2SHB 1591 - H AMD **2035**
By Representative Taylor

NOT CONSIDERED 03/12/2026

Strike everything after the enacting clause and insert the following:

"Legislative Intent

NEW SECTION. **Sec. 1.** The legislature finds that domestic violence, sexual assault, and human trafficking are among the most serious crimes against society. Washington's laws have long provided strong penalties for perpetrators and robust protections for victims, recognizing that these crimes cause lasting harm, predict future violence, and disproportionately affect women, low-income people, and communities of color.

At the same time, the legislature acknowledges that certain defendants appearing before Washington courts are also survivors of domestic violence, sexual assault, or human trafficking. Their criminal conduct often arises from coercion, duress, or trauma responses linked directly to their victimization. This abuse-to-prison pipeline has resulted in survivors serving sentences for conduct that reflects the control of their abusers, rather than independent, intentional choices to commit harm.

Therefore, the legislature intends to authorize sentencing alternatives for survivors whose offenses were significantly shaped by domestic violence, sexual assault, or human trafficking, and who acted to protect themselves or their children, complied under coercion, or offended under credible threats of harm. This reform will ensure that courts are authorized to consider the impact of victimization while still imposing sentences that reflect the seriousness of the offense, uphold accountability, and protect public safety.

The legislature further intends to provide relief only in cases where the defendant's criminal conduct was directly influenced by domestic violence, sexual assault, or human trafficking. By focusing on remedies for survivor defendants, Washington will continue its

leadership in victim protection while ensuring that justice remains proportionate, trauma-informed, and consistent with public safety.

Sentencing Alternative

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

(1) Notwithstanding any other provision of this chapter, the court may reduce any term of incarceration or other criminal penalties under this chapter or impose available alternatives as provided under subsection (2) of this section when sentencing any defendant for one or more crimes where: At the time of the offense, the defendant was a verified victim of domestic violence, sexual assault, or human trafficking involving a pattern of severe or coercive abuse that created ongoing fear, control, or dependency, and subjected the defendant to substantial physical, sexual, or psychological abuse; the domestic violence or abuse suffered by the defendant was the primary and proximate cause of the defendant's criminal conduct; and the generally applicable sentencing requirements under this chapter would be unduly harsh given the nature and circumstances of the crime and the history, character, and condition of the defendant.

(2)(a) The defendant must provide notice to the prosecuting attorney and the court of any intention to seek alternative sentencing under this section or section 3 of this act before the defendant's sentencing hearing. Prior to reducing a term of incarceration or imposing alternatives under this section, the court shall make findings as to whether the defendant qualifies under this section. The court may determine a defendant qualifies under this section regardless of whether the defendant previously raised any defense related to the domestic violence or abuse.

(b)(i) The court may consider the following when making its finding as to whether the domestic violence or abuse suffered by the defendant was the primary and proximate cause of his or her criminal conduct: Whether the defendant is being sentenced for a crime against an intimate partner who committed domestic violence against the defendant; whether, at any point in time, the defendant has been diagnosed with or treated for any behavioral health condition related to prior victimization; evidence that the defendant's prior victimization has affected how the defendant perceives their safety

and security; evidence that the defendant's prior victimization has affected how the defendant perceives their ability to receive help through law enforcement or other government entities; evidence that the defendant's prior victimization has limited the defendant's ability to achieve financial independence; and any other factors deemed relevant by the court.

(ii) Domestic violence or abuse suffered by the defendant may only be considered the primary and proximate cause of his or her criminal conduct if the court finds a temporal nexus between the domestic violence or abuse and the criminal conduct. Remote or historical domestic violence or abuse suffered by the defendant without a contemporaneous connection to his or her criminal conduct does not satisfy this requirement.

(c) In making findings under this section, the court may consider any of the following: Oral and written arguments; a written statement from the defendant; testimony from the defendant or from witnesses offered by either party; written statements from third parties regarding whether the defendant is a survivor of domestic violence, sexual assault, human trafficking, or stalking including, but not limited to, statements from a mental health or victim service provider or school administrator or teacher; medical records and documents; physical evidence; copies of restraining, antiharassment, or protection orders; police reports; recordings of 911 calls; expert testimony; and any other relevant evidence.

(d) The prosecuting attorney and the court shall comply with the requirements set forth in chapter 7.69 RCW including, but not limited to: Informing victims and survivors of victims of the date, time, and place of the sentencing hearing; providing an opportunity for victims and survivors of victims of any crimes for which the defendant has been convicted to present a statement personally or by representation; and providing victims and survivors of victims access to available victim advocates and other related services.

(3) If the court finds that a defendant qualifies under this section, the court may, in its discretion:

(a) Impose a sentence below the standard range under RCW 9.94A.510, and, to the extent authorized under state law, below any mandatory minimum terms under RCW 9.94A.540 and 9.94A.570, except for offenses involving sexual abuse;

(b) Depart downward from any sentencing enhancements under RCW 9.94A.533; or

(c) Impose the sentencing alternative under section 3 of this act.

(4) Nothing in this section modifies the authority of the court to impose any other available sentencing alternatives for a qualifying defendant including, but not limited to, alternatives under RCW 9.94A.650, 9.94A.655, 9.94A.660, 9.94A.670, or 9.94A.711.

(5) Defendants sentenced for offenses under any of the following are not eligible for alternative sentencing under this act: RCW 10.95.020 (aggravated first degree murder); RCW 9A.32.030 (first degree murder); RCW 9A.32.055 (homicide by abuse; minors and dependent adults); RCW 9A.36.120 (first degree assault of a child); RCW 46.61.520 (vehicular homicide); an offense committed with intent to commit a terrorist act under chapter 70.74 RCW; any offense requiring sex offender registration under chapter 9A.44 RCW; and attempt or conspiracy to commit any of the foregoing.

(6) For the purposes of this section, "family or household member" and "intimate partner" have the same meanings as provided in RCW 10.99.020.

(7) For the purposes of this section, a "verified victim" means a person for whom there exists:

(a) A criminal or civil court record referencing the person's victimization;

(b) A documented report from a qualified domestic violence, sexual assault, or human trafficking professional attesting to the person's victimization, including but not limited to such reports by:

(i) A prosecutor;

(ii) Law enforcement officer; or

(iii) Community or system-based victim advocate;

(c) A protection order, restraining order, or no-contact order naming the person as a victim; or

(d) Any other relevant and credible evidence of the person's victimization including, but not limited to, the following:

(i) The person's sworn or unsworn testimony or written declarations;

(ii) Testimony, declarations, or letters from family members, friends, neighbors, faith leaders, educators, employers, or other individuals with personal knowledge of the abuse suffered by the person or the effects of such abuse;

(iii) Documentation, testimony, or records from community-based organizations, survivor advocacy organizations, shelters, victim service providers, or human trafficking service providers;

(iv) Evaluations, assessments, or testimony from licensed or qualified professionals including, but not limited to, mental health providers, social workers, psychologists, medical professionals, or trauma-informed forensic evaluators;

(v) Educational, employment, or community records that corroborate the timing, impact, or circumstances of the abuse suffered by the person;

(vi) Digital, written, or personal evidence including, but not limited to, text messages, emails, voicemail recordings, social media communications, photographs, journals, or other personal writings;

(vii) Expert testimony regarding trauma, coercive control, cumulative abuse, or the dynamics of domestic violence, sexual assault, or human trafficking; or

(viii) Any other evidence the court deems relevant and probative.

NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A RCW to read as follows:

(1) A person is eligible for the sentencing alternative under this section if the court finds that he or she meets the criteria under section 2 of this act and the person provides notice to the prosecuting attorney and the court of any intention to seek alternative sentencing under this section before the person's sentencing hearing. To assist the court in determining whether the alternative is appropriate for the defendant, the court may order the department to complete a risk assessment report or a chemical dependency screening report as provided in RCW 9.94A.500.

(2) If the sentencing court determines that the person is eligible for the sentencing alternative under this section and that the sentencing alternative is appropriate and should be imposed, the court shall waive the sentence within the standard sentence range and any applicable enhancements, and instead impose: A reduced term of confinement with an extended term of community custody, as determined by the court; or waive the term of confinement and impose an extended term of community custody. The court has complete discretion to determine the term of incarceration and community custody, provided that the combined length of both does not exceed the standard range and enhancements applicable to the underlying crime or crimes for

which the defendant has been convicted. For the term of community custody, the court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate, and the department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

(3) For any person serving a term of community custody under this section:

(a) The department shall report to the court if the person commits any violations of the conditions imposed by the court or the department;

(b) The court may order the person to report to court at any time during the period of community custody in order to evaluate the person's compliance or progress with his or her conditions, or to determine if any violations of the conditions have occurred;

(c) The court may modify the conditions of community custody or impose sanctions for violations, including extending the term of community custody; and

(d) The court may order the person to serve a term of total confinement within the standard range for the offense at any time during the period of community custody, if the person violates the conditions or requirements of the sentence.

Resentencing, Vacating, and Other Provisions

NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW to read as follows:

(1)(a) Any person who is currently incarcerated and serving a sentence of at least eight years imposed prior to the effective date of this section may petition the sentencing court for resentencing on the basis that he or she meets the requirements described in section 2(1) of this act. A petition must include at least two pieces of evidence corroborating the applicant's claim of eligibility:

(i) At least one piece of evidence must be either a court record, presentence report, social services record, hospital record, sworn statement from a witness to the domestic violence or abuse, law enforcement record, domestic incident report, or order of protection.

(ii) Other evidence may include, but shall not be limited to, local and state department of corrections or other corrections records, a showing based in part on documentation prepared at or near the time of the commission of the offense or the prosecution thereof

tending to support the person's claim, or verification of consultation with a licensed medical or mental health care provider, employee of a court acting within the scope of his or her employment, member of the clergy, attorney, social worker, or other advocate acting on behalf of an agency that assists victims of domestic violence for the purpose of assisting such person with domestic violence victim counseling or support.

(2) The court may deny a petition for resentencing without a hearing and must notify the person and dismiss the petition without prejudice. If the court orders a hearing on the petition, the court may receive testimony and evidence as provided under section 2(2) of this act.

(a) The court may consider any fact or circumstances relevant to the imposition of a new sentence which are submitted by the petitioner or the prosecuting attorney, including the petitioner's record of confinement.

(b) The court's consideration of the individual's record of confinement shall include, but not be limited to, such applicant's participation in or willingness to participate in programming concerning domestic violence, parenting and substance abuse treatment while incarcerated, and the applicant's disciplinary history. The fact that the applicant may have been unable to participate in treatment or other programming while incarcerated despite such applicant's willingness to do so shall not be considered a negative factor in making a determination on a petition pursuant to this section.

(c) If the court grants a petition, the court may resentence the person in accordance with sections 2 and 3 of this act, provided that any new sentence may not be greater than the initial sentence.

(d) If the court determines that the applicant should not be resentenced in accordance with this act, the court shall inform such petitioner and shall enter an order to that effect. Any order issued by a court pursuant to this section must include written findings of fact and the reasons for such order.

(3) If a hearing on a petition is scheduled pursuant to this section, the prosecuting attorney shall make reasonable efforts to notify victims and survivors of victims of the petition and the date of hearing. The prosecuting attorney shall provide victims and survivors of victims access to available victim advocates and other related services. The court shall provide an opportunity for victims

and survivors of victims of any crimes for which the defendant has been convicted to present a statement personally or by representation. The prosecuting attorney and the court shall comply with the requirements set forth in chapter 7.69 RCW.

(4) If the court denies a petition filed pursuant to this section, the petitioner may file a new petition no earlier than three years after the date the court denied the previous petition, unless the court authorizes the petitioner to file a new petition at an earlier date.

(5) A petition filed under this section does not reopen the defendant's conviction to challenges that would otherwise be barred.

(6)(a) An appeal may be taken as of right in accordance with applicable provisions of this act:

(i) From an order denying resentencing; or

(ii) From a new sentence imposed under this provision.

(b) An appeal may be based on the grounds that:

(i) The term of the new sentence is harsh or excessive; or

(ii) The term of the new sentence is unauthorized as a matter of law.

(c) Upon remand to the sentencing court following such appeal the applicant shall be given an opportunity to withdraw an application for resentencing before any resentence is imposed.

Sec. 5. RCW 9.94A.501 and 2025 c 371 s 2 are each amended to read as follows:

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

(a) Individuals convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

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

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

(b) Individuals who have:

(i) A current conviction for a repetitive domestic violence offense after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense after August 1, 2011.

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

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

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

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

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

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

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

(e)(i) Has a current conviction for a domestic violence felony offense after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense after August 1, 2011. This subsection (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

(ii) Has a current conviction for a domestic violence felony offense. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an individual under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, 9.94A.670, 9.94A.711, 9.94A.695, section 2 or 3 of this act, or 9.94A.661;

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

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

(5) The department shall supervise any individual released by the indeterminate sentence review board who was sentenced to community custody or subject to community custody under the terms of release.

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

(7) The department is not authorized to, and may not, supervise any individual sentenced to a term of community custody or any probationer unless the individual or probationer is one for whom supervision is required under this section.

(8) The department shall conduct a risk assessment for every individual convicted of a felony and sentenced to a term of community custody who may be subject to supervision under this section.

(9) The period of time the department is authorized to supervise an individual under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through (9), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535 and where the governor imposes a term of community custody as a condition of conditional commutation or imposes an additional term of community custody due to a violation of conditional commutation.

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

Sec. 6. RCW 9.94A.533 and 2024 c 301 s 28 are each amended to read as follows:

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

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

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which

underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

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

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

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

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

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

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

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

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

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

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

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

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

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

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or

both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

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

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

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

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

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

(a) Eighteen months for offenses committed under RCW 69.50.401(2)(a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2)(c), (d), or (e);

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

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

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

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

Notwithstanding any other provision of law, all impaired driving enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) An additional 12 months may, at the discretion of the court, be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.828.

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

(17) Regardless of any provisions in this section, if the court finds a person qualifies under section 2 or 3 of this act, the court has full discretion to depart downward from mandatory sentencing enhancements.

Sec. 7. RCW 9.94A.535 and 2025 c 90 s 1 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other

than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) ((~~The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.~~

~~(k)~~)) The defendant was convicted of vehicular homicide, by the operation of a vehicle in a reckless manner and has committed no other previous serious traffic offenses as defined in RCW 9.94A.030, and the sentence is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(k) The defendant was a victim of domestic violence, sexual assault, or human trafficking at the time of the offense and subjected to substantial physical, sexual, or psychological abuse; the domestic violence or abuse was the primary and proximate cause of the defendant's criminal conduct; and the sentence would be unduly harsh given the nature and circumstances of the crime and the history, character, and condition of the defendant.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(7)(a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

(dd) The current offense involved a felony crime against persons, except for assault in the third degree pursuant to RCW 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This subsection shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the offense.

(ee) During the commission of the current offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater.

(ff) The current offense involved the assault of a utility employee of any publicly or privately owned utility company or agency, who is at the time of the act engaged in official duties, including: (i) The maintenance or repair of utility poles, lines, conduits, pipes, or other infrastructure; or (ii) connecting, disconnecting, or recording utility meters.

Sec. 8. RCW 9.94A.540 and 2014 c 130 s 2 are each amended to read as follows:

(1) Except to the extent provided in subsections (3) and (4) of this section, the following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.535:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(d) An offender convicted of the crime of sexually violent predator escape shall be sentenced to a minimum term of total confinement not less than sixty months.

(e) An offender convicted of the crime of aggravated first degree murder for a murder that was committed prior to the offender's eighteenth birthday shall be sentenced to a term of total confinement not less than twenty-five years.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.728((~~(3)~~)) (1)(c).

(3)(a) Subsection (1)(a) through (d) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).

(b) This subsection (3) applies only to crimes committed on or after July 24, 2005.

(4) The mandatory minimum terms under this section do not apply if a court finds that a defendant qualifies for reduced or alternative sentencing under section 2 or 3 of this act.

Sec. 9. RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read as follows:

((~~Notwithstanding~~)) (1) Except as provided in subsection (2) of this section, and notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this ((~~section~~)) subsection may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.728 ((~~(1), (2), (3), (4), (6), (8), or (9)~~)) (1) (b), (c), (e), (h), and (i), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: ((~~(1)~~)) (a) In the case of an offender in need of emergency medical treatment; or ((~~(2)~~)) (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(2) This section does not apply if a court finds a defendant qualifies for reduced or alternative sentencing under section 2 or 3 of this act.

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

(1)(a) Except as provided under (b) of this subsection, any person who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of his or her record of conviction for an offense occurring prior to the effective date of this section on the basis that: At the time of the offense, the person was a victim of domestic violence, sexual assault, or human trafficking and subjected to substantial physical, sexual, or psychological abuse; the domestic violence or abuse suffered by the person was the primary and proximate cause of the defendant's criminal conduct; and the collateral consequences of the record of conviction create an unduly harsh burden on the person given the nature and circumstances of the offense and the personal history, character, and condition of the individual.

(b) An applicant may not have his or her record of conviction vacated pursuant to this section if any one of the following is present:

(i) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal or tribal court, at the time of application; or

(ii) The applicant has been convicted of a new crime in any court of this state or another state, or in any federal or tribal court, after the conviction that the applicant is seeking to vacate.

(2) In considering an application under this section, the court may consider the factors specified in section 2(2)(b) of this act and any evidence offered by the applicant, the prosecutor, and third parties including, but not limited to, those specified in section 2(2)(c) of this act; however, the court, in its discretion, may rely solely upon the sworn testimony of the applicant at a hearing before the court when granting an application under this section.

(3) If the court finds that an applicant qualifies under this section, the court may, in the interest of justice, waive the restrictions under RCW 9.94A.640(2) and vacate the conviction according to the process provided in RCW 9.94A.640(1).

(4) For the purposes of this section, "intimate partner" and "family or household member" have the same meanings as provided in RCW 10.99.020.

Sec. 11. RCW 9.94A.640 and 2025 c 169 s 2 are each amended to read as follows:

(1) Except as provided in subsection (5) of this section, every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section or section 10 of this act, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) ((~~An~~)) Except as provided under section 10 of this act, an offender may not have the record of conviction cleared if:

(a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court;

(b) The offense was a violent offense as defined in RCW 9.94A.030 or crime against persons as defined in RCW 43.43.830, except the following offenses may be vacated if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement: (i) Assault in the second degree under RCW 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when not committed against a law enforcement officer or peace officer; and (iii) robbery in the second degree under RCW 9A.56.210;

(c) The offense is a class B felony and the offender has been convicted of a new crime in this state, another state, or federal court in the ten years prior to the application for vacation;

(d) The offense is a class C felony and the offender has been convicted of a new crime in this state, another state, or federal court in the five years prior to the application for vacation;

(e) The offense is a class B felony and less than ten years have passed since the later of: (i) The applicant's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date;

(f) The offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than five years have passed since the later of: (i) The applicant's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date; or

(g) The offense was a felony described in RCW 46.61.502 or 46.61.504.

(3) If the applicant is a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030, the victim or the prosecutor of the county in which the victim was sentenced may apply to the sentencing court or the sentencing court's successor to vacate the victim's record of conviction for a class B or class C felony offense using the process in RCW 9.94A.648. When preparing or filing the petition, the prosecutor is not deemed to be providing legal advice or legal assistance on behalf of the victim, but is fulfilling an administrative function on behalf of the state in order to further their responsibility to seek to reform and improve the administration of criminal justice. A record of conviction vacated using the process in RCW 9.94A.648 is subject to subsection (4) of this section.

(4)(a) Except as otherwise provided, once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution, and nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

(b) A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense occurring on or after July 28, 2019, and may be used to establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

(5) Every person convicted of a prison riot offense under RCW 9.94.010 who was incarcerated in a facility operated by the department of children, youth, and families or a county juvenile detention facility at the time of the offense may apply to the sentencing court for a vacation of the applicant's record of adjudication or conviction for the offense. If an applicant qualifies under this subsection, the court shall vacate the record of conviction or adjudication.

NEW SECTION. **Sec. 12.** A new section is added to chapter 9.96 RCW to read as follows:

(1)(a) Except as provided under (b) of this subsection, any person who has completed the conditions of his or her sentence may apply to the sentencing court for a vacation of his or her record of conviction for an offense occurring prior to the effective date of this section on the basis that: At the time of the offense, the person was a victim of domestic violence, sexual assault, or human trafficking and subjected to substantial physical, sexual, or psychological abuse; the domestic violence or abuse suffered by the person was the primary and proximate cause of the defendant's

criminal conduct; and the collateral consequences of the record of conviction create an unduly harsh burden on the person given the nature and circumstances of the offense and the personal history, character, and condition of the individual.

(b) An applicant may not have his or her record of conviction vacated pursuant to this section if any one of the following is present:

(i) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal or tribal court, at the time of application; or

(ii) The applicant has been convicted of a new crime in any court of this state or another state, or in any federal or tribal court, after the conviction that the applicant is seeking to vacate.

(2) In considering an application under this section, the court may consider the factors specified in section 2(2)(b) of this act. The court may consider any evidence offered by the defendant, the prosecutor, and third parties including, but not limited to, the types specified in section 2(2)(c) of this act; however, the court, in its discretion, may rely solely upon the sworn testimony of the applicant at a hearing before the court when granting an application under this section.

(3) If the court finds that an applicant qualifies under this section, the court may, in the interest of justice, waive the restrictions under RCW 9.96.060(2) and vacate the conviction according to the process provided in RCW 9.96.060(1).

(4) For the purposes of this section, "intimate partner" and "family or household member" have the same meanings as provided in RCW 10.99.020.

Sec. 13. RCW 9.96.060 and 2024 c 296 s 1 are each amended to read as follows:

(1) When vacating a conviction under this section <u>or section 12 of this act</u>, the court effectuates the vacation by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) Every person convicted of a misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the requirements of this subsection, the court may in its discretion vacate the record of conviction. Except as provided in subsections (3), (4), (5), and (6) of this section and section 12 of this act, an applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

(a) The applicant has not completed all of the terms of the sentence for the offense, including satisfaction of financial obligations;

(b) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal or tribal court, at the time of application;

(c) The offense was a violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense;

(d) The offense was a violation of RCW 46.61.502 (driving while under the influence), 46.61.504 (actual physical control while under the influence), 9.91.020 (operating a railroad, etc. while intoxicated), or the offense is considered a "prior offense" under RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense or less than 10 years has elapsed since the date of the arrest for the prior offense;

(e) The offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses), except for failure to register as a sex offender under RCW 9A.44.132;

(f) The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020, or the court determines after a review of the court file that the offense was committed by one family or household member against another or by one intimate partner against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in RCW 10.99.020, or for comparable offenses in another state or in federal court, and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense

involved domestic violence, and any one of the following factors exist:

(i) The applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought, or has not provided that notification to the court;

(ii) The applicant has two or more domestic violence convictions stemming from different incidents. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;

(iii) The applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or

(iv) Less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including successful completion of any treatment ordered as a condition of sentencing, but excluding the payment of financial obligations;

(g) For any offense other than those described in (f) of this subsection, less than three years have passed since the later of the applicant's release from supervision or probation; the applicant's release from total and partial confinement, as defined in RCW 9.94A.030; or the applicant's sentencing date;

(h) The offender has been convicted of a new crime in this state, another state, or federal or tribal court in the three years prior to the vacation application; or

(i) The applicant is currently restrained by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party or was previously restrained by such an order and was found to have committed one or more violations of the order in the five years prior to the vacation application.

(3) If the applicant is a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030, or the prosecutor applies on behalf of the state, the sentencing court may vacate the record of conviction if the application satisfies the requirements of RCW 9.96.080. When preparing or filing the petition, the prosecutor is not deemed to be providing legal advice or legal assistance on

behalf of the victim, but is fulfilling an administrative function on behalf of the state in order to further their responsibility to seek to reform and improve the administration of criminal justice. A record of conviction vacated using the process in RCW 9.96.080 is subject to subsections (7) and (8) of this section.

(4) Every person convicted prior to January 1, 1975, of violating any statute or rule regarding the regulation of fishing activities, including, but not limited to, ((~~[former]~~)) former RCW 75.08.260, 75.12.060, 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240 who claimed to be exercising a treaty Indian fishing right, may apply to the sentencing court for vacation of the applicant's record of the misdemeanor, gross misdemeanor, or felony conviction for the offense. If the person is deceased, a member of the person's family or an official representative of the tribe of which the person was a member may apply to the court on behalf of the deceased person. Notwithstanding the requirements of RCW 9.94A.640, the court shall vacate the record of conviction if:

(a) The applicant is a member of a tribe that may exercise treaty Indian fishing rights at the location where the offense occurred; and

(b) The state has been enjoined from taking enforcement action of the statute or rule to the extent that it interferes with a treaty Indian fishing right as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and any posttrial orders of those courts, or any other state supreme court or federal court decision.

(5) Every person convicted of a misdemeanor cannabis offense, who was 21 years of age or older at the time of the offense, may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. A misdemeanor cannabis offense includes, but is not limited to: Any offense under RCW 69.50.4014, from July 1, 2004, onward, and its predecessor statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense under an equivalent municipal ordinance. If an applicant qualifies under this subsection, the court shall vacate the record of conviction.

(6) If a person convicted of violating RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) completes a substance use disorder program and files proof of completion with the court, or obtains an assessment from a recovery navigator program

established under RCW 71.24.115, an arrest and jail alternative program established under RCW 36.28A.450, or a law enforcement assisted diversion program established under RCW 71.24.589, and has six months of substantial compliance with recommended treatment or services and progress toward recovery goals as reflected by a written status update, upon verification the court must vacate the conviction or convictions.

(7) A person who is a family member of a homicide victim may apply to the sentencing court on the behalf of the victim for vacation of the victim's record of conviction for prostitution under RCW 9A.88.030. If an applicant qualifies under this subsection, the court shall vacate the victim's record of conviction.

(8)(a) Except as provided in (c) of this subsection, once the court vacates a record of conviction under this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under this section may state that he or she has never been convicted of that crime. However, nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.041. Except as provided in (b) of this subsection, nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(b) When a court vacates a record of domestic violence as defined in RCW 10.99.020 under this section, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle (RCW 10.99.040, 10.99.050, 26.09.300, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070, or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and 74.34.145); (ii) stalking (RCW 9A.46.110); or (iii) a domestic violence protection order or vulnerable adult protection order

entered under chapter 7.105 RCW. A vacated conviction under this section is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

(c) A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense as defined in RCW 9.94A.030 occurring on or after July 28, 2019.

(9) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

(10) For the purposes of this section, "cannabis" has the meaning provided in RCW 69.50.101.

NEW SECTION. **Sec. 14.** A new section is added to chapter 72.09 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, and within three years of the effective date of this section, the department, in partnership with the Washington state center for court research of the administrative office of the courts, and in consultation with the gender and justice commission of the Washington state supreme court, shall submit a report to the relevant committees of the legislature detailing the implementation of this act, including the following:

(a) The number of persons applying for relief under a provision of this act;

(b) Demographic information about applicants;

(c) The types of offenses committed by applicants; and

(d) Outcomes for applicants.

(2) This section expires January 1, 2030.

NEW SECTION. **Sec. 15.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2026, in the omnibus appropriations act, this act is null and void."

Correct the title.

EFFECT: The striking amendment makes the following changes to the underlying bill:

- Requires the prosecuting attorney and the court to comply with specified statutory rights of victims and survivors of victims at sentencing hearings where the court may impose the sentencing alternative or other reduced sentence under the bill.
- Requires a defendant who intends to seek the sentencing alternative or other reduced sentence under the bill to provide notice to the prosecuting attorney and the court before the sentencing hearing.
- Expands the definition of "verified victim" to include any person for whom there exists relevant and credible evidence of the person's victimization, and provides a nonexhaustive list of such evidence.
- Prohibits a person whose petition for resentencing under the bill is denied from filing a new petition for three years, unless the court authorizes the person to file a new petition at an earlier date.
- Prohibits vacating a person's record of conviction under the bill if the person has any pending criminal charges or any new convictions after the conviction that the person is seeking to vacate.

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