribing
6 penalties; providing effective dates; and providing an expiration
7 date."

EFFECT: (1) Removes repeal of enhancement related to involving a minor in a street gang-related felony.

(2) Requires the Department of Corrections to report to the Legislature a comprehensive list of all individuals released from confinement pursuant to the changes in calculating earned early release in this bill.

(3) Provides an effective date of July 1, 2025, for provisions of the bill relating to resentencing individuals currently serving a sentence.

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