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**SUBSTITUTE HOUSE BILL 1169**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Goodman, Davis, Dolan, Simmons, Bateman, Lekanoff, Springer, Gregerson, Senn, Fitzgibbon, Ramos, Frame, Ramel, Peterson, Lovick, Ryu, Callan, Slatter, Duerr, Ormsby, Macri, and Hackney)

READ FIRST TIME 02/02/21.

1 AN ACT Relating to sentencing enhancements; amending RCW  
2 9.94A.599, 9.94A.729, 9.94A.729, 10.01.210, and 72.01.410; reenacting  
3 and amending RCW 9.94A.030 and 9.94A.533; adding a new section to  
4 chapter 9.94A RCW; creating new sections; repealing RCW 9.94A.833 and  
5 69.50.435; prescribing penalties; providing an effective date; and  
6 providing an expiration date.

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

8 **Sec. 1.** RCW 9.94A.030 and 2020 c 296 s 2, 2020 c 252 s 4, and  
9 2020 c 137 s 1 are each reenacted and amended to read as follows:

10 Unless the context clearly requires otherwise, the definitions in  
11 this section apply throughout this chapter.

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

14 (2) "Collect," or any derivative thereof, "collect and remit," or  
15 "collect and deliver," when used with reference to the department,  
16 means that the department, either directly or through a collection  
17 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
18 and enforcing the offender's sentence with regard to the legal  
19 financial obligation, receiving payment thereof from the offender,  
20 and, consistent with current law, delivering daily the entire payment

1 to the superior court clerk without depositing it in a departmental  
2 account.

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

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

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

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

16 (7) "Community restitution" means compulsory service, without  
17 compensation, performed for the benefit of the community by the  
18 offender.

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

20 (9) "Conviction" means an adjudication of guilt pursuant to Title  
21 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,  
22 and acceptance of a plea of guilty.

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

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

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

39 (b) A conviction may be removed from a defendant's criminal  
40 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,

1 9.95.240, or a similar out-of-state statute, or if the conviction has  
2 been vacated pursuant to a governor's pardon. However, when a  
3 defendant is charged with a recidivist offense, "criminal history"  
4 includes a vacated prior conviction for the sole purpose of  
5 establishing that such vacated prior conviction constitutes an  
6 element of the present recidivist offense as provided in RCW  
7 9.94A.640(3)(b) and 9.96.060(6)(c).

8 (c) The determination of a defendant's criminal history is  
9 distinct from the determination of an offender score. A prior  
10 conviction that was not included in an offender score calculated  
11 pursuant to a former version of the sentencing reform act remains  
12 part of the defendant's criminal history.

13 (12) "Criminal street gang" means any ongoing organization,  
14 association, or group of three or more persons, whether formal or  
15 informal, having a common name or common identifying sign or symbol,  
16 having as one of its primary activities the commission of criminal  
17 acts, and whose members or associates individually or collectively  
18 engage in or have engaged in a pattern of criminal street gang  
19 activity. This definition does not apply to employees engaged in  
20 concerted activities for their mutual aid and protection, or to the  
21 activities of labor and bona fide nonprofit organizations or their  
22 members or agents.

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

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

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

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

36 (c) To exact revenge or retribution for the gang or any member of  
37 the gang;

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

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

4 (f) To provide the gang with any advantage in, or any control or  
5 dominance over any criminal market sector, including, but not limited  
6 to, manufacturing, delivering, or selling any controlled substance  
7 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
8 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
9 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual  
10 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter  
11 9.68 RCW).

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

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

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

22 (18) "Determinate sentence" means a sentence that states with  
23 exactitude the number of actual years, months, or days of total  
24 confinement, of partial confinement, of community custody, the number  
25 of actual hours or days of community restitution work, or dollars or  
26 terms of a legal financial obligation. The fact that an offender  
27 through earned release can reduce the actual period of confinement  
28 shall not affect the classification of the sentence as a determinate  
29 sentence.

30 (19) "Disposable earnings" means that part of the earnings of an  
31 offender remaining after the deduction from those earnings of any  
32 amount required by law to be withheld. For the purposes of this  
33 definition, "earnings" means compensation paid or payable for  
34 personal services, whether denominated as wages, salary, commission,  
35 bonuses, or otherwise, and, notwithstanding any other provision of  
36 law making the payments exempt from garnishment, attachment, or other  
37 process to satisfy a court-ordered legal financial obligation,  
38 specifically includes periodic payments pursuant to pension or  
39 retirement programs, or insurance policies of any type, but does not

1 include payments made under Title 50 RCW, except as provided in RCW  
2 50.40.020 and 50.40.050, or Title 74 RCW.

3 (20) "Domestic violence" has the same meaning as defined in RCW  
4 10.99.020 and 26.50.010.

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

8 (22) "Drug offense" means:

9 (a) Any felony violation of chapter 69.50 RCW except possession  
10 of a controlled substance (RCW 69.50.4013) or forged prescription for  
11 a controlled substance (RCW 69.50.403);

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

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

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

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

24 (a) Radio frequency signaling technology, which detects if the  
25 monitored individual is or is not at an approved location and  
26 notifies the monitoring agency of the time that the monitored  
27 individual either leaves the approved location or tampers with or  
28 removes the monitoring device; or

29 (b) Active or passive global positioning system technology, which  
30 detects the location of the monitored individual and notifies the  
31 monitoring agency of the monitored individual's location and which  
32 may also include electronic monitoring with victim notification  
33 technology that is capable of notifying a victim or protected party,  
34 either directly or through a monitoring agency, if the monitored  
35 individual enters within the restricted distance of a victim or  
36 protected party, or within the restricted distance of a designated  
37 location.

38 (25) "Escape" means:

39 (a) Sexually violent predator escape (RCW 9A.76.115), escape in  
40 the first degree (RCW 9A.76.110), escape in the second degree (RCW

1 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
2 willful failure to return from work release (RCW 72.65.070), or  
3 willful failure to be available for supervision by the department  
4 while in community custody (RCW 72.09.310); or

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

8 (26) "Felony traffic offense" means:

9 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
10 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
11 run injury-accident (RCW 46.52.020(4)), felony driving while under  
12 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),  
13 or felony physical control of a vehicle while under the influence of  
14 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

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

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

38 (c) A private residence where the individual stays as a transient  
39 invitee.

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

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

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

20 (b) Assault in the second degree;

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

22 (d) Child molestation in the second degree;

23 (e) Controlled substance homicide;

24 (f) Extortion in the first degree;

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

26 14;

27 (h) Indecent liberties;

28 (i) Kidnapping in the second degree;

29 (j) Leading organized crime;

30 (k) Manslaughter in the first degree;

31 (l) Manslaughter in the second degree;

32 (m) Promoting prostitution in the first degree;

33 (n) Rape in the third degree;

34 (o) Sexual exploitation;

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

39 (q) Vehicular homicide, when proximately caused by the driving of  
40 any vehicle by any person while under the influence of intoxicating

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

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

5 (s) Any other felony with a deadly weapon verdict under RCW  
6 9.94A.825;

7 (t) Any felony offense in effect at any time prior to December 2,  
8 1993, that is comparable to a most serious offense under this  
9 subsection, or any federal or out-of-state conviction for an offense  
10 that under the laws of this state would be a felony classified as a  
11 most serious offense under this subsection;

12 (u)(i) A prior conviction for indecent liberties under RCW  
13 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.  
14 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),  
15 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW  
16 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,  
17 until July 1, 1988;

18 (ii) A prior conviction for indecent liberties under RCW  
19 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
20 if: (A) The crime was committed against a child under the age of  
21 (~~fourteen~~) 14; or (B) the relationship between the victim and  
22 perpetrator is included in the definition of indecent liberties under  
23 RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,  
24 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,  
25 1993, through July 27, 1997;

26 (v) Any out-of-state conviction for a felony offense with a  
27 finding of sexual motivation if the minimum sentence imposed was  
28 (~~ten~~) 10 years or more; provided that the out-of-state felony  
29 offense must be comparable to a felony offense under this title and  
30 Title 9A RCW and the out-of-state definition of sexual motivation  
31 must be comparable to the definition of sexual motivation contained  
32 in this section.

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

35 (34) "Offender" means a person who has committed a felony  
36 established by state law and is eighteen years of age or older or is  
37 less than (~~eighteen~~) 18 years of age but whose case is under  
38 superior court jurisdiction under RCW 13.04.030 or has been  
39 transferred by the appropriate juvenile court to a criminal court  
40 pursuant to RCW 13.40.110. In addition, for the purpose of community



1 custody requirements under this chapter, "offender" also means a  
2 misdemeanor or gross misdemeanor probationer ordered by a superior  
3 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210  
4 and supervised by the department pursuant to RCW 9.94A.501 and  
5 9.94A.5011. Throughout this chapter, the terms "offender" and  
6 "defendant" are used interchangeably.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 ~~(xi))~~ Residential Burglary (RCW 9A.52.025);

40 ~~((xi))~~ (xi) Burglary 2 (RCW 9A.52.030);

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

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

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

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

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

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

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

37       (b) (i) Has been convicted of: (A) Rape in the first degree, rape  
38 of a child in the first degree, child molestation in the first  
39 degree, rape in the second degree, rape of a child in the second  
40 degree, or indecent liberties by forcible compulsion; (B) any of the

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

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

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

1 28A.225.010; and (B) "teacher, counselor, volunteer, or other person  
2 in authority" does not include the parent or legal guardian of the  
3 victim.

4 (39) "Private school" means a school regulated under chapter  
5 28A.195 or 28A.205 RCW.

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

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

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

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

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

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

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

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

17 (g) Violation of a no-contact or protection order, RCW  
18 26.50.110(5).

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

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

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

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

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

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

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

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

39 (44) "Risk assessment" means the application of the risk  
40 instrument recommended to the department by the Washington state

1 institute for public policy as having the highest degree of  
2 predictive accuracy for assessing an offender's risk of reoffense.

3 (45) "Serious traffic offense" means:

4 (a) Nonfelony driving while under the influence of intoxicating  
5 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
6 while under the influence of intoxicating liquor or any drug (RCW  
7 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
8 attended vehicle (RCW 46.52.020(5)); or

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

12 (46) "Serious violent offense" is a subcategory of violent  
13 offense and means:

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

15 (ii) Homicide by abuse;

16 (iii) Murder in the second degree;

17 (iv) Manslaughter in the first degree;

18 (v) Assault in the first degree;

19 (vi) Kidnapping in the first degree;

20 (vii) Rape in the first degree;

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

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

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

27 (47) "Sex offense" means:

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

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

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

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

36 (v) A felony violation of RCW 9A.44.132(1) (failure to register  
37 as a sex offender) if the person has been convicted of violating RCW  
38 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130  
39 prior to June 10, 2010, on at least one prior occasion;

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

4 (c) A felony with a finding of sexual motivation under RCW  
5 9.94A.835 or 13.40.135; or

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

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

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

14 (50) "Statutory maximum sentence" means the maximum length of  
15 time for which an offender may be confined as punishment for a crime  
16 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute  
17 defining the crime, or other statute defining the maximum penalty for  
18 a crime.

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

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

25 (53) "Transition training" means written and verbal instructions  
26 and assistance provided by the department to the offender during the  
27 two weeks prior to the offender's successful completion of the work  
28 ethic camp program. The transition training shall include  
29 instructions in the offender's requirements and obligations during  
30 the offender's period of community custody.

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

34 (55) "Violent offense" means:

35 (a) Any of the following felonies:

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

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

40 (iii) Manslaughter in the first degree;

- 1 (iv) Manslaughter in the second degree;  
2 (v) Indecent liberties if committed by forcible compulsion;  
3 (vi) Kidnapping in the second degree;  
4 (vii) Arson in the second degree;  
5 (viii) Assault in the second degree;  
6 (ix) Assault of a child in the second degree;  
7 (x) Extortion in the first degree;  
8 (xi) Robbery in the second degree;  
9 (xii) Drive-by shooting;  
10 (xiii) Vehicular assault, when caused by the operation or driving  
11 of a vehicle by a person while under the influence of intoxicating  
12 liquor or any drug or by the operation or driving of a vehicle in a  
13 reckless manner; and  
14 (xiv) Vehicular homicide, when proximately caused by the driving  
15 of any vehicle by any person while under the influence of  
16 intoxicating liquor or any drug as defined by RCW 46.61.502, or by  
17 the operation of any vehicle in a reckless manner;  
18 (b) Any conviction for a felony offense in effect at any time  
19 prior to July 1, 1976, that is comparable to a felony classified as a  
20 violent offense in (a) of this subsection; and  
21 (c) Any federal or out-of-state conviction for an offense that  
22 under the laws of this state would be a felony classified as a  
23 violent offense under (a) or (b) of this subsection.  
24 (56) "Work crew" means a program of partial confinement  
25 consisting of civic improvement tasks for the benefit of the  
26 community that complies with RCW 9.94A.725.  
27 (57) "Work ethic camp" means an alternative incarceration program  
28 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
29 the cost of corrections by requiring offenders to complete a  
30 comprehensive array of real-world job and vocational experiences,  
31 character-building work ethics training, life management skills  
32 development, substance abuse rehabilitation, counseling, literacy  
33 training, and basic adult education.  
34 (58) "Work release" means a program of partial confinement  
35 available to offenders who are employed or engaged as a student in a  
36 regular course of study at school.

37 **Sec. 2.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are  
38 each reenacted and amended to read as follows:

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

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

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

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

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

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

35 (d) If the offender is being sentenced for any firearm  
36 enhancements under (a), (b), and/or (c) of this subsection and the  
37 offender has previously been sentenced for any deadly weapon  
38 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
39 subsection or subsection (4)(a), (b), and/or (c) of this section, or



1 both, all firearm enhancements under this subsection shall be twice  
2 the amount of the enhancement listed;

3 (e) (i) Notwithstanding any other provision of law, all firearm  
4 enhancements under this section are mandatory ~~((, shall be served in  
5 total confinement, and shall run consecutively to all other  
6 sentencing provisions, including other firearm or deadly weapon  
7 enhancements, for all offenses sentenced under this chapter. However,  
8 whether))~~. For any person sentenced to multiple firearm enhancements  
9 on or after the effective date of this section, the court may order  
10 the enhancements to run consecutively.

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

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

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

16 (f) The firearm enhancements in this section shall apply to all  
17 felony crimes except the following: Possession of a machine gun or  
18 bump-fire stock, possessing a stolen firearm, drive-by shooting,  
19 theft of a firearm, unlawful possession of a firearm in the first and  
20 second degree, and use of a machine gun or bump-fire stock in a  
21 felony;

22 (g) If the standard sentence range under this section exceeds the  
23 statutory maximum sentence for the offense, the statutory maximum  
24 sentence shall be the presumptive sentence unless the offender is a  
25 persistent offender. ~~((If the addition of a firearm enhancement  
26 increases the sentence so that it would exceed the statutory maximum  
27 for the offense, the portion of the sentence representing the  
28 enhancement may not be reduced.))~~

29 (4) The following additional times shall be added to the standard  
30 sentence range for felony crimes committed after July 23, 1995, if  
31 the offender or an accomplice was armed with a deadly weapon other  
32 than a firearm as defined in RCW 9.41.010 and the offender is being  
33 sentenced for one of the crimes listed in this subsection as eligible  
34 for any deadly weapon enhancements based on the classification of the  
35 completed felony crime. If the offender is being sentenced for more  
36 than one offense, the deadly weapon enhancement or enhancements must  
37 be added to the total period of confinement for all offenses,  
38 regardless of which underlying offense is subject to a deadly weapon  
39 enhancement. If the offender or an accomplice was armed with a deadly  
40 weapon other than a firearm as defined in RCW 9.41.010 and the

1 offender is being sentenced for an anticipatory offense under chapter  
2 9A.28 RCW to commit one of the crimes listed in this subsection as  
3 eligible for any deadly weapon enhancements, the following additional  
4 times shall be added to the standard sentence range determined under  
5 subsection (2) of this section based on the felony crime of  
6 conviction as classified under RCW 9A.28.020:

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

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

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

16 (d) If the offender is being sentenced under (a), (b), and/or (c)  
17 of this subsection for any deadly weapon enhancements and the  
18 offender has previously been sentenced for any deadly weapon  
19 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
20 subsection or subsection (3)(a), (b), and/or (c) of this section, or  
21 both, all deadly weapon enhancements under this subsection shall be  
22 twice the amount of the enhancement listed;

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

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

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

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

36 (f) The deadly weapon enhancements in this section shall apply to  
37 all felony crimes except the following: Possession of a machine gun  
38 or bump-fire stock, possessing a stolen firearm, drive-by shooting,  
39 theft of a firearm, unlawful possession of a firearm in the first and

1 second degree, and use of a machine gun or bump-fire stock in a  
2 felony;

3 (g) If the standard sentence range under this section exceeds the  
4 statutory maximum sentence for the offense, the statutory maximum  
5 sentence shall be the presumptive sentence unless the offender is a  
6 persistent offender. (~~If the addition of a deadly weapon enhancement  
7 increases the sentence so that it would exceed the statutory maximum  
8 for the offense, the portion of the sentence representing the  
9 enhancement may not be reduced.~~)

10 (5) The following additional times shall be added to the standard  
11 sentence range if the offender or an accomplice committed the offense  
12 while in a county jail or state correctional facility and the  
13 offender is being sentenced for one of the crimes listed in this  
14 subsection. If the offender or an accomplice committed one of the  
15 crimes listed in this subsection while in a county jail or state  
16 correctional facility, and the offender is being sentenced for an  
17 anticipatory offense under chapter 9A.28 RCW to commit one of the  
18 crimes listed in this subsection, the following additional times  
19 shall be added to the standard sentence range determined under  
20 subsection (2) of this section:

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

22 (a) or (b) or 69.50.410;

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

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

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

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

29 (6) An additional (~~twenty-four~~) 24 months shall be added to the  
30 standard sentence range for any ranked offense involving a violation  
31 of chapter 69.50 RCW if the offense was also a violation of RCW  
32 (~~69.50.435 or~~) 9.94A.827. (~~All enhancements under this subsection  
33 shall run consecutively to all other sentencing provisions, for all  
34 offenses sentenced under this chapter.~~)

35 (7) An additional two years shall be added to the standard  
36 sentence range for vehicular homicide committed while under the  
37 influence of intoxicating liquor or any drug as defined by RCW  
38 46.61.502 for each prior offense as defined in RCW 46.61.5055.

39 Notwithstanding any other provision of law, all impaired driving  
40 enhancements under this subsection are mandatory(~~, shall be served~~

1 ~~in total confinement,~~) and shall run consecutively to all other  
2 sentencing provisions, including other impaired driving enhancements,  
3 for all offenses sentenced under this chapter. If the offender has  
4 three or more prior offenses as defined in RCW 46.61.5055, all  
5 enhancements in this subsection must be served in total confinement.

6 An offender serving a sentence under this subsection may be  
7 granted an extraordinary medical placement when authorized under RCW  
8 9.94A.728(1)(c).

9 (8)(a) The following additional times shall be added to the  
10 standard sentence range for felony crimes committed on or after July  
11 1, 2006, if the offense was committed with sexual motivation, as that  
12 term is defined in RCW 9.94A.030. If the offender is being sentenced  
13 for more than one offense, the sexual motivation enhancement must be  
14 added to the total period of (~~total~~) confinement for all offenses,  
15 regardless of which underlying offense is subject to a sexual  
16 motivation enhancement. If the offender committed the offense with  
17 sexual motivation and the offender is being sentenced for an  
18 anticipatory offense under chapter 9A.28 RCW, the following  
19 additional times shall be added to the standard sentence range  
20 determined under subsection (2) of this section based on the felony  
21 crime of conviction as classified under RCW 9A.28.020:

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

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

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

30 (iv) If the offender is being sentenced for any sexual motivation  
31 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
32 the offender has previously been sentenced for any sexual motivation  
33 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or  
34 (iii) of this subsection, all sexual motivation enhancements under  
35 this subsection shall be twice the amount of the enhancement listed;

36 (b) Notwithstanding any other provision of law, all sexual  
37 motivation enhancements under this subsection are mandatory(~~, shall~~  
38 ~~be served in total confinement,~~) and shall run consecutively to all  
39 other sentencing provisions, including other sexual motivation  
40 enhancements, for all offenses sentenced under this chapter. However,

1 whether or not a mandatory minimum term has expired, an offender  
2 serving a sentence under this subsection may be:

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

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

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

8 (d) If the standard sentence range under this subsection exceeds  
9 the statutory maximum sentence for the offense, the statutory maximum  
10 sentence shall be the presumptive sentence unless the offender is a  
11 persistent offender(~~(. If the addition of a sexual motivation~~  
12 ~~enhancement increases the sentence so that it would exceed the~~  
13 ~~statutory maximum for the offense, the portion of the sentence~~  
14 ~~representing the enhancement may not be reduced))~~);

15 (e) (~~The portion of the total confinement sentence which the~~  
16 ~~offender must serve under this subsection shall be calculated before~~  
17 ~~any earned early release time is credited to the offender;~~

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

21 (9) An additional one-year enhancement shall be added to the  
22 standard sentence range for the felony crimes of RCW 9A.44.073,  
23 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
24 or after July 22, 2007, if the offender engaged, agreed, or offered  
25 to engage the victim in the sexual conduct in return for a fee. If  
26 the offender is being sentenced for more than one offense, the  
27 one-year enhancement must be added to the total period of (~~total~~)  
28 confinement for all offenses, regardless of which underlying offense  
29 is subject to the enhancement. If the offender is being sentenced for  
30 an anticipatory offense for the felony crimes of RCW 9A.44.073,  
31 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the  
32 offender attempted, solicited another, or conspired to engage, agree,  
33 or offer to engage the victim in the sexual conduct in return for a  
34 fee, an additional one-year enhancement shall be added to the  
35 standard sentence range determined under subsection (2) of this  
36 section. For purposes of this subsection, "sexual conduct" means  
37 sexual intercourse or sexual contact, both as defined in chapter  
38 9A.44 RCW.

39 (10) (~~(a) For a person age eighteen or older convicted of any~~  
40 ~~criminal street gang-related felony offense for which the person~~

1 ~~compensated, threatened, or solicited a minor in order to involve the~~  
2 ~~minor in the commission of the felony offense, the standard sentence~~  
3 ~~range is determined by locating the sentencing grid sentence range~~  
4 ~~defined by the appropriate offender score and the seriousness level~~  
5 ~~of the completed crime, and multiplying the range by one hundred~~  
6 ~~twenty-five percent. If the standard sentence range under this~~  
7 ~~subsection exceeds the statutory maximum sentence for the offense,~~  
8 ~~the statutory maximum sentence is the presumptive sentence unless the~~  
9 ~~offender is a persistent offender.~~

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

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

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

22 ~~((12))~~ (11) An additional ~~((twelve))~~ 12 months shall be added  
23 to the standard sentence range for an offense that is also a  
24 violation of RCW 9.94A.831.

25 ~~((13))~~ (12) An additional ~~((twelve))~~ 12 months shall be added  
26 to the standard sentence range for vehicular homicide committed while  
27 under the influence of intoxicating liquor or any drug as defined by  
28 RCW 46.61.520 or for vehicular assault committed while under the  
29 influence of intoxicating liquor or any drug as defined by RCW  
30 46.61.522, or for any felony driving under the influence (RCW  
31 46.61.502(6)) or felony physical control under the influence (RCW  
32 46.61.504(6)) for each child passenger under the age of ~~((sixteen))~~  
33 16 who is an occupant in the defendant's vehicle. These enhancements  
34 shall be mandatory ~~((, shall be served in total confinement,))~~ and  
35 shall run consecutively to all other sentencing provisions, including  
36 other minor child enhancements, for all offenses sentenced under this  
37 chapter. ~~((If the addition of a minor child enhancement increases the~~  
38 ~~sentence so that it would exceed the statutory maximum for the~~  
39 ~~offense, the portion of the sentence representing the enhancement~~  
40 ~~shall be mandatory, shall be served in total confinement, and shall~~

1 ~~run consecutively to all other sentencing provisions.)~~ If the  
2 defendant has three or more prior offenses as defined in RCW  
3 46.61.5055, all enhancements in this subsection must be served in  
4 total confinement.

5 ~~((14))~~ (13) An additional ~~((twelve))~~ 12 months shall be added  
6 to the standard sentence range for an offense that is also a  
7 violation of RCW 9.94A.832.

8 ~~((15))~~ (14) Regardless of any provisions in this section, if a  
9 person is being sentenced in adult court for a crime committed under  
10 age ~~((eighteen))~~ 18, the court has full discretion to depart from  
11 mandatory sentencing enhancements and to take the particular  
12 circumstances surrounding the defendant's youth into account.

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

15 If the presumptive sentence duration given in the sentencing grid  
16 exceeds the statutory maximum sentence for the offense, the statutory  
17 maximum sentence shall be the presumptive sentence. ~~((If the addition~~  
18 ~~of a firearm or deadly weapon enhancement increases the sentence so~~  
19 ~~that it would exceed the statutory maximum for the offense, the~~  
20 ~~portion of the sentence representing the enhancement may not be~~  
21 ~~reduced.))~~

22 **Sec. 4.** RCW 9.94A.729 and 2015 c 134 s 4 are each amended to  
23 read as follows:

24 (1)(a) The term of the sentence of an offender committed to a  
25 correctional facility operated by the department may be reduced by  
26 earned release time in accordance with procedures that shall be  
27 developed and adopted by the correctional agency having jurisdiction  
28 in which the offender is confined. The earned release time shall be  
29 for good behavior and good performance, as determined by the  
30 correctional agency having jurisdiction. The correctional agency  
31 shall not credit the offender with earned release credits in advance  
32 of the offender actually earning the credits.

33 (b) Any program established pursuant to this section shall allow  
34 an offender to earn early release credits for presentence  
35 incarceration. If an offender is transferred from a county jail to  
36 the department, the administrator of a county jail facility shall  
37 certify to the department the amount of time spent in custody at the  
38 facility and the number of days of early release credits lost or not

1 earned. The department may approve a jail certification from a  
2 correctional agency that calculates early release time based on the  
3 actual amount of confinement time served by the offender before  
4 sentencing when an erroneous calculation of confinement time served  
5 by the offender before sentencing appears on the judgment and  
6 sentence. The department must adjust an offender's rate of early  
7 release listed on the jail certification to be consistent with the  
8 rate applicable to offenders in the department's facilities. However,  
9 the department is not authorized to adjust the number of presentence  
10 early release days that the jail has certified as lost or not earned.

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

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

18 (a) In the case of an offender sentenced pursuant to RCW  
19 10.95.030(3) or 10.95.035, the offender may not receive any earned  
20 early release time during the minimum term of confinement imposed by  
21 the court; for any remaining portion of the sentence served by the  
22 offender, the aggregate earned release time may not exceed ~~((ten))~~ 10  
23 percent of the sentence.

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

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

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

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

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

37 (A) A sex offense;

38 (B) A violent offense;

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



1 (D) A felony that is domestic violence as defined in RCW  
2 10.99.020;

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

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

7 (G) A violation of, or an attempt, solicitation, or conspiracy to  
8 violate, RCW 69.50.406 (delivery of a controlled substance to a  
9 minor);

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

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

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

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

20 (~~(4)~~) (3) The department shall perform a risk assessment of  
21 each offender who may qualify for earned early release under  
22 subsection (~~(3)~~) (2)(d) of this section utilizing the risk  
23 assessment tool recommended by the Washington state institute for  
24 public policy. Subsection (~~(3)~~) (2)(d) of this section does not  
25 apply to offenders convicted after July 1, 2010.

26 (~~(5)~~) (4)(a) A person who is eligible for earned early release  
27 as provided in this section and who will be supervised by the  
28 department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be  
29 transferred to community custody in lieu of earned release time;

30 (b) The department shall, as a part of its program for release to  
31 the community in lieu of earned release, require the offender to  
32 propose a release plan that includes an approved residence and living  
33 arrangement. All offenders with community custody terms eligible for  
34 release to community custody in lieu of earned release shall provide  
35 an approved residence and living arrangement prior to release to the  
36 community;

37 (c) The department may deny transfer to community custody in lieu  
38 of earned release time if the department determines an offender's  
39 release plan, including proposed residence location and living  
40 arrangements, may violate the conditions of the sentence or

1 conditions of supervision, place the offender at risk to violate the  
2 conditions of the sentence, place the offender at risk to reoffend,  
3 or present a risk to victim safety or community safety. The  
4 department's authority under this section is independent of any  
5 court-ordered condition of sentence or statutory provision regarding  
6 conditions for community custody;

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

9 (i) Transfer an offender to partial confinement in lieu of earned  
10 early release for a period not to exceed three months. The three  
11 months in partial confinement is in addition to that portion of the  
12 offender's term of confinement that may be served in partial  
13 confinement as provided in RCW 9.94A.728(~~((5))~~) (1)(e);

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

17 A voucher must be provided in conjunction with additional  
18 transition support programming or services that enable an offender to  
19 participate in services including, but not limited to, substance  
20 abuse treatment, mental health treatment, sex offender treatment,  
21 educational programming, or employment programming;

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

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

31 (~~((6))~~) (5) An offender serving a term of confinement imposed  
32 under RCW 9.94A.670(5)(a) is not eligible for earned release credits  
33 under this section.

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

36 (1)(a) The term of the sentence of an offender committed to a  
37 correctional facility operated by the department may be reduced by  
38 earned release time in accordance with procedures that shall be  
39 developed and adopted by the correctional agency having jurisdiction

1 in which the offender is confined. The earned release time shall be  
2 for good behavior and good performance, as determined by the  
3 correctional agency having jurisdiction. The correctional agency  
4 shall not credit the offender with earned release credits in advance  
5 of the offender actually earning the credits.

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

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

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

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

34 (a) In the case of an offender sentenced pursuant to RCW  
35 10.95.030(3) or 10.95.035, the offender may not receive any earned  
36 early release time during the minimum term of confinement imposed by  
37 the court; for any remaining portion of the sentence served by the  
38 offender, the aggregate earned release time may not exceed ~~((ten))~~ 10  
39 percent of the sentence.

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

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

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

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

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

14 (A) A sex offense;

15 (B) A violent offense;

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

17 (D) A felony that is domestic violence as defined in RCW  
18 10.99.020;

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

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

23 (G) A violation of, or an attempt, solicitation, or conspiracy to  
24 violate, RCW 69.50.406 (delivery of a controlled substance to a  
25 minor);

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

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

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

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

36 (~~((4))~~) (3) The department shall perform a risk assessment of  
37 each offender who may qualify for earned early release under  
38 subsection (~~((3))~~) (2)(d) of this section utilizing the risk  
39 assessment tool recommended by the Washington state institute for

1 public policy. Subsection (~~(3)~~) (2)(d) of this section does not  
2 apply to offenders convicted after July 1, 2010.

3 (~~(5)~~) (4)(a) A person who is eligible for earned early release  
4 as provided in this section and who will be supervised by the  
5 department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be  
6 transferred to community custody in lieu of earned release time;

7 (b) The department shall, as a part of its program for release to  
8 the community in lieu of earned release, require the offender to  
9 propose a release plan that includes an approved residence and living  
10 arrangement. All offenders with community custody terms eligible for  
11 release to community custody in lieu of earned release shall provide  
12 an approved residence and living arrangement prior to release to the  
13 community;

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

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

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

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

34 A voucher must be provided in conjunction with additional  
35 transition support programming or services that enable an offender to  
36 participate in services including, but not limited to, substance  
37 abuse treatment, mental health treatment, sex offender treatment,  
38 educational programming, or employment programming;

39 (e) The department shall maintain a list of housing providers  
40 that meets the requirements of RCW 72.09.285. If more than two

1 voucher recipients will be residing per dwelling unit, as defined in  
2 RCW 59.18.030, rental vouchers for those recipients may only be paid  
3 to a housing provider on the department's list;

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

8 ~~((+6))~~ (5) An offender serving a term of confinement imposed  
9 under RCW 9.94A.670(5)(a) is not eligible for earned release credits  
10 under this section.

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

13 Any and all law enforcement agencies and personnel, criminal  
14 justice attorneys, sentencing judges, and state and local  
15 correctional facilities and personnel may, but are not required to,  
16 give any and all offenders either written or oral notice, or both, of  
17 the sanctions imposed and criminal justice changes regarding armed  
18 offenders, including but not limited to the subjects of:

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

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

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

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

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

32 ~~+6))~~ Providing the death penalty for those who commit first  
33 degree murder: (a) To join, maintain, or advance membership in an  
34 identifiable group; (b) as part of a drive-by shooting; or (c) to  
35 avoid prosecution as a persistent offender as defined in RCW  
36 9.94A.030.

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

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

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

18 (b) If the person's sentence includes a term of community  
19 custody, the department of children, youth, and families shall not  
20 release the person to community custody until the department of  
21 corrections has approved the person's release plan pursuant to RCW  
22 9.94A.729(~~(+5)~~) (4)(b). If a person is held past his or her earned  
23 release date pending release plan approval, the department of  
24 children, youth, and families shall retain custody until a plan is  
25 approved or the person completes the ordered term of confinement  
26 prior to age (~~twenty-five~~) 25.

27 (c) If the department of children, youth, and families determines  
28 that retaining custody of the person in a facility of the department  
29 of children, youth, and families presents a significant safety risk,  
30 the department of children, youth, and families may transfer the  
31 person to the custody of the department of corrections.

32 (d) The department of corrections must retain authority over  
33 custody decisions relating to a person whose earned release date is  
34 on or after the person's (~~twenty-fifth~~) 25th birthday and who is  
35 placed in a facility operated by the department of children, youth,  
36 and families under this section, unless the person qualifies for  
37 partial confinement under RCW 72.01.412, and must approve any leave  
38 from the facility. When the person turns age (~~twenty-five~~) 25, he  
39 or she must be transferred to the department of corrections, except  
40 as described under RCW 72.01.412. The department of children, youth,

1 and families has all routine and day-to-day operations authority for  
2 the person while the person is in its custody.

3 (2) (a) Except as provided in (b) and (c) of this subsection, a  
4 person under the age of (~~(eighteen)~~) 18 who is transferred to the  
5 custody of the department of corrections must be placed in a housing  
6 unit, or a portion of a housing unit, that is separated from other  
7 persons in custody who are (~~(eighteen)~~) 18 years of age or older,  
8 until the person reaches the age of (~~(eighteen)~~) 18.

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

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

31 (3) The department of children, youth, and families must review  
32 the placement of a person over age (~~(twenty-one)~~) 21 in the custody  
33 of the department of children, youth, and families under this section  
34 to determine whether the person should be transferred to the custody  
35 of the department of corrections. The department of children, youth,  
36 and families may determine the frequency of the review required under  
37 this subsection, but the review must occur at least once before the  
38 person reaches age (~~(twenty-three)~~) 23 if the person's commitment  
39 period in a juvenile institution extends beyond the person's  
40 (~~(twenty-third)~~) 23rd birthday.



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

3        (1) For any offender who is currently serving a sentence imposed  
4 prior to the effective date of this section involving multiple,  
5 consecutive firearm or deadly weapon enhancements under RCW  
6 9.94A.533, either the offender or the applicable county prosecuting  
7 attorney may petition the sentencing court for resentencing on the  
8 basis that the consecutive enhancements no longer advance the  
9 interests of justice.

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

17        (3) If a resentencing hearing is scheduled pursuant to this  
18 section, the prosecuting attorney shall make reasonable efforts to  
19 notify victims and survivors of victims of the petition and the date  
20 of hearing. The prosecuting attorney shall provide victims and  
21 survivors of victims access to available victim advocates and other  
22 related services. The court shall provide an opportunity for victims  
23 and survivors of victims of any crimes for which the offender has  
24 been convicted to present a statement personally or by  
25 representation. The prosecuting attorney and the court shall comply  
26 with the requirements set forth in chapter 7.69 RCW.

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

30        NEW SECTION.    **Sec. 9.**    The following acts or parts of acts are  
31 each repealed:

32        (1) RCW 9.94A.833 (Special allegation—Involving minor in felony  
33 offense—Procedures) and 2008 c 276 s 302; and

34        (2) RCW 69.50.435 (Violations committed in or on certain public  
35 places or facilities—Additional penalty—Defenses—Construction—  
36 Definitions) and 2015 c 265 s 37 & 2003 c 53 s 346.

1        NEW SECTION.    **Sec. 10.**    The changes to restrictions on partial  
2 confinement and earned early release for sentencing enhancements  
3 under sections 2, 4, and 5 of this act apply retroactively to  
4 offenders currently serving a sentence in any facility or institution  
5 either operated by the state or utilized under contract. Pursuant to  
6 RCW 9.94A.729, the department of corrections shall recalculate the  
7 earned release date for any qualifying offender, regardless of the  
8 date of sentencing or date of offense. For offenders whose offense  
9 was committed prior to the effective date of this section, the  
10 recalculation shall not extend a term of incarceration beyond that to  
11 which an offender is currently subject.

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

22        NEW SECTION.    **Sec. 12.**    Section 4 of this act expires January 1,  
23 2022.

24        NEW SECTION.    **Sec. 13.**    Section 5 of this act takes effect  
25 January 1, 2022.

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