
HOUSE BILL 1169

State of Washington

67th Legislature

2021 Regular Session

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 01/13/21. Referred to Committee on Public Safety.

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.

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

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

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

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

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

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

34 (b) Notwithstanding any other provision of law, all sexual
35 motivation enhancements under this subsection are mandatory(~~, shall~~
36 ~~be served in total confinement,~~) and shall run consecutively to all
37 other sentencing provisions, including other sexual motivation
38 enhancements, for all offenses sentenced under this chapter. However,
39 whether or not a mandatory minimum term has expired, an offender
40 serving a sentence under this subsection may be:

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

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

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

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

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

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

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

37 ~~(10) ((a) For a person age eighteen or older convicted of any
38 criminal street gang-related felony offense for which the person
39 compensated, threatened, or solicited a minor in order to involve the
40 minor in the commission of the felony offense, the standard sentence~~

1 range is determined by locating the sentencing grid sentence range
2 defined by the appropriate offender score and the seriousness level
3 of the completed crime, and multiplying the range by one hundred
4 twenty-five percent. If the standard sentence range under this
5 subsection exceeds the statutory maximum sentence for the offense,
6 the statutory maximum sentence is the presumptive sentence unless the
7 offender is a persistent offender.

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

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

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

20 ~~((12))~~ (11) An additional ~~((twelve))~~ 12 months shall be added
21 to the standard sentence range for an offense that is also a
22 violation of RCW 9.94A.831.

23 ~~((13))~~ (12) An additional ~~((twelve))~~ 12 months shall be added
24 to the standard sentence range for vehicular homicide committed while
25 under the influence of intoxicating liquor or any drug as defined by
26 RCW 46.61.520 or for vehicular assault committed while under the
27 influence of intoxicating liquor or any drug as defined by RCW
28 46.61.522, or for any felony driving under the influence (RCW
29 46.61.502(6)) or felony physical control under the influence (RCW
30 46.61.504(6)) for each child passenger under the age of ~~((sixteen))~~
31 16 who is an occupant in the defendant's vehicle. These enhancements
32 shall be mandatory ~~((, shall be served in total confinement,))~~ and
33 shall run consecutively to all other sentencing provisions, including
34 other minor child enhancements, for all offenses sentenced under this
35 chapter. If the addition of a minor child enhancement increases the
36 sentence so that it would exceed the statutory maximum for the
37 offense, the portion of the sentence representing the enhancement
38 shall be mandatory ~~((, shall be served in total confinement,))~~ and
39 shall run consecutively to all other sentencing provisions.

1 (~~(14)~~) (13) An additional (~~(twelve)~~) 12 months shall be added
2 to the standard sentence range for an offense that is also a
3 violation of RCW 9.94A.832.

4 (~~(15)~~) (14) Regardless of any provisions in this section, if a
5 person is being sentenced in adult court for a crime committed under
6 age (~~(eighteen)~~) 18, the court has full discretion to depart from
7 mandatory sentencing enhancements and to take the particular
8 circumstances surrounding the defendant's youth into account.

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

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

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

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

29 (b) Any program established pursuant to this section shall allow
30 an offender to earn early release credits for presentence
31 incarceration. If an offender is transferred from a county jail to
32 the department, the administrator of a county jail facility shall
33 certify to the department the amount of time spent in custody at the
34 facility and the number of days of early release credits lost or not
35 earned. The department may approve a jail certification from a
36 correctional agency that calculates early release time based on the
37 actual amount of confinement time served by the offender before
38 sentencing when an erroneous calculation of confinement time served

1 by the offender before sentencing appears on the judgment and
2 sentence. The department must adjust an offender's rate of early
3 release listed on the jail certification to be consistent with the
4 rate applicable to offenders in the department's facilities. However,
5 the department is not authorized to adjust the number of presentence
6 early release days that the jail has certified as lost or not earned.

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

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

14 (a) In the case of an offender sentenced pursuant to RCW
15 10.95.030(3) or 10.95.035, the offender may not receive any earned
16 early release time during the minimum term of confinement imposed by
17 the court; for any remaining portion of the sentence served by the
18 offender, the aggregate earned release time may not exceed ~~((ten))~~ 10
19 percent of the sentence.

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

24 (c) 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, 2003, the aggregate earned release time may not exceed
27 ~~((ten))~~ 10 percent of the sentence.

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

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

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

33 (A) A sex offense;

34 (B) A violent offense;

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

36 (D) A felony that is domestic violence as defined in RCW
37 10.99.020;

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

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

4 (G) A violation of, or an attempt, solicitation, or conspiracy to
5 violate, RCW 69.50.406 (delivery of a controlled substance to a
6 minor);

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

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

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

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

17 ~~((4))~~ (3) The department shall perform a risk assessment of
18 each offender who may qualify for earned early release under
19 subsection ~~((3))~~ (2)(d) of this section utilizing the risk
20 assessment tool recommended by the Washington state institute for
21 public policy. Subsection ~~((3))~~ (2)(d) of this section does not
22 apply to offenders convicted after July 1, 2010.

23 ~~((5))~~ (4)(a) A person who is eligible for earned early release
24 as provided in this section and who will be supervised by the
25 department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be
26 transferred to community custody in lieu of earned release time;

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

34 (c) The department may deny transfer to community custody in lieu
35 of earned release time if the department determines an offender's
36 release plan, including proposed residence location and living
37 arrangements, may violate the conditions of the sentence or
38 conditions of supervision, place the offender at risk to violate the
39 conditions of the sentence, place the offender at risk to reoffend,
40 or present a risk to victim safety or community safety. The

1 department's authority under this section is independent of any
2 court-ordered condition of sentence or statutory provision regarding
3 conditions for community custody;

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

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

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

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

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

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

28 (~~((6))~~) (5) An offender serving a term of confinement imposed
29 under RCW 9.94A.670(5)(a) is not eligible for earned release credits
30 under this section.

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

33 (1)(a) The term of the sentence of an offender committed to a
34 correctional facility operated by the department may be reduced by
35 earned release time in accordance with procedures that shall be
36 developed and adopted by the correctional agency having jurisdiction
37 in which the offender is confined. The earned release time shall be
38 for good behavior and good performance, as determined by the
39 correctional agency having jurisdiction. The correctional agency

1 shall not credit the offender with earned release credits in advance
2 of the offender actually earning the credits.

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

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

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

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

31 (a) In the case of an offender sentenced pursuant to RCW
32 10.95.030(3) or 10.95.035, the offender may not receive any earned
33 early release time during the minimum term of confinement imposed by
34 the court; for any remaining portion of the sentence served by the
35 offender, the aggregate earned release time may not exceed ~~((ten))~~ 10
36 percent of the sentence.

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

1 (c) 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, 2003, the aggregate earned release time may not exceed
4 (~~ten~~) 10 percent of the sentence.

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

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

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

10 (A) A sex offense;

11 (B) A violent offense;

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

13 (D) A felony that is domestic violence as defined in RCW
14 10.99.020;

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

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

19 (G) A violation of, or an attempt, solicitation, or conspiracy to
20 violate, RCW 69.50.406 (delivery of a controlled substance to a
21 minor);

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

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

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

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

32 (~~(4)~~) (3) The department shall perform a risk assessment of
33 each offender who may qualify for earned early release under
34 subsection (~~(3)~~) (2)(d) of this section utilizing the risk
35 assessment tool recommended by the Washington state institute for
36 public policy. Subsection (~~(3)~~) (2)(d) of this section does not
37 apply to offenders convicted after July 1, 2010.

38 (~~(5)~~) (4)(a) A person who is eligible for earned early release
39 as provided in this section and who will be supervised by the

1 department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be
2 transferred to community custody in lieu of earned release time;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (1) Whenever any person is convicted as an adult in the courts of
37 this state of a felony offense committed under the age of
38 ~~((eighteen))~~ 18, and is committed for a term of confinement, that

1 person shall be initially placed in a facility operated by the
2 department of children, youth, and families. The department of
3 corrections shall determine the person's earned release date.

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

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

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

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

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

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

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

29 (3) The department of children, youth, and families must review
30 the placement of a person over age (~~(twenty-one)~~) 21 in the custody
31 of the department of children, youth, and families under this section
32 to determine whether the person should be transferred to the custody
33 of the department of corrections. The department of children, youth,
34 and families may determine the frequency of the review required under
35 this subsection, but the review must occur at least once before the
36 person reaches age (~~(twenty-three)~~) 23 if the person's commitment
37 period in a juvenile institution extends beyond the person's
38 (~~(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 person 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 person 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 defendant in the same manner as if the offender had not
13 previously been sentenced, except: The court may, in its discretion,
14 order the firearm or deadly weapon enhancements to be served
15 concurrently, regardless of the date of the offense; and the new
16 sentence, if any, 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 person's conviction to challenges that would otherwise be
29 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 persons
4 currently serving a sentence in any facility or institution either
5 operated by the state or utilized under contract. Pursuant to RCW
6 9.94A.729, the department of corrections shall recalculate the earned
7 release date for any qualifying person, regardless of the date of
8 sentencing or date of offense. For offenders whose offense was
9 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 9
13 of this act does not create any liberty interest. For persons
14 incarcerated on the effective date of this section, the department of
15 corrections may implement the retroactive changes to earned early
16 release for qualifying persons over a period of six months following
17 the effective date of this section.

18 NEW SECTION. **Sec. 12.** Section 4 of this act expires January 1,
19 2022.

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

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