
HOUSE BILL 1292

State of Washington

67th Legislature

2021 Regular Session

By Representatives Griffey, Mosbrucker, Eslick, and Chase

Read first time 01/19/21. Referred to Committee on Public Safety.

1 AN ACT Relating to the crime of providing harmful material to a
2 minor; amending RCW 7.90.150, 9.94A.411, 9.94A.501, 9.94A.515,
3 9.95.062, 9A.44.128, 9A.44.140, 10.64.025, 43.43.754, and 43.43.830;
4 adding a new section to chapter 9.68A RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.68A
7 RCW to read as follows:

8 (1) A person commits the crime of providing harmful material to a
9 minor if:

10 (a) The person is eighteen years of age or older; and

11 (b) With knowledge of its character, the person:

12 (i) Knowingly sells, furnishes, presents, distributes, or
13 otherwise disseminates to someone the person knows or should know is
14 a minor, with or without consideration, any matter that is harmful to
15 minors; or

16 (ii) Knowingly presents or participates in presenting to someone
17 the person knows or should know is a minor, with or without
18 consideration, any live performance that is harmful to minors.

19 (2)(a) Except as provided in (b) of this subsection, a person who
20 provides harmful material to a minor is guilty of a gross
21 misdemeanor.

1 (b) A person who provides harmful material to a minor is guilty
2 of a class C felony if the person has previously been convicted under
3 this section or of a felony sexual offense under this chapter or
4 chapter 9A.44 or 9A.64 RCW or of any other felony sexual offense in
5 this or any other state.

6 (3) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Harmful to minors" means any matter or live performance:

9 (i) That the average adult person, applying contemporary
10 community standards, would find, when considered as a whole, appeals
11 to the prurient interest of minors; and

12 (ii) That explicitly depicts or contains, by prevailing standards
13 in the adult community with respect to what is suitable for minors,
14 patently offensive representations or descriptions of any of the
15 following:

16 (A) Ultimate sexual acts or sexual contact;

17 (B) Masturbation, lewd exhibition of the genitals or genital
18 area, sexual excitement, or sexually explicit nudity; or

19 (C) Bestiality, excretory functions, or sexual acts that are
20 violent or destructive, including but not limited to human or animal
21 mutilation, dismemberment, rape, or torture; and

22 (iii) That, when considered as a whole, and in the context in
23 which it is used, lacks serious literary, artistic, political, or
24 scientific value for minors.

25 (b) "Knowingly" has the same meaning as in RCW 9A.08.010(1)(b).

26 (c) "Knowledge of its character" means that the person has
27 knowledge that the matter or performance contains, depicts, or
28 describes activity or conduct that may be found to be patently
29 offensive under (a) of this subsection. Such knowledge may be proved
30 by direct or circumstantial evidence, or both.

31 (d) "Live performance" means any play, show, skit, dance, or
32 other exhibition performed or presented to or before an audience of
33 one or more, in person or by electronic transmission, or by
34 telephonic communication, with or without consideration.

35 (e) "Matter" includes, but is not limited to:

36 (i) Books, magazines, articles, pamphlets, and other printed or
37 written material, however produced or reproduced;

38 (ii) Illustrations, pictures, images, motion picture films,
39 videos, and other visual representations;

40 (iii) Sound recordings; and

1 (iv) Sexual devices.

2 (f) "Sexual contact" means physical contact with a person's
3 clothed or unclothed genitals, pubic area, buttocks, perineum, or, if
4 such person is a female, breast.

5 (g) "Sexual device" means any artificial device primarily
6 designed, promoted, or marketed to physically stimulate or manipulate
7 the human genitals.

8 (h) "Sexual excitement" means the condition of human male or
9 female genitals when in a state of sexual stimulation or arousal, or
10 the depiction of covered male genitals in a discernibly turgid state.

11 (i) "Sexually explicit nudity" means the showing of the human
12 male or female genitals, pubic area, buttocks, or perineum with less
13 than a fully opaque covering; or the showing of the female breast
14 with less than a fully opaque covering of any portion thereof below
15 the top of the nipple.

16 (4) In any prosecution under this section, it is an affirmative
17 defense that:

18 (a) The matter or performance involved was displayed or otherwise
19 disseminated to a minor by the minor's parent or legal guardian, for
20 a legitimate purpose; or

21 (b) The matter or performance involved was displayed or otherwise
22 disseminated to a minor with the written permission of the minor's
23 parent or legal guardian, for a legitimate purpose; or

24 (c) The person made a reasonable good faith attempt to ascertain
25 the true age of the minor by requiring production of a driver's
26 license, marriage license, birth certificate, or other governmental
27 or educational identification card or paper, or copy thereof, and not
28 relying solely on the allegations or apparent age of the minor.

29 **Sec. 2.** RCW 7.90.150 and 2006 c 138 s 16 are each amended to
30 read as follows:

31 (1)(a) When any person charged with or arrested for a sex offense
32 as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a
33 violation of RCW 9.68A.090, a violation of section 1 of this act, or
34 a gross misdemeanor that is, under chapter 9A.28 RCW, a criminal
35 attempt, criminal solicitation, or criminal conspiracy to commit an
36 offense that is classified as a sex offense under RCW 9.94A.030, is
37 released from custody before arraignment or trial on bail or personal
38 recognizance, the court authorizing the release may prohibit that
39 person from having any contact with the victim. The jurisdiction

1 authorizing the release shall determine whether that person should be
2 prohibited from having any contact with the victim. If there is no
3 outstanding restraining or protective order prohibiting that person
4 from having contact with the victim, the court authorizing release
5 may issue, by telephone, a sexual assault protection order
6 prohibiting the person charged or arrested from having contact with
7 the victim or from knowingly coming within, or knowingly remaining
8 within, a specified distance of a location.

9 (b) In issuing the order, the court shall consider the provisions
10 of RCW 9.41.800.

11 (c) The sexual assault protection order shall also be issued in
12 writing as soon as possible.

13 (2)(a) At the time of arraignment or whenever a motion is brought
14 to modify the conditions of the defendant's release, the court shall
15 determine whether a sexual assault protection order shall be issued
16 or extended. If a sexual assault protection order is issued or
17 extended, the court may also include in the conditions of release a
18 requirement that the defendant submit to electronic monitoring. If
19 electronic monitoring is ordered, the court shall specify who shall
20 provide the monitoring services, and the terms under which the
21 monitoring shall be performed. Upon conviction, the court may require
22 as a condition of the sentence that the defendant reimburse the
23 providing agency for the costs of the electronic monitoring.

24 (b) A sexual assault protection order issued by the court in
25 conjunction with criminal charges shall terminate if the defendant is
26 acquitted or the charges are dismissed, unless the victim files an
27 independent action for a sexual assault protection order. If the
28 victim files an independent action for a sexual assault protection
29 order, the order may be continued by the court until a full hearing
30 is conducted pursuant to RCW 7.90.050.

31 (3)(a) The written order releasing the person charged or arrested
32 shall contain the court's directives and shall bear the legend:
33 "Violation of this order is a criminal offense under chapter 26.50
34 RCW and will subject a violator to arrest. You can be arrested even
35 if any person protected by the order invites or allows you to violate
36 the order's prohibitions. You have the sole responsibility to avoid
37 or refrain from violating the order's provisions. Only the court can
38 change the order."

39 (b) A certified copy of the order shall be provided to the victim
40 at no charge.

1 (4) If a sexual assault protection order has been issued prior to
2 charging, that order shall expire at arraignment or within seventy-
3 two hours if charges are not filed. Such orders need not be entered
4 into the computer-based criminal intelligence information system in
5 this state which is used by law enforcement agencies to list
6 outstanding warrants.

7 (5) Whenever an order prohibiting contact is issued pursuant to
8 subsection (2) of this section, the clerk of the court shall forward
9 a copy of the order on or before the next judicial day to the
10 appropriate law enforcement agency specified in the order. Upon
11 receipt of the copy of the order, the law enforcement agency shall
12 enter the order for one year or until the expiration date specified
13 on the order into any computer-based criminal intelligence
14 information system available in this state used by law enforcement
15 agencies to list outstanding warrants. Entry into the computer-based
16 criminal intelligence information system constitutes notice to all
17 law enforcement agencies of the existence of the order. The order is
18 fully enforceable in any jurisdiction in the state.

19 (6) (a) When a defendant is found guilty of a sex offense as
20 defined in RCW 9.94A.030, any violation of RCW 9A.44.096, (~~(or)~~) any
21 violation of RCW 9.68A.090, or any violation of section 1 of this
22 act, or any gross misdemeanor that is, under chapter 9A.28 RCW, a
23 criminal attempt, criminal solicitation, or criminal conspiracy to
24 commit an offense that is classified as a sex offense under RCW
25 9.94A.030, and a condition of the sentence restricts the defendant's
26 ability to have contact with the victim, the condition shall be
27 recorded as a sexual assault protection order.

28 (b) The written order entered as a condition of sentencing shall
29 contain the court's directives and shall bear the legend: "Violation
30 of this order is a criminal offense under chapter 26.50 RCW and will
31 subject a violator to arrest. You can be arrested even if any person
32 protected by the order invites or allows you to violate the order's
33 prohibitions. You have the sole responsibility to avoid or refrain
34 from violating the order's provisions. Only the court can change the
35 order."

36 (c) A final sexual assault protection order entered in
37 conjunction with a criminal prosecution shall remain in effect for a
38 period of two years following the expiration of any sentence of
39 imprisonment and subsequent period of community supervision,
40 conditional release, probation, or parole.

1 (d) A certified copy of the order shall be provided to the victim
2 at no charge.

3 (7) A knowing violation of a court order issued under subsection
4 (1), (2), or (6) of this section is punishable under RCW 26.50.110.

5 (8) Whenever a sexual assault protection order is issued,
6 modified, or terminated under subsection (1), (2), or (6) of this
7 section, the clerk of the court shall forward a copy of the order on
8 or before the next judicial day to the appropriate law enforcement
9 agency specified in the order. Upon receipt of the copy of the order,
10 the law enforcement agency shall enter the order for one year or
11 until the expiration date specified on the order into any computer-
12 based criminal intelligence information system available in this
13 state used by law enforcement agencies to list outstanding warrants.
14 Entry into the computer-based criminal intelligence information
15 system constitutes notice to all law enforcement agencies of the
16 existence of the order. The order is fully enforceable in any
17 jurisdiction in the state. Upon receipt of notice that an order has
18 been terminated under subsection (2) of this section, the law
19 enforcement agency shall remove the order from the computer-based
20 criminal intelligence information system.

21 **Sec. 3.** RCW 9.94A.411 and 2019 c 46 s 5008 are each amended to
22 read as follows:

23 (1) Decision not to prosecute.

24 **STANDARD:** A prosecuting attorney may decline to prosecute, even
25 though technically sufficient evidence to prosecute exists, in
26 situations where prosecution would serve no public purpose, would
27 defeat the underlying purpose of the law in question or would result
28 in decreased respect for the law.

29 **GUIDELINE/COMMENTARY:**

30 **Examples**

31 The following are examples of reasons not to prosecute which
32 could satisfy the standard.

33 (a) **Contrary to Legislative Intent** - It may be proper to decline
34 to charge where the application of criminal sanctions would be
35 clearly contrary to the intent of the legislature in enacting the
36 particular statute.

37 (b) **Antiquated Statute** - It may be proper to decline to charge
38 where the statute in question is antiquated in that:

39 (i) It has not been enforced for many years; and

1 (ii) Most members of society act as if it were no longer in
2 existence; and

3 (iii) It serves no deterrent or protective purpose in today's
4 society; and

5 (iv) The statute has not been recently reconsidered by the
6 legislature.

7 This reason is not to be construed as the basis for declining
8 cases because the law in question is unpopular or because it is
9 difficult to enforce.

10 (c) De Minimis Violation - It may be proper to decline to charge
11 where the violation of law is only technical or insubstantial and
12 where no public interest or deterrent purpose would be served by
13 prosecution.

14 (d) Confinement on Other Charges - It may be proper to decline to
15 charge because the accused has been sentenced on another charge to a
16 lengthy period of confinement; and

17 (i) Conviction of the new offense would not merit any additional
18 direct or collateral punishment;

19 (ii) The new offense is either a misdemeanor or a felony which is
20 not particularly aggravated; and

21 (iii) Conviction of the new offense would not serve any
22 significant deterrent purpose.

23 (e) Pending Conviction on Another Charge - It may be proper to
24 decline to charge because the accused is facing a pending prosecution
25 in the same or another county; and

26 (i) Conviction of the new offense would not merit any additional
27 direct or collateral punishment;

28 (ii) Conviction in the pending prosecution is imminent;

29 (iii) The new offense is either a misdemeanor or a felony which
30 is not particularly aggravated; and

31 (iv) Conviction of the new offense would not serve any
32 significant deterrent purpose.

33 (f) High Disproportionate Cost of Prosecution - It may be proper
34 to decline to charge where the cost of locating or transporting, or
35 the burden on, prosecution witnesses is highly disproportionate to
36 the importance of prosecuting the offense in question. This reason
37 should be limited to minor cases and should not be relied upon in
38 serious cases.

39 (g) Improper Motives of Complainant - It may be proper to decline
40 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the
2 underlying purpose of the law in question or would result in
3 decreased respect for the law.

4 (h) Immunity - It may be proper to decline to charge where
5 immunity is to be given to an accused in order to prosecute another
6 where the accused's information or testimony will reasonably lead to
7 the conviction of others who are responsible for more serious
8 criminal conduct or who represent a greater danger to the public
9 interest.

10 (i) Victim Request - It may be proper to decline to charge
11 because the victim requests that no criminal charges be filed and the
12 case involves the following crimes or situations:

13 (i) Assault cases where the victim has suffered little or no
14 injury;

15 (ii) Crimes against property, not involving violence, where no
16 major loss was suffered;

17 (iii) Where doing so would not jeopardize the safety of society.

18 Care should be taken to insure that the victim's request is
19 freely made and is not the product of threats or pressure by the
20 accused.

21 The presence of these factors may also justify the decision to
22 dismiss a prosecution which has been commenced.

23 Notification

24 The prosecutor is encouraged to notify the victim, when
25 practical, and the law enforcement personnel, of the decision not to
26 prosecute.

27 (2) Decision to prosecute.

28 (a) STANDARD:

29 Crimes against persons will be filed if sufficient admissible
30 evidence exists, which, when considered with the most plausible,
31 reasonably foreseeable defense that could be raised under the
32 evidence, would justify conviction by a reasonable and objective fact
33 finder. With regard to offenses prohibited by RCW 9A.44.040,
34 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,
35 9A.44.089, and 9A.64.020 the prosecutor should avoid prefilings
36 agreements or diversions intended to place the accused in a program
37 of treatment or counseling, so that treatment, if determined to be
38 beneficial, can be provided pursuant to RCW 9.94A.670.

39 Crimes against property/other crimes will be filed if the
40 admissible evidence is of such convincing force as to make it

1 probable that a reasonable and objective fact finder would convict
2 after hearing all the admissible evidence and the most plausible
3 defense that could be raised.

4 See table below for the crimes within these categories.

5 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

6 CRIMES AGAINST PERSONS

7 Aggravated Murder (RCW 10.95.020)
8 1st Degree Murder (RCW 9A.32.030)
9 2nd Degree Murder (RCW 9A.32.050)
10 1st Degree Manslaughter (RCW 9A.32.060)
11 2nd Degree Manslaughter (RCW 9A.32.070)
12 1st Degree Kidnapping (RCW 9A.40.020)
13 2nd Degree Kidnapping (RCW 9A.40.030)
14 1st Degree Assault (RCW 9A.36.011)
15 2nd Degree Assault (RCW 9A.36.021)
16 3rd Degree Assault (RCW 9A.36.031)
17 4th Degree Assault (if a violation of RCW 9A.36.041(3))
18 1st Degree Assault of a Child (RCW 9A.36.120)
19 2nd Degree Assault of a Child (RCW 9A.36.130)
20 3rd Degree Assault of a Child (RCW 9A.36.140)
21 1st Degree Rape (RCW 9A.44.040)
22 2nd Degree Rape (RCW 9A.44.050)
23 3rd Degree Rape (RCW 9A.44.060)
24 1st Degree Rape of a Child (RCW 9A.44.073)
25 2nd Degree Rape of a Child (RCW 9A.44.076)
26 3rd Degree Rape of a Child (RCW 9A.44.079)
27 1st Degree Robbery (RCW 9A.56.200)
28 2nd Degree Robbery (RCW 9A.56.210)
29 1st Degree Arson (RCW 9A.48.020)
30 1st Degree Burglary (RCW 9A.52.020)
31 1st Degree Identity Theft (RCW 9.35.020(2))
32 2nd Degree Identity Theft (RCW 9.35.020(3))
33 1st Degree Extortion (RCW 9A.56.120)
34 2nd Degree Extortion (RCW 9A.56.130)
35 1st Degree Criminal Mistreatment (RCW 9A.42.020)
36 2nd Degree Criminal Mistreatment (RCW 9A.42.030)
37 1st Degree Theft from a Vulnerable Adult (RCW 9A.56.400(1))
38 2nd Degree Theft from a Vulnerable Adult (RCW 9A.56.400(2))
39 Indecent Liberties (RCW 9A.44.100)

1 Incest (RCW 9A.64.020)
2 Vehicular Homicide (RCW 46.61.520)
3 Vehicular Assault (RCW 46.61.522)
4 1st Degree Child Molestation (RCW 9A.44.083)
5 2nd Degree Child Molestation (RCW 9A.44.086)
6 3rd Degree Child Molestation (RCW 9A.44.089)
7 1st Degree Promoting Prostitution (RCW 9A.88.070)
8 Intimidating a Juror (RCW 9A.72.130)
9 Communication with a Minor (RCW 9.68A.090)
10 Intimidating a Witness (RCW 9A.72.110)
11 Intimidating a Public Servant (RCW 9A.76.180)
12 Bomb Threat (if against person) (RCW 9.61.160)
13 Unlawful Imprisonment (RCW 9A.40.040)
14 Promoting a Suicide Attempt (RCW 9A.36.060)
15 Criminal Mischief (if against person) (RCW 9A.84.010)
16 Stalking (RCW 9A.46.110)
17 Custodial Assault (RCW 9A.36.100)
18 Domestic Violence Court Order Violation (RCW 10.99.040,
19 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.50.110, 26.52.070, or
20 74.34.145)
21 Counterfeiting (if a violation of RCW 9.16.035(4))
22 Felony Driving a Motor Vehicle While Under the Influence of
23 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
24 Felony Physical Control of a Motor Vehicle While Under the
25 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
26 Providing Harmful Material to a Minor (section 1 of this act)
27 CRIMES AGAINST PROPERTY/OTHER CRIMES
28 2nd Degree Arson (RCW 9A.48.030)
29 1st Degree Escape (RCW 9A.76.110)
30 2nd Degree Escape (RCW 9A.76.120)
31 2nd Degree Burglary (RCW 9A.52.030)
32 1st Degree Theft (RCW 9A.56.030)
33 2nd Degree Theft (RCW 9A.56.040)
34 1st Degree Perjury (RCW 9A.72.020)
35 2nd Degree Perjury (RCW 9A.72.030)
36 1st Degree Introducing Contraband (RCW 9A.76.140)
37 2nd Degree Introducing Contraband (RCW 9A.76.150)
38 1st Degree Possession of Stolen Property (RCW 9A.56.150)
39 2nd Degree Possession of Stolen Property (RCW 9A.56.160)

1 Bribery (RCW 9A.68.010)
2 Bribing a Witness (RCW 9A.72.090)
3 Bribe received by a Witness (RCW 9A.72.100)
4 Bomb Threat (if against property) (RCW 9.61.160)
5 1st Degree Malicious Mischief (RCW 9A.48.070)
6 2nd Degree Malicious Mischief (RCW 9A.48.080)
7 1st Degree Reckless Burning (RCW 9A.48.040)
8 Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and
9 9A.56.075)
10 Forgery (RCW 9A.60.020)
11 2nd Degree Promoting Prostitution (RCW 9A.88.080)
12 Tampering with a Witness (RCW 9A.72.120)
13 Trading in Public Office (RCW 9A.68.040)
14 Trading in Special Influence (RCW 9A.68.050)
15 Receiving/Granting Unlawful Compensation (RCW 9A.68.030)
16 Bigamy (RCW 9A.64.010)
17 Eluding a Pursuing Police Vehicle (RCW 46.61.024)
18 Willful Failure to Return from Furlough
19 Escape from Community Custody
20 Criminal Mischief (if against property) (RCW 9A.84.010)
21 1st Degree Theft of Livestock (RCW 9A.56.080)
22 2nd Degree Theft of Livestock (RCW 9A.56.083)
23 ALL OTHER UNCLASSIFIED FELONIES
24 Selection of Charges/Degree of Charge
25 (i) The prosecutor should file charges which adequately describe
26 the nature of defendant's conduct. Other offenses may be charged only
27 if they are necessary to ensure that the charges:
28 (A) Will significantly enhance the strength of the state's case
29 at trial; or
30 (B) Will result in restitution to all victims.
31 (ii) The prosecutor should not overcharge to obtain a guilty
32 plea. Overcharging includes:
33 (A) Charging a higher degree;
34 (B) Charging additional counts.
35 This standard is intended to direct prosecutors to charge those
36 crimes which demonstrate the nature and seriousness of a defendant's
37 criminal conduct, but to decline to charge crimes which are not
38 necessary to such an indication. Crimes which do not merge as a

1 matter of law, but which arise from the same course of conduct, do
2 not all have to be charged.

3 (b) GUIDELINES/COMMENTARY:

4 (i) Police Investigation

5 A prosecuting attorney is dependent upon law enforcement agencies
6 to conduct the necessary factual investigation which must precede the
7 decision to prosecute. The prosecuting attorney shall ensure that a
8 thorough factual investigation has been conducted before a decision
9 to prosecute is made. In ordinary circumstances the investigation
10 should include the following:

11 (A) The interviewing of all material witnesses, together with the
12 obtaining of written statements whenever possible;

13 (B) The completion of necessary laboratory tests; and

14 (C) The obtaining, in accordance with constitutional
15 requirements, of the suspect's version of the events.

16 If the initial investigation is incomplete, a prosecuting
17 attorney should insist upon further investigation before a decision
18 to prosecute is made, and specify what the investigation needs to
19 include.

20 (ii) Exceptions

21 In certain situations, a prosecuting attorney may authorize
22 filing of a criminal complaint before the investigation is complete
23 if:

24 (A) Probable cause exists to believe the suspect is guilty; and

25 (B) The suspect presents a danger to the community or is likely
26 to flee if not apprehended; or

27 (C) The arrest of the suspect is necessary to complete the
28 investigation of the crime.

29 In the event that the exception to the standard is applied, the
30 prosecuting attorney shall obtain a commitment from the law
31 enforcement agency involved to complete the investigation in a timely
32 manner. If the subsequent investigation does not produce sufficient
33 evidence to meet the normal charging standard, the complaint should
34 be dismissed.

35 (iii) Investigation Techniques

36 The prosecutor should be fully advised of the investigatory
37 techniques that were used in the case investigation including:

38 (A) Polygraph testing;

39 (B) Hypnosis;

1 (C) Electronic surveillance;

2 (D) Use of informants.

3 (iv) Prefiling Discussions with Defendant

4 Discussions with the defendant or his/her representative
5 regarding the selection or disposition of charges may occur prior to
6 the filing of charges, and potential agreements can be reached.

7 (v) Prefiling Discussions with Victim(s)

8 Discussions with the victim(s) or victims' representatives
9 regarding the selection or disposition of charges may occur before
10 the filing of charges. The discussions may be considered by the
11 prosecutor in charging and disposition decisions, and should be
12 considered before reaching any agreement with the defendant regarding
13 these decisions.

14 **Sec. 4.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to
15 read as follows:

16 (1) The department shall supervise the following offenders who
17 are sentenced to probation in superior court, pursuant to RCW
18 9.92.060, 9.95.204, or 9.95.210:

19 (a) Offenders convicted of:

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

21 (ii) Custodial sexual misconduct second degree;

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

23 (iv) Providing harmful material to a minor; and

24 (v) Violation of RCW 9A.44.132(2) (failure to register); and

25 (b) Offenders who have:

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

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

32 (2) Misdemeanor and gross misdemeanor offenders supervised by the
33 department pursuant to this section shall be placed on community
34 custody.

35 (3) The department shall supervise every felony offender
36 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
37 whose risk assessment classifies the offender as one who is at a high
38 risk to reoffend.

1 (4) Notwithstanding any other provision of this section, the
2 department shall supervise an offender sentenced to community custody
3 regardless of risk classification if the offender:

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

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

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

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

14 (e)(i) Has a current conviction for a domestic violence felony
15 offense where domestic violence has been pleaded and proven after
16 August 1, 2011, and a prior conviction for a repetitive domestic
17 violence offense or domestic violence felony offense where domestic
18 violence was pleaded and proven after August 1, 2011. This subsection
19 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

20 (ii) Has a current conviction for a domestic violence felony
21 offense where domestic violence was pleaded and proven. The state and
22 its officers, agents, and employees shall not be held criminally or
23 civilly liable for its supervision of an offender under this
24 subsection (4)(e)(ii) unless the state and its officers, agents, and
25 employees acted with gross negligence;

26 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
27 9.94A.670, or 9.94A.711;

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

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

32 (5) The department shall supervise any offender who is released
33 by the indeterminate sentence review board and who was sentenced to
34 community custody or subject to community custody under the terms of
35 release.

36 (6) The department is not authorized to, and may not, supervise
37 any offender sentenced to a term of community custody or any
38 probationer unless the offender or probationer is one for whom
39 supervision is required under this section or RCW 9.94A.5011.

1 (7) The department shall conduct a risk assessment for every
2 felony offender sentenced to a term of community custody who may be
3 subject to supervision under this section or RCW 9.94A.5011.

4 (8) The period of time the department is authorized to supervise
5 an offender under this section may not exceed the duration of
6 community custody specified under RCW 9.94B.050, 9.94A.701 (1)
7 through (8), or 9.94A.702, except in cases where the court has
8 imposed an exceptional term of community custody under RCW 9.94A.535.

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

12 **Sec. 5.** RCW 9.94A.515 and 2020 c 344 s 4 are each amended to
13 read as follows:

14 TABLE 2

15 CRIMES INCLUDED WITHIN EACH
16 SERIOUSNESS LEVEL

- 17 XVI Aggravated Murder 1 (RCW 10.95.020)
- 18 XV Homicide by abuse (RCW 9A.32.055)
- 19 Malicious explosion 1 (RCW
20 70.74.280(1))
- 21 Murder 1 (RCW 9A.32.030)
- 22 XIV Murder 2 (RCW 9A.32.050)
- 23 Trafficking 1 (RCW 9A.40.100(1))
- 24 XIII Malicious explosion 2 (RCW
25 70.74.280(2))
- 26 Malicious placement of an explosive 1
27 (RCW 70.74.270(1))
- 28 XII Assault 1 (RCW 9A.36.011)
- 29 Assault of a Child 1 (RCW 9A.36.120)
- 30 Malicious placement of an imitation
31 device 1 (RCW 70.74.272(1)(a))
- 32 Promoting Commercial Sexual Abuse of
33 a Minor (RCW 9.68A.101)
- 34 Rape 1 (RCW 9A.44.040)
- 35 Rape of a Child 1 (RCW 9A.44.073)

1 Trafficking 2 (RCW 9A.40.100(3))
2 XI Manslaughter 1 (RCW 9A.32.060)
3 Rape 2 (RCW 9A.44.050)
4 Rape of a Child 2 (RCW 9A.44.076)
5 Vehicular Homicide, by being under the
6 influence of intoxicating liquor or
7 any drug (RCW 46.61.520)
8 Vehicular Homicide, by the operation of
9 any vehicle in a reckless manner
10 (RCW 46.61.520)
11 X Child Molestation 1 (RCW 9A.44.083)
12 Criminal Mistreatment 1 (RCW
13 9A.42.020)
14 Indecent Liberties (with forcible
15 compulsion) (RCW
16 9A.44.100(1)(a))
17 Kidnapping 1 (RCW 9A.40.020)
18 Leading Organized Crime (RCW
19 9A.82.060(1)(a))
20 Malicious explosion 3 (RCW
21 70.74.280(3))
22 Sexually Violent Predator Escape (RCW
23 9A.76.115)
24 IX Abandonment of Dependent Person 1
25 (RCW 9A.42.060)
26 Assault of a Child 2 (RCW 9A.36.130)
27 Explosive devices prohibited (RCW
28 70.74.180)
29 Hit and Run—Death (RCW
30 46.52.020(4)(a))
31 Homicide by Watercraft, by being under
32 the influence of intoxicating liquor
33 or any drug (RCW 79A.60.050)
34 Inciting Criminal Profiteering (RCW
35 9A.82.060(1)(b))

1 Malicious placement of an explosive 2
2 (RCW 70.74.270(2))
3 Robbery 1 (RCW 9A.56.200)
4 Sexual Exploitation (RCW 9.68A.040)
5 VIII Arson 1 (RCW 9A.48.020)
6 Commercial Sexual Abuse of a Minor
7 (RCW 9.68A.100)
8 Homicide by Watercraft, by the
9 operation of any vessel in a reckless
10 manner (RCW 79A.60.050)
11 Manslaughter 2 (RCW 9A.32.070)
12 Promoting Prostitution 1 (RCW
13 9A.88.070)
14 Theft of Ammonia (RCW 69.55.010)
15 VII Air bag diagnostic systems (causing
16 bodily injury or death) (RCW
17 46.37.660(2)(b))
18 Air bag replacement requirements
19 (causing bodily injury or death)
20 (RCW 46.37.660(1)(b))
21 Burglary 1 (RCW 9A.52.020)
22 Child Molestation 2 (RCW 9A.44.086)
23 Civil Disorder Training (RCW
24 9A.48.120)
25 Dealing in depictions of minor engaged
26 in sexually explicit conduct 1
27 (RCW 9.68A.050(1))
28 Drive-by Shooting (RCW 9A.36.045)
29 False Reporting 1 (RCW
30 9A.84.040(2)(a))
31 Homicide by Watercraft, by disregard
32 for the safety of others (RCW
33 79A.60.050)

1 Indecent Liberties (without forcible
2 compulsion) (RCW 9A.44.100(1)
3 (b) and (c))
4 Introducing Contraband 1 (RCW
5 9A.76.140)
6 Malicious placement of an explosive 3
7 (RCW 70.74.270(3))
8 Manufacture or import counterfeit,
9 nonfunctional, damaged, or
10 previously deployed air bag
11 (causing bodily injury or death)
12 (RCW 46.37.650(1)(b))
13 Negligently Causing Death By Use of a
14 Signal Preemption Device (RCW
15 46.37.675)
16 Sell, install, or reinstall counterfeit,
17 nonfunctional, damaged, or
18 previously deployed airbag (RCW
19 46.37.650(2)(b))
20 Sending, bringing into state depictions
21 of minor engaged in sexually
22 explicit conduct 1 (RCW
23 9.68A.060(1))
24 Unlawful Possession of a Firearm in the
25 first degree (RCW 9.41.040(1))
26 Use of a Machine Gun or Bump-fire
27 Stock in Commission of a Felony
28 (RCW 9.41.225)
29 Vehicular Homicide, by disregard for
30 the safety of others (RCW
31 46.61.520)
32 VI Bail Jumping with Murder 1 (RCW
33 9A.76.170(3)(a))
34 Bribery (RCW 9A.68.010)
35 Incest 1 (RCW 9A.64.020(1))
36 Intimidating a Judge (RCW 9A.72.160)

1 Intimidating a Juror/Witness (RCW
2 9A.72.110, 9A.72.130)
3 Malicious placement of an imitation
4 device 2 (RCW 70.74.272(1)(b))
5 Possession of Depictions of a Minor
6 Engaged in Sexually Explicit
7 Conduct 1 (RCW 9.68A.070(1))
8 Rape of a Child 3 (RCW 9A.44.079)
9 Theft of a Firearm (RCW 9A.56.300)
10 Theft from a Vulnerable Adult 1 (RCW
11 9A.56.400(1))
12 Unlawful Storage of Ammonia (RCW
13 69.55.020)
14 V Abandonment of Dependent Person 2
15 (RCW 9A.42.070)
16 Advancing money or property for
17 extortionate extension of credit
18 (RCW 9A.82.030)
19 Air bag diagnostic systems (RCW
20 46.37.660(2)(c))
21 Air bag replacement requirements
22 (RCW 46.37.660(1)(c))
23 Bail Jumping with class A Felony
24 (RCW 9A.76.170(3)(b))
25 Child Molestation 3 (RCW 9A.44.089)
26 Criminal Mistreatment 2 (RCW
27 9A.42.030)
28 Custodial Sexual Misconduct 1 (RCW
29 9A.44.160)
30 Dealing in Depictions of Minor
31 Engaged in Sexually Explicit
32 Conduct 2 (RCW 9.68A.050(2))

1 Domestic Violence Court Order
2 Violation (RCW 10.99.040,
3 10.99.050, 26.09.300, 26.10.220,
4 26.26B.050, 26.50.110, 26.52.070,
5 or 74.34.145)
6 Extortion 1 (RCW 9A.56.120)
7 Extortionate Extension of Credit (RCW
8 9A.82.020)
9 Extortionate Means to Collect
10 Extensions of Credit (RCW
11 9A.82.040)
12 Incest 2 (RCW 9A.64.020(2))
13 Kidnapping 2 (RCW 9A.40.030)
14 Manufacture or import counterfeit,
15 nonfunctional, damaged, or
16 previously deployed air bag (RCW
17 46.37.650(1)(c))
18 Perjury 1 (RCW 9A.72.020)
19 Persistent prison misbehavior (RCW
20 9.94.070)
21 Possession of a Stolen Firearm (RCW
22 9A.56.310)
23 Rape 3 (RCW 9A.44.060)
24 Rendering Criminal Assistance 1 (RCW
25 9A.76.070)
26 Sell, install, or reinstall counterfeit,
27 nonfunctional, damaged, or
28 previously deployed airbag (RCW
29 46.37.650(2)(c))
30 Sending, Bringing into State Depictions
31 of Minor Engaged in Sexually
32 Explicit Conduct 2 (RCW
33 9.68A.060(2))
34 Sexual Misconduct with a Minor 1
35 (RCW 9A.44.093)

1 Sexually Violating Human Remains
2 (RCW 9A.44.105)
3 Stalking (RCW 9A.46.110)
4 Taking Motor Vehicle Without
5 Permission 1 (RCW 9A.56.070)
6 IV Arson 2 (RCW 9A.48.030)
7 Assault 2 (RCW 9A.36.021)
8 Assault 3 (of a Peace Officer with a
9 Projectile Stun Gun) (RCW
10 9A.36.031(1)(h))
11 Assault 4 (third domestic violence
12 offense) (RCW 9A.36.041(3))
13 Assault by Watercraft (RCW
14 79A.60.060)
15 Bribing a Witness/Bribe Received by
16 Witness (RCW 9A.72.090,
17 9A.72.100)
18 Cheating 1 (RCW 9A.46.1961)
19 Commercial Bribery (RCW 9A.68.060)
20 Counterfeiting (RCW 9.16.035(4))
21 Driving While Under the Influence
22 (RCW 46.61.502(6))
23 Endangerment with a Controlled
24 Substance (RCW 9A.42.100)
25 Escape 1 (RCW 9A.76.110)
26 Hate Crime (RCW 9A.36.080)
27 Hit and Run—Injury (RCW
28 46.52.020(4)(b))
29 Hit and Run with Vessel—Injury
30 Accident (RCW 79A.60.200(3))
31 Identity Theft 1 (RCW 9.35.020(2))
32 Indecent Exposure to Person Under Age
33 Fourteen (subsequent sex offense)
34 (RCW 9A.88.010)

1 Influencing Outcome of Sporting Event
2 (RCW 9A.82.070)
3 Physical Control of a Vehicle While
4 Under the Influence (RCW
5 46.61.504(6))
6 Possession of Depictions of a Minor
7 Engaged in Sexually Explicit
8 Conduct 2 (RCW 9.68A.070(2))
9 Residential Burglary (RCW 9A.52.025)
10 Robbery 2 (RCW 9A.56.210)
11 Theft of Livestock 1 (RCW 9A.56.080)
12 Threats to Bomb (RCW 9.61.160)
13 Trafficking in Stolen Property 1 (RCW
14 9A.82.050)
15 Unlawful factoring of a credit card or
16 payment card transaction (RCW
17 9A.56.290(4)(b))
18 Unlawful transaction of health coverage
19 as a health care service contractor
20 (RCW 48.44.016(3))
21 Unlawful transaction of health coverage
22 as a health maintenance
23 organization (RCW 48.46.033(3))
24 Unlawful transaction of insurance
25 business (RCW 48.15.023(3))
26 Unlicensed practice as an insurance
27 professional (RCW 48.17.063(2))
28 Use of Proceeds of Criminal
29 Profiteering (RCW 9A.82.080 (1)
30 and (2))
31 Vehicle Prowling 2 (third or subsequent
32 offense) (RCW 9A.52.100(3))

1 Vehicular Assault, by being under the
2 influence of intoxicating liquor or
3 any drug, or by the operation or
4 driving of a vehicle in a reckless
5 manner (RCW 46.61.522)

6 Viewing of Depictions of a Minor
7 Engaged in Sexually Explicit
8 Conduct 1 (RCW 9.68A.075(1))

9 Willful Failure to Return from Furlough
10 (RCW 72.66.060)

11 III Animal Cruelty 1 (Sexual Conduct or
12 Contact) (RCW 16.52.205(3))

13 Assault 3 (Except Assault 3 of a Peace
14 Officer With a Projectile Stun Gun)
15 (RCW 9A.36.031 except subsection
16 (1)(h))

17 Assault of a Child 3 (RCW 9A.36.140)

18 Bail Jumping with class B or C Felony
19 (RCW 9A.76.170(3)(c))

20 Burglary 2 (RCW 9A.52.030)

21 Communication with a Minor for
22 Immoral Purposes (RCW
23 9.68A.090)

24 Criminal Gang Intimidation (RCW
25 9A.46.120)

26 Custodial Assault (RCW 9A.36.100)

27 Cyberstalking (subsequent conviction or
28 threat of death) (RCW 9.61.260(3))

29 Escape 2 (RCW 9A.76.120)

30 Extortion 2 (RCW 9A.56.130)

31 False Reporting 2 (RCW
32 9A.84.040(2)(b))

33 Harassment (RCW 9A.46.020)

34 Intimidating a Public Servant (RCW
35 9A.76.180)

1 Introducing Contraband 2 (RCW
2 9A.76.150)
3 Malicious Injury to Railroad Property
4 (RCW 81.60.070)
5 Manufacture of Untraceable Firearm
6 with Intent to Sell (RCW 9.41.190)
7 Manufacture or Assembly of an
8 Undetectable Firearm or
9 Untraceable Firearm (RCW
10 9.41.325)
11 Mortgage Fraud (RCW 19.144.080)
12 Negligently Causing Substantial Bodily
13 Harm By Use of a Signal
14 Preemption Device (RCW
15 46.37.674)
16 Organized Retail Theft 1 (RCW
17 9A.56.350(2))
18 Perjury 2 (RCW 9A.72.030)
19 Possession of Incendiary Device (RCW
20 9.40.120)
21 Possession of Machine Gun, Bump-Fire
22 Stock, Undetectable Firearm, or
23 Short-Barreled Shotgun or Rifle
24 (RCW 9.41.190)
25 Promoting Prostitution 2 (RCW
26 9A.88.080)
27 Providing Harmful Material to a Minor
28 (section 1(2)(b) of this act)
29 Retail Theft with Special Circumstances
30 1 (RCW 9A.56.360(2))
31 Securities Act violation (RCW
32 21.20.400)
33 Tampering with a Witness (RCW
34 9A.72.120)

1 Telephone Harassment (subsequent
2 conviction or threat of death) (RCW
3 9.61.230(2))
4 Theft of Livestock 2 (RCW 9A.56.083)
5 Theft with the Intent to Resell 1 (RCW
6 9A.56.340(2))
7 Trafficking in Stolen Property 2 (RCW
8 9A.82.055)
9 Unlawful Hunting of Big Game 1 (RCW
10 77.15.410(3)(b))
11 Unlawful Imprisonment (RCW
12 9A.40.040)
13 Unlawful Misbranding of Fish or
14 Shellfish 1 (RCW 77.140.060(3))
15 Unlawful possession of firearm in the
16 second degree (RCW 9.41.040(2))
17 Unlawful Taking of Endangered Fish or
18 Wildlife 1 (RCW 77.15.120(3)(b))
19 Unlawful Trafficking in Fish, Shellfish,
20 or Wildlife 1 (RCW
21 77.15.260(3)(b))
22 Unlawful Use of a Nondesignated
23 Vessel (RCW 77.15.530(4))
24 Vehicular Assault, by the operation or
25 driving of a vehicle with disregard
26 for the safety of others (RCW
27 46.61.522)
28 Willful Failure to Return from Work
29 Release (RCW 72.65.070)
30 II Commercial Fishing Without a License
31 1 (RCW 77.15.500(3)(b))
32 Computer Trespass 1 (RCW 9A.90.040)
33 Counterfeiting (RCW 9.16.035(3))
34 Electronic Data Service Interference
35 (RCW 9A.90.060)

1 Electronic Data Tampering 1 (RCW
2 9A.90.080)
3 Electronic Data Theft (RCW 9A.90.100)
4 Engaging in Fish Dealing Activity
5 Unlicensed 1 (RCW 77.15.620(3))
6 Escape from Community Custody
7 (RCW 72.09.310)
8 Failure to Register as a Sex Offender
9 (second or subsequent offense)
10 (RCW 9A.44.130 prior to June 10,
11 2010, and RCW 9A.44.132)
12 Health Care False Claims (RCW
13 48.80.030)
14 Identity Theft 2 (RCW 9.35.020(3))
15 Improperly Obtaining Financial
16 Information (RCW 9.35.010)
17 Malicious Mischief 1 (RCW 9A.48.070)
18 Organized Retail Theft 2 (RCW
19 9A.56.350(3))
20 Possession of Stolen Property 1 (RCW
21 9A.56.150)
22 Possession of a Stolen Vehicle (RCW
23 9A.56.068)
24 Retail Theft with Special Circumstances
25 2 (RCW 9A.56.360(3))
26 Scrap Processing, Recycling, or
27 Supplying Without a License
28 (second or subsequent offense)
29 (RCW 19.290.100)
30 Theft 1 (RCW 9A.56.030)
31 Theft of a Motor Vehicle (RCW
32 9A.56.065)
33 Theft of Rental, Leased, Lease-
34 purchased, or Loaned Property
35 (valued at five thousand dollars or
36 more) (RCW 9A.56.096(5)(a))

1 Theft with the Intent to Resell 2 (RCW
2 9A.56.340(3))
3 Trafficking in Insurance Claims (RCW
4 48.30A.015)
5 Unlawful factoring of a credit card or
6 payment card transaction (RCW
7 9A.56.290(4)(a))
8 Unlawful Participation of Non-Indians
9 in Indian Fishery (RCW
10 77.15.570(2))
11 Unlawful Practice of Law (RCW
12 2.48.180)
13 Unlawful Purchase or Use of a License
14 (RCW 77.15.650(3)(b))
15 Unlawful Trafficking in Fish, Shellfish,
16 or Wildlife 2 (RCW
17 77.15.260(3)(a))
18 Unlicensed Practice of a Profession or
19 Business (RCW 18.130.190(7))
20 Voyeurism 1 (RCW 9A.44.115)
21 I Attempting to Elude a Pursuing Police
22 Vehicle (RCW 46.61.024)
23 False Verification for Welfare (RCW
24 74.08.055)
25 Forgery (RCW 9A.60.020)
26 Fraudulent Creation or Revocation of a
27 Mental Health Advance Directive
28 (RCW 9A.60.060)
29 Malicious Mischief 2 (RCW 9A.48.080)
30 Mineral Trespass (RCW 78.44.330)
31 Possession of Stolen Property 2 (RCW
32 9A.56.160)
33 Reckless Burning 1 (RCW 9A.48.040)
34 Spotlighting Big Game 1 (RCW
35 77.15.450(3)(b))

1 Suspension of Department Privileges 1
2 (RCW 77.15.670(3)(b))
3 Taking Motor Vehicle Without
4 Permission 2 (RCW 9A.56.075)
5 Theft 2 (RCW 9A.56.040)
6 Theft from a Vulnerable Adult 2 (RCW
7 9A.56.400(2))
8 Theft of Rental, Leased, Lease-
9 purchased, or Loaned Property
10 (valued at seven hundred fifty
11 dollars or more but less than five
12 thousand dollars) (RCW
13 9A.56.096(5)(b))
14 Transaction of insurance business
15 beyond the scope of licensure
16 (RCW 48.17.063)
17 Unlawful Fish and Shellfish Catch
18 Accounting (RCW 77.15.630(3)(b))
19 Unlawful Issuance of Checks or Drafts
20 (RCW 9A.56.060)
21 Unlawful Possession of Fictitious
22 Identification (RCW 9A.56.320)
23 Unlawful Possession of Instruments of
24 Financial Fraud (RCW 9A.56.320)
25 Unlawful Possession of Payment
26 Instruments (RCW 9A.56.320)
27 Unlawful Possession of a Personal
28 Identification Device (RCW
29 9A.56.320)
30 Unlawful Production of Payment
31 Instruments (RCW 9A.56.320)
32 Unlawful Releasing, Planting,
33 Possessing, or Placing Deleterious
34 Exotic Wildlife (RCW
35 77.15.250(2)(b))

1 Unlawful Trafficking in Food Stamps
2 (RCW 9.91.142)
3 Unlawful Use of Food Stamps (RCW
4 9.91.144)
5 Unlawful Use of Net to Take Fish 1
6 (RCW 77.15.580(3)(b))
7 Unlawful Use of Prohibited Aquatic
8 Animal Species (RCW
9 77.15.253(3))
10 Vehicle Prowl 1 (RCW 9A.52.095)
11 Violating Commercial Fishing Area or
12 Time 1 (RCW 77.15.550(3)(b))

13 **Sec. 6.** RCW 9.95.062 and 2011 c 111 s 3 are each amended to read
14 as follows:

15 (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant
16 in a criminal action shall not stay the execution of the judgment of
17 conviction, if the court determines by a preponderance of the
18 evidence that:

19 (a) The defendant is likely to flee or to pose a danger to the
20 safety of any other person or the community if the judgment is
21 stayed; or

22 (b) The delay resulting from the stay will unduly diminish the
23 deterrent effect of the punishment; or

24 (c) A stay of the judgment will cause unreasonable trauma to the
25 victims of the crime or their families; or

26 (d) The defendant has not undertaken to the extent of the
27 defendant's financial ability to pay the financial obligations under
28 the judgment or has not posted an adequate performance bond to assure
29 payment.

30 (2) An appeal by a defendant convicted of one of the following
31 offenses shall not stay execution of the judgment of conviction: Rape
32 in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of
33 a child in the first, second, or third degree (RCW 9A.44.073,
34 9A.44.076, and 9A.44.079); child molestation in the first, second, or
35 third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual
36 misconduct with a minor in the first or second degree (RCW 9A.44.093
37 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW

1 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or
2 second degree (RCW 9A.40.100); promoting commercial sexual abuse of a
3 minor (RCW 9.68A.101); any class A or B felony that is a sexually
4 motivated offense as defined in RCW 9.94A.030; a felony violation of
5 RCW 9.68A.090; a felony violation of section 1 of this act; or any
6 offense that is, under chapter 9A.28 RCW, a criminal attempt,
7 solicitation, or conspiracy to commit one of those offenses.

8 (3) In case the defendant has been convicted of a felony, and has
9 been unable to obtain release pending the appeal by posting an appeal
10 bond, cash, adequate security, release on personal recognizance, or
11 any other conditions imposed by the court, the time the defendant has
12 been imprisoned pending the appeal shall be deducted from the term
13 for which the defendant was sentenced, if the judgment is affirmed.

14 **Sec. 7.** RCW 9A.44.128 and 2015 c 261 s 2 are each amended to
15 read as follows:

16 For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200,
17 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

18 (1) "Business day" means any day other than Saturday, Sunday, or
19 a legal local, state, or federal holiday.

20 (2) "Conviction" means any adult conviction or juvenile
21 adjudication for a sex offense or kidnapping offense.

22 (3) "Disqualifying offense" means a conviction for: Any offense
23 that is a felony; a sex offense as defined in this section; a crime
24 against children or persons as defined in RCW 43.43.830(7) and
25 9.94A.411(2)(a); an offense with a domestic violence designation as
26 provided in RCW 10.99.020; permitting the commercial sexual abuse of
27 a minor as defined in RCW 9.68A.103; or any violation of chapter
28 9A.88 RCW.

29 (4) "Employed" or "carries on a vocation" means employment that
30 is full time or part time for a period of time exceeding fourteen
31 days, or for an aggregate period of time exceeding thirty days during
32 any calendar year. A person is employed or carries on a vocation
33 whether the person's employment is financially compensated,
34 volunteered, or for the purpose of government or educational benefit.

35 (5) "Fixed residence" means a building that a person lawfully and
36 habitually uses as living quarters a majority of the week. Uses as
37 living quarters means to conduct activities consistent with the
38 common understanding of residing, such as sleeping; eating; keeping
39 personal belongings; receiving mail; and paying utilities, rent, or

1 mortgage. A nonpermanent structure including, but not limited to, a
2 motor home, travel trailer, camper, or boat may qualify as a
3 residence provided it is lawfully and habitually used as living
4 quarters a majority of the week, primarily kept at one location with
5 a physical address, and the location it is kept at is either owned or
6 rented by the person or used by the person with the permission of the
7 owner or renter. A shelter program may qualify as a residence
8 provided it is a shelter program designed to provide temporary living
9 accommodations for the homeless, provides an offender with a
10 personally assigned living space, and the offender is permitted to
11 store belongings in the living space.

12 (6) "In the community" means residing outside of confinement or
13 incarceration for a disqualifying offense.

14 (7) "Institution of higher education" means any public or private
15 institution dedicated to postsecondary education, including any
16 college, university, community college, trade, or professional
17 school.

18 (8) "Kidnapping offense" means:

19 (a) The crimes of kidnapping in the first degree, kidnapping in
20 the second degree, and unlawful imprisonment, as defined in chapter
21 9A.40 RCW, where the victim is a minor and the offender is not the
22 minor's parent;

23 (b) Any offense that is, under chapter 9A.28 RCW, a criminal
24 attempt, criminal solicitation, or criminal conspiracy to commit an
25 offense that is classified as a kidnapping offense under this
26 subsection;

27 (c) Any federal or out-of-state conviction for: An offense for
28 which the person would be required to register as a kidnapping
29 offender if residing in the state of conviction; or, if not required
30 to register in the state of conviction, an offense that under the
31 laws of this state would be classified as a kidnapping offense under
32 this subsection; and

33 (d) Any tribal conviction for an offense for which the person
34 would be required to register as a kidnapping offender while residing
35 in the reservation of conviction; or, if not required to register in
36 the reservation of conviction, an offense that under the laws of this
37 state would be classified as a kidnapping offense under this
38 subsection.

39 (9) "Lacks a fixed residence" means the person does not have a
40 living situation that meets the definition of a fixed residence and

1 includes, but is not limited to, a shelter program designed to
2 provide temporary living accommodations for the homeless, an outdoor
3 sleeping location, or locations where the person does not have
4 permission to stay.

5 (10) "Sex offense" means:

6 (a) Any offense defined as a sex offense by RCW 9.94A.030;

7 (b) Any violation under RCW 9A.44.096 (sexual misconduct with a
8 minor in the second degree);

9 (c) Any violation under RCW 9A.40.100(1)(b)(ii) (trafficking);

10 (d) Any violation under RCW 9.68A.090 (communication with a minor
11 for immoral purposes);

12 (e) A violation under RCW 9A.88.070 (promoting prostitution in
13 the first degree) or RCW 9A.88.080 (promoting prostitution in the
14 second degree) if the person has a prior conviction for one of these
15 offenses;

16 (f) Any violation under RCW 9A.40.100(1)(a)(i)(A) (III) or (IV)
17 or (a)(i)(B);

18 (g) Any violation under section 1 of this act;

19 (h) Any gross misdemeanor that is, under chapter 9A.28 RCW, a
20 criminal attempt, criminal solicitation, or criminal conspiracy to
21 commit an offense that is classified as a sex offense under RCW
22 9.94A.030 or this subsection;

23 ~~((h))~~ (i) Any out-of-state conviction for an offense for which
24 the person would be required to register as a sex offender while
25 residing in the state of conviction; or, if not required to register
26 in the state of conviction, an offense that under the laws of this
27 state would be classified as a sex offense under this subsection;

28 ~~((i))~~ (j) Any federal conviction classified as a sex offense
29 under 42 U.S.C. Sec. 16911 (SORNA);

30 ~~((j))~~ (k) Any military conviction for a sex offense. This
31 includes sex offenses under the uniform code of military justice, as
32 specified by the United States secretary of defense;

33 ~~((k))~~ (l) Any conviction in a foreign country for a sex offense
34 if it was obtained with sufficient safeguards for fundamental
35 fairness and due process for the accused under guidelines or
36 regulations established pursuant to 42 U.S.C. Sec. 16912;

37 ~~((l))~~ (m) Any tribal conviction for an offense for which the
38 person would be required to register as a sex offender while residing
39 in the reservation of conviction; or, if not required to register in

1 the reservation of conviction, an offense that under the laws of this
2 state would be classified as a sex offense under this subsection.

3 (11) "School" means a public or private school regulated under
4 Title 28A RCW or chapter 72.40 RCW.

5 (12) "Student" means a person who is enrolled, on a full-time or
6 part-time basis, in any school or institution of higher education.

7 **Sec. 8.** RCW 9A.44.140 and 2020 c 249 s 2 are each amended to
8 read as follows:

9 The duty to register under RCW 9A.44.130 shall continue for the
10 duration provided in this section.

11 (1) For a person convicted in this state of a class A felony, or
12 a person convicted of any sex offense or kidnapping offense who has
13 one or more prior convictions for a sex offense or kidnapping
14 offense, the duty to register shall continue indefinitely.

15 (2) For a person convicted in this state of a class B felony who
16 does not have one or more prior convictions for a sex offense or
17 kidnapping offense, the duty to register shall end fifteen years
18 after the last date of release from confinement, if any, (including
19 full-time residential treatment) pursuant to the conviction, or entry
20 of the judgment and sentence, if the person has spent fifteen
21 consecutive years in the community without being convicted of a
22 disqualifying offense during that time period.

23 (3) For a person convicted in this state of a class C felony, a
24 violation of RCW 9.68A.090 (~~(or)~~), 9A.44.096, or section 1 of this
25 act, or an attempt, solicitation, or conspiracy to commit a class C
26 felony, and the person does not have one or more prior convictions
27 for a sex offense or kidnapping offense, the duty to register shall
28 end ten years after the last date of release from confinement, if
29 any, (including full-time residential treatment) pursuant to the
30 conviction, or entry of the judgment and sentence, if the person has
31 spent ten consecutive years in the community without being convicted
32 of a disqualifying offense during that time period.

33 (4) Except as provided in RCW 9A.44.142, for a person required to
34 register for a federal, tribal, or out-of-state conviction, the duty
35 to register shall continue indefinitely.

36 (5) For a person who is or has been determined to be a sexually
37 violent predator pursuant to chapter 71.09 RCW, the duty to register
38 shall continue for the person's lifetime.

1 (6) Nothing in this section prevents a person from being relieved
2 of the duty to register under RCW 9A.44.142, 9A.44.143, and
3 13.40.162.

4 (7) Nothing in RCW 9.94A.637 relating to discharge of an offender
5 shall be construed as operating to relieve the offender of his or her
6 duty to register pursuant to RCW 9A.44.130.

7 (8) For purposes of determining whether a person has been
8 convicted of more than one sex offense, failure to register as a sex
9 offender or kidnapping offender is not a sex or kidnapping offense.

10 (9) The provisions of this section and RCW 9A.44.141 through
11 9A.44.143 apply equally to a person who has been found not guilty by
12 reason of insanity under chapter 10.77 RCW of a sex offense or
13 kidnapping offense.

14 **Sec. 9.** RCW 10.64.025 and 2011 c 111 s 4 are each amended to
15 read as follows:

16 (1) A defendant who has been found guilty of a felony and is
17 awaiting sentencing shall be detained unless the court finds by clear
18 and convincing evidence that the defendant is not likely to flee or
19 to pose a danger to the safety of any other person or the community
20 if released. Any bail bond that was posted on behalf of a defendant
21 shall, upon the defendant's conviction, be exonerated.

22 (2) A defendant who has been found guilty of one of the following
23 offenses shall be detained pending sentencing: Rape in the first or
24 second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the
25 first, second, or third degree (RCW 9A.44.073, 9A.44.076, and
26 9A.44.079); child molestation in the first, second, or third degree
27 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a
28 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);
29 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring
30 (RCW 9A.40.090); human trafficking in the first or second degree (RCW
31 9A.40.100); promoting commercial sexual abuse of a minor (RCW
32 9.68A.101); any class A or B felony that is a sexually motivated
33 offense as defined in RCW 9.94A.030; a felony violation of RCW
34 9.68A.090; a felony violation of section 1 of this act; or any
35 offense that is, under chapter 9A.28 RCW, a criminal attempt,
36 solicitation, or conspiracy to commit one of those offenses.

37 **Sec. 10.** RCW 43.43.754 and 2020 c 26 s 7 are each amended to
38 read as follows:

1 (1) A biological sample must be collected for purposes of DNA
2 identification analysis from:

3 (a) Every adult or juvenile individual convicted of a felony, or
4 any of the following crimes (or equivalent juvenile offenses):

5 (i) Assault in the fourth degree where domestic violence as
6 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
7 9.94A.030);

8 (ii) Assault in the fourth degree with sexual motivation (RCW
9 9A.36.041, 9.94A.835);

10 (iii) Communication with a minor for immoral purposes (RCW
11 9.68A.090);

12 (iv) Custodial sexual misconduct in the second degree (RCW
13 9A.44.170);

14 (v) Failure to register (chapter 9A.44 RCW);

15 (vi) Harassment (RCW 9A.46.020);

16 (vii) Patronizing a prostitute (RCW 9A.88.110);

17 (viii) Sexual misconduct with a minor in the second degree (RCW
18 9A.44.096);

19 (ix) Stalking (RCW 9A.46.110);

20 (x) Indecent exposure (RCW 9A.88.010);

21 (xi) Providing harmful material to a minor (section 1 of this
22 act);

23 (xii) Violation of a sexual assault protection order granted
24 under chapter 7.90 RCW; and

25 (b) Every adult or juvenile individual who is required to
26 register under RCW 9A.44.130.

27 (2)(a) A municipal jurisdiction may also submit any biological
28 sample to the laboratory services bureau of the Washington state
29 patrol for purposes of DNA identification analysis when:

30 (i) The sample was collected from a defendant upon conviction for
31 a municipal offense where the underlying ordinance does not adopt the
32 relevant state statute by reference but the offense is otherwise
33 equivalent to an offense in subsection (1)(a) of this section;

34 (ii) The equivalent offense in subsection (1)(a) of this section
35 was an offense for which collection of a biological sample was
36 required under this section at the time of the conviction; and

37 (iii) The sample was collected on or after June 12, 2008, and
38 before January 1, 2020.

39 (b) When submitting a biological sample under this subsection,
40 the municipal jurisdiction must include a signed affidavit from the

1 municipal prosecuting authority of the jurisdiction in which the
2 conviction occurred specifying the state crime to which the municipal
3 offense is equivalent.

4 (3) Law enforcement may submit to the forensic laboratory
5 services bureau of the Washington state patrol, for purposes of DNA
6 identification analysis, any lawfully obtained biological sample
7 within its control from a deceased offender who was previously
8 convicted of an offense under subsection (1)(a) of this section,
9 regardless of the date of conviction.

10 (4) If the Washington state patrol crime laboratory already has a
11 DNA sample from an individual for a qualifying offense, a subsequent
12 submission is not required to be submitted.

13 (5) Biological samples shall be collected in the following
14 manner:

15 (a) For persons convicted of any offense listed in subsection
16 (1)(a) of this section or adjudicated guilty of an equivalent
17 juvenile offense, who do not serve a term of confinement in a
18 department of corrections facility or a department of children,
19 youth, and families facility, and are serving a term of confinement
20 in a city or county jail facility, the city or county jail facility
21 shall be responsible for obtaining the biological samples.

22 (b) The local police department or sheriff's office shall be
23 responsible for obtaining the biological samples for:

24 (i) Persons convicted of any offense listed in subsection (1)(a)
25 of this section or adjudicated guilty of an equivalent juvenile
26 offense, who do not serve a term of confinement in a department of
27 corrections facility, department of children, youth, and families
28 facility, or a city or county jail facility; and

29 (ii) Persons who are required to register under RCW 9A.44.130.

30 (c) For persons convicted of any offense listed in subsection
31 (1)(a) of this section or adjudicated guilty of an equivalent
32 juvenile offense, who are serving or who are to serve a term of
33 confinement in a department of corrections facility or a department
34 of children, youth, and families facility, the facility holding the
35 person shall be responsible for obtaining the biological samples as
36 part of the intake process. If the facility did not collect the
37 biological sample during the intake process, then the facility shall
38 collect the biological sample as soon as is practicable. For those
39 persons incarcerated before June 12, 2008, who have not yet had a

1 biological sample collected, priority shall be given to those persons
2 who will be released the soonest.

3 (d) For persons convicted of any offense listed in subsection
4 (1)(a) of this section or adjudicated guilty of an equivalent
5 juvenile offense, who will not serve a term of confinement, the court
6 shall: Order the person to report to the local police department or
7 sheriff's office as provided under subsection (5)(b)(i) of this
8 section within a reasonable period of time established by the court
9 in order to provide a biological sample; or if the local police
10 department or sheriff's office has a protocol for collecting the
11 biological sample in the courtroom, order the person to immediately
12 provide the biological sample to the local police department or
13 sheriff's office before leaving the presence of the court. The court
14 must further inform the person that refusal to provide a biological
15 sample is a gross misdemeanor under this section.

16 (6) Any biological sample taken pursuant to RCW 43.43.752 through
17 43.43.758 may be retained by the forensic laboratory services bureau,
18 and shall be used solely for the purpose of providing DNA or other
19 tests for identification analysis and prosecution of a criminal
20 offense or for the identification of human remains or missing
21 persons. Nothing in this section prohibits the submission of results
22 derived from the biological samples to the federal bureau of
23 investigation combined DNA index system.

24 (7) The forensic laboratory services bureau of the Washington
25 state patrol is responsible for testing performed on all biological
26 samples that are collected under this section, to the extent allowed
27 by funding available for this purpose. Known duplicate samples may be
28 excluded from testing unless testing is deemed necessary or advisable
29 by the director.

30 (8) This section applies to:

31 (a) All adults and juveniles to whom this section applied prior
32 to June 12, 2008;

33 (b) All adults and juveniles to whom this section did not apply
34 prior to June 12, 2008, who:

35 (i) Are convicted on or after June 12, 2008, of an offense listed
36 in subsection (1)(a) of this section on the date of conviction; or

37 (ii) Were convicted prior to June 12, 2008, of an offense listed
38 in subsection (1)(a) of this section and are still incarcerated on or
39 after June 12, 2008;

1 (c) All adults and juveniles who are required to register under
2 RCW 9A.44.130 on or after June 12, 2008, whether convicted before,
3 on, or after June 12, 2008; and

4 (d) All samples submitted under subsections (2) and (3) of this
5 section.

6 (9) This section creates no rights in a third person. No cause of
7 action may be brought based upon the noncollection or nonanalysis or
8 the delayed collection or analysis of a biological sample authorized
9 to be taken under RCW 43.43.752 through 43.43.758.

10 (10) The detention, arrest, or conviction of a person based upon
11 a database match or database information is not invalidated if it is
12 determined that the sample was obtained or placed in the database by
13 mistake, or if the conviction or juvenile adjudication that resulted
14 in the collection of the biological sample was subsequently vacated
15 or otherwise altered in any future proceeding including but not
16 limited to posttrial or postfact-finding motions, appeals, or
17 collateral attacks. No cause of action may be brought against the
18 state based upon the analysis of a biological sample authorized to be
19 taken pursuant to a municipal ordinance if the conviction or
20 adjudication that resulted in the collection of the biological sample
21 was subsequently vacated or otherwise altered in any future
22 proceeding including, but not limited to, posttrial or postfact-
23 finding motions, appeals, or collateral attacks.

24 (11) A person commits the crime of refusal to provide DNA if the
25 person willfully refuses to comply with a legal request for a DNA
26 sample as required under this section. The refusal to provide DNA is
27 a gross misdemeanor.

28 **Sec. 11.** RCW 43.43.830 and 2019 c 271 s 10 are each amended to
29 read as follows:

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout (~~(RCW 43.43.830)~~) this section and RCW
32 43.43.832 through 43.43.845.

33 (1) "Agency" means any person, firm, partnership, association,
34 corporation, or facility which receives, provides services to, houses
35 or otherwise cares for vulnerable adults, juveniles, or children, or
36 which provides child day care, early learning, or early childhood
37 education services.

38 (2) "Applicant" means:

1 (a) Any prospective employee who will or may have unsupervised
2 access to children under sixteen years of age or developmentally
3 disabled persons or vulnerable adults during the course of his or her
4 employment or involvement with the business or organization;

5 (b) Any prospective volunteer who will have regularly scheduled
6 unsupervised access to children under sixteen years of age,
7 developmentally disabled persons, or vulnerable adults during the
8 course of his or her employment or involvement with the business or
9 organization under circumstances where such access will or may
10 involve groups of (i) five or fewer children under twelve years of
11 age, (ii) three or fewer children between twelve and sixteen years of
12 age, (iii) developmentally disabled persons, or (iv) vulnerable
13 adults;

14 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
15 or

16 (d) Any prospective custodian in a nonparental custody proceeding
17 under chapter 26.10 RCW.

18 (3) "Business or organization" means a person, business, or
19 organization licensed in this state, any agency of the state, or
20 other governmental entity, that educates, trains, treats, supervises,
21 houses, or provides recreation to developmentally disabled persons,
22 vulnerable adults, or children under sixteen years of age, or that
23 provides child day care, early learning, or early learning childhood
24 education services, including but not limited to public housing
25 authorities, school districts, and educational service districts.

26 (4) "Civil adjudication proceeding" is a judicial or
27 administrative adjudicative proceeding that results in a finding of,
28 or upholds an agency finding of, domestic violence, abuse, sexual
29 abuse, neglect, abandonment, violation of a professional licensing
30 standard regarding a child or vulnerable adult, or exploitation or
31 financial exploitation of a child or vulnerable adult under any
32 provision of law, including but not limited to chapter 13.34, 26.44,
33 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.
34 "Civil adjudication proceeding" also includes judicial or
35 administrative findings that become final due to the failure of the
36 alleged perpetrator to timely exercise a legal right to
37 administratively challenge such findings.

38 (5) "Client" or "resident" means a child, person with
39 developmental disabilities, or vulnerable adult applying for housing
40 assistance from a business or organization.

1 (6) "Conviction record" means "conviction record" information as
2 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed
3 by either an adult or a juvenile. It does not include a conviction
4 for an offense that has been the subject of an expungement, pardon,
5 annulment, certificate of rehabilitation, or other equivalent
6 procedure based on a finding of the rehabilitation of the person
7 convicted, or a conviction that has been the subject of a pardon,
8 annulment, or other equivalent procedure based on a finding of
9 innocence. It does include convictions for offenses for which the
10 defendant received a deferred or suspended sentence, unless the
11 record has been expunged according to law.

12 (7) "Crime against children or other persons" means a conviction
13 of any of the following offenses: Aggravated murder; first or second
14 degree murder; first or second degree kidnapping; first, second, or
15 third degree assault; fourth degree assault (if a violation of RCW
16 9A.36.041(3)); first, second, or third degree assault of a child;
17 first, second, or third degree rape; first, second, or third degree
18 rape of a child; first or second degree robbery; first degree arson;
19 first degree burglary; first or second degree manslaughter; first or
20 second degree extortion; indecent liberties; incest; vehicular
21 homicide; first degree promoting prostitution; communication with a
22 minor; providing harmful material to a minor; unlawful imprisonment;
23 simple assault; sexual exploitation of minors; first or second degree
24 criminal mistreatment; endangerment with a controlled substance;
25 child abuse or neglect as defined in RCW 26.44.020; first or second
26 degree custodial interference; first or second degree custodial
27 sexual misconduct; hate crime; first, second, or third degree child
28 molestation; first or second degree sexual misconduct with a minor;
29 commercial sexual abuse of a minor; child abandonment; promoting
30 pornography; selling or distributing erotic material to a minor;
31 custodial assault; violation of child abuse restraining order; child
32 buying or selling; prostitution; felony indecent exposure; criminal
33 abandonment; or any of these crimes as they may be renamed in the
34 future.

35 (8) "Crimes relating to drugs" means a conviction of a crime to
36 manufacture, delivery, or possession with intent to manufacture or
37 deliver a controlled substance.

38 (9) "Crimes relating to financial exploitation" means a
39 conviction for first, second, or third degree extortion; first,

1 second, or third degree theft; first or second degree robbery;
2 forgery; or any of these crimes as they may be renamed in the future.

3 (10) "Financial exploitation" means "financial exploitation" as
4 defined in RCW 74.34.020.

5 (11) "Health care facility" means a nursing home licensed under
6 chapter 18.51 RCW, an assisted living facility licensed under chapter
7 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

8 (12) "Peer counselor" means a nonprofessional person who has
9 equal standing with another person, providing advice on a topic about
10 which the nonprofessional person is more experienced or
11 knowledgeable, and who is a counselor for a peer counseling program
12 that contracts with or is otherwise approved by the department,
13 another state or local agency, or the court.

14 (13) "Unsupervised" means not in the presence of:

15 (a) Another employee or volunteer from the same business or
16 organization as the applicant; or

17 (b) Any relative or guardian of any of the children or
18 developmentally disabled persons or vulnerable adults to which the
19 applicant has access during the course of his or her employment or
20 involvement with the business or organization.

21 With regard to peer counselors, "unsupervised" does not include
22 incidental contact with children under age sixteen at the location at
23 which the peer counseling is taking place. "Incidental contact" means
24 minor or casual contact with a child in an area accessible to and
25 within visual or auditory range of others. It could include passing a
26 child while walking down a hallway but would not include being alone
27 with a child for any period of time in a closed room or office.

28 (14) "Vulnerable adult" means "vulnerable adult" as defined in
29 chapter 74.34 RCW, except that for the purposes of requesting and
30 receiving background checks pursuant to RCW 43.43.832, it shall also
31 include adults of any age who lack the functional, mental, or
32 physical ability to care for themselves.

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