
SENATE BILL 5945

State of Washington

69th Legislature

2026 Regular Session

By Senators Hasegawa, C. Wilson, and Nobles

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1 AN ACT Relating to modifying the definition of persistent
2 offender to exclude convictions for offenses committed by someone
3 under the age of 18 and providing for resentencing; amending RCW
4 9.94A.030; adding a new section to chapter 9.94A RCW; and creating
5 new sections.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that in *Miller*
8 *v. Alabama*, 567 U.S. 460 (2012), the United States supreme court
9 affirmed that sentencing youth to mandatory life without parole for
10 certain offenses committed under the age of 18 constitutes cruel and
11 unusual punishment when the sentencing court does not consider youth
12 or its attendant characteristics as a mitigating factor. The
13 Washington state supreme court subsequently confirmed that such
14 mandatory life without parole sentencing schemes are unconstitutional
15 for youth, regardless of whether a court considers youth and its
16 attendant characteristics as mitigating factors in *State v. Bassett*,
17 192 Wn.2d 67, 428 P.3d 343 (2018). These landmark decisions reflect
18 the advancement of brain development science and a growing national
19 and state understanding that children are fundamentally different
20 from adults in their capacity for judgment, impulse control, and
21 potential for rehabilitation.

1 The legislature finds that it established section 9, chapter 130,
2 Laws of 2014 to comply with *Miller* but only applying to prospective
3 cases, creating an injustice for a small number of individuals whose
4 qualifying crime as a youth was committed before the implementation
5 date of the bill.

6 The legislature finds that, despite the *Miller v. Alabama*, 567
7 U.S. 460 (2012) and *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343
8 (2018) rulings and section 9, chapter 130, Laws of 2014, a very small
9 number of individuals in Washington remain incarcerated for offenses
10 committed as juveniles, having received "strike" sentences following
11 prosecution in adult court. This outcome is inconsistent with the
12 spirit and intent of both *Miller v. Alabama*, 567 U.S. 460 (2012) and
13 *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018).

14 The legislature further finds that this disparity undermines
15 fairness and equal treatment under the law and fails to reflect
16 contemporary scientific understandings of adolescent brain
17 development and the increased capacity youth have for growth and
18 rehabilitation.

19 Therefore, the legislature intends to update the persistent
20 offender statute to ensure that youth are treated in a manner
21 consistent with the spirit and intent of *Miller v. Alabama*, 567 U.S.
22 460 (2012) and *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018),
23 contemporary science, and fundamental principles of fairness and
24 equal treatment under the law. This update is intended to clarify
25 constitutional protections for youth, promote equitable sentencing
26 practices, and reflect society's understanding that children, even
27 when held accountable, possess a unique capacity for rehabilitation.

28 **Sec. 2.** RCW 9.94A.030 and 2025 c 407 s 3 are each amended to
29 read as follows:

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

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

34 (2) "Collect," or any derivative thereof, "collect and remit," or
35 "collect and deliver," when used with reference to the department,
36 means that the department, either directly or through a collection
37 agreement authorized by RCW 9.94A.760, is responsible for monitoring
38 and enforcing the offender's sentence with regard to the legal
39 financial obligation, receiving payment thereof from the offender,

1 and, consistent with current law, delivering daily the entire payment
2 to the superior court clerk without depositing it in a departmental
3 account.

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

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

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

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

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

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

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

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

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

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

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

1 9.95.240, or a similar out-of-state statute, or if the conviction has
2 been vacated pursuant to a governor's pardon. However, when a
3 defendant is charged with a recidivist offense, "criminal history"
4 includes a vacated prior conviction for the sole purpose of
5 establishing that such vacated prior conviction constitutes an
6 element of the present recidivist offense as provided in RCW
7 9.94A.640(4)(b) and 9.96.060(8)(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (b) "Domestic violence" also means: (i) Physical harm, bodily
6 injury, assault, or the infliction of fear of imminent physical harm,
7 bodily injury, or assault, sexual assault, or stalking, as defined in
8 RCW 9A.46.110, of one intimate partner by another intimate partner as
9 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
10 assault, or the infliction of fear of imminent physical harm, bodily
11 injury, or assault, sexual assault, or stalking, as defined in RCW
12 9A.46.110, of one family or household member by another family or
13 household member as defined in RCW 10.99.020.

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

17 (22) "Drug offender sentencing alternative for driving under the
18 influence" is a sentencing option available to persons convicted of
19 felony driving while under the influence of intoxicating liquor or
20 any drug under RCW 46.61.502(6), or felony physical control of a
21 vehicle while under the influence of intoxicating liquor or any drug
22 under RCW 46.61.504(6) who are eligible under RCW 9.94A.661.

23 (23) "Drug offense" means:

24 (a) Any felony violation of chapter 69.50 RCW except possession
25 of a controlled substance (RCW 69.50.4013) or forged prescription for
26 a controlled substance (RCW 69.50.403);

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

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

33 (24) "Earned release" means earned release from confinement as
34 provided in RCW 9.94A.728.

35 (25) "Electronic monitoring" means tracking the location of an
36 individual through the use of technology that is capable of
37 determining or identifying the monitored individual's presence or
38 absence at a particular location including, but not limited to:

39 (a) Radio frequency signaling technology, which detects if the
40 monitored individual is or is not at an approved location and

1 notifies the monitoring agency of the time that the monitored
2 individual either leaves the approved location or tampers with or
3 removes the monitoring device; or

4 (b) Active or passive global positioning system technology, which
5 detects the location of the monitored individual and notifies the
6 monitoring agency of the monitored individual's location and which
7 may also include electronic monitoring with victim notification
8 technology that is capable of notifying a victim or protected party,
9 either directly or through a monitoring agency, if the monitored
10 individual enters within the restricted distance of a victim or
11 protected party, or within the restricted distance of a designated
12 location.

13 (26) "Escape" means:

14 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
15 the first degree (RCW 9A.76.110), escape in the second degree (RCW
16 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
17 willful failure to return from work release (RCW 72.65.070), or
18 willful failure to be available for supervision by the department
19 while in community custody (RCW 72.09.310); or

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

23 (27) "Felony traffic offense" means:

24 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
25 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
26 run injury-accident (RCW 46.52.020(4)), felony driving while under
27 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
28 or felony physical control of a vehicle while under the influence of
29 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

33 (28) "Fine" means a specific sum of money ordered by the
34 sentencing court to be paid by the offender to the court over a
35 specific period of time.

36 (29) "First-time offender" means any person who has no prior
37 convictions for a felony and is eligible for the first-time offender
38 waiver under RCW 9.94A.650.

39 (30) "Home detention" is a subset of electronic monitoring and
40 means a program of partial confinement available to offenders wherein

1 the offender is confined in a private residence 24 hours a day,
2 unless an absence from the residence is approved, authorized, or
3 otherwise permitted in the order by the court or other supervising
4 agency that ordered home detention, and the offender is subject to
5 electronic monitoring.

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

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

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

13 (c) A private residence where the individual stays as a transient
14 invitee.

15 (32) "Legal financial obligation" means a sum of money that is
16 ordered by a superior court of the state of Washington for legal
17 financial obligations which may include restitution to the victim,
18 statutorily imposed crime victims' compensation fees as assessed
19 pursuant to RCW 7.68.035, court costs, county or interlocal drug
20 funds, court-appointed attorneys' fees, and costs of defense, fines,
21 and any other financial obligation that is assessed to the offender
22 as a result of a felony conviction. Upon conviction for vehicular
23 assault while under the influence of intoxicating liquor or any drug,
24 RCW 46.61.522(1)(b), or vehicular homicide while under the influence
25 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal
26 financial obligations may also include payment to a public agency of
27 the expense of an emergency response to the incident resulting in the
28 conviction, subject to RCW 38.52.430.

29 (33) "Most serious offense" means any of the following felonies
30 or a felony attempt to commit any of the following felonies:

31 (a) Any felony defined under any law as a class A felony or
32 criminal solicitation of or criminal conspiracy to commit a class A
33 felony;

34 (b) Assault in the second degree;

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

36 (d) Child molestation in the second degree;

37 (e) Controlled substance homicide;

38 (f) Extortion in the first degree;

39 (g) Incest when committed against a child under age 14;

40 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Sexual exploitation;
- 8 (p) Vehicular assault, when caused by the operation or driving of
- 9 a vehicle by a person while under the influence of intoxicating
- 10 liquor or any drug or by the operation or driving of a vehicle in a
- 11 reckless manner;
- 12 (q) Vehicular homicide, when proximately caused by the driving of
- 13 any vehicle by any person while under the influence of intoxicating
- 14 liquor or any drug as defined by RCW 46.61.502, or by the operation
- 15 of any vehicle in a reckless manner;
- 16 (r) Any other class B felony offense with a finding of sexual
- 17 motivation;
- 18 (s) Any other felony with a deadly weapon verdict under RCW
- 19 9.94A.825;
- 20 (t) Any felony offense in effect at any time prior to December 2,
- 21 1993, that is comparable to a most serious offense under this
- 22 subsection, or any federal or out-of-state conviction for an offense
- 23 that under the laws of this state would be a felony classified as a
- 24 most serious offense under this subsection;
- 25 (u) (i) A prior conviction for indecent liberties under RCW
- 26 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
- 27 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
- 28 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
- 29 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
- 30 until July 1, 1988;
- 31 (ii) A prior conviction for indecent liberties under RCW
- 32 9A.44.100(1) (c) as it existed from June 11, 1986, until July 1, 1988,
- 33 if: (A) The crime was committed against a child under the age of 14;
- 34 or (B) the relationship between the victim and perpetrator is
- 35 included in the definition of indecent liberties under RCW
- 36 9A.44.100(1) (c) as it existed from July 1, 1988, through July 27,
- 37 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
- 38 1993, through July 27, 1997;
- 39 (v) Any out-of-state conviction for a felony offense with a
- 40 finding of sexual motivation if the minimum sentence imposed was 10

1 years or more; provided that the out-of-state felony offense must be
2 comparable to a felony offense under this title and Title 9A RCW and
3 the out-of-state definition of sexual motivation must be comparable
4 to the definition of sexual motivation contained in this section.

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

7 (35) "Offender" means a person who has committed a felony
8 established by state law and is 18 years of age or older or is less
9 than 18 years of age but whose case is under superior court
10 jurisdiction under RCW 13.04.030 or has been transferred by the
11 appropriate juvenile court to a criminal court pursuant to RCW
12 13.40.110. In addition, for the purpose of community custody
13 requirements under this chapter, "offender" also means a misdemeanor
14 or gross misdemeanor probationer ordered by a superior court to
15 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
16 supervised by the department pursuant to RCW 9.94A.501 and
17 9.94A.5011. Throughout this chapter, the terms "offender" and
18 "defendant" are used interchangeably.

19 (36) "Partial confinement" means confinement up to 18 months in a
20 facility or institution operated or utilized under contract by the
21 state or any other unit of government, or, if home detention,
22 electronic monitoring, or work crew has been ordered by the court or
23 home detention has been ordered by the department as part of the
24 parenting program or the graduated reentry program, in an approved
25 residence, for a substantial portion of each day with the balance of
26 the day spent in the community. Partial confinement includes work
27 release, home detention, work crew, electronic monitoring, and a
28 combination of work crew, electronic monitoring, and home detention.

29 (37) "Pattern of criminal street gang activity" means:

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

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

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

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

1 (iv) Any violation of the firearms and dangerous weapon act
2 (chapter 9.41 RCW);
3 (v) Theft of a Firearm (RCW 9A.56.300);
4 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
5 (vii) Hate Crime (RCW 9A.36.080);
6 (viii) Harassment where a subsequent violation or deadly threat
7 is made (RCW 9A.46.020(2)(b));
8 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
9 (x) Any felony conviction by a person 18 years of age or older
10 with a special finding of involving a juvenile in a felony offense
11 under RCW 9.94A.833;
12 (xi) Residential Burglary (RCW 9A.52.025);
13 (xii) Burglary 2 (RCW 9A.52.030);
14 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
15 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
16 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
17 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
18 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
19 9A.56.070);
20 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
21 9A.56.075);
22 (xix) Extortion 1 (RCW 9A.56.120);
23 (xx) Extortion 2 (RCW 9A.56.130);
24 (xxi) Intimidating a Witness (RCW 9A.72.110);
25 (xxii) Tampering with a Witness (RCW 9A.72.120);
26 (xxiii) Reckless Endangerment (RCW 9A.36.050);
27 (xxiv) Coercion (RCW 9A.36.070);
28 (xxv) Harassment (RCW 9A.46.020); or
29 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
30 (b) That at least one of the offenses listed in (a) of this
31 subsection shall have occurred after July 1, 2008;
32 (c) That the most recent committed offense listed in (a) of this
33 subsection occurred within three years of a prior offense listed in
34 (a) of this subsection; and
35 (d) Of the offenses that were committed in (a) of this
36 subsection, the offenses occurred on separate occasions or were
37 committed by two or more persons.
38 (38) "Persistent offender" is an offender who:

1 (a) (i) Has been convicted in this state of any felony considered
2 a most serious offense and was 18 years of age or older on the
3 offense date; and

4 (ii) Has, before the commission of the offense under (a) of this
5 subsection, been convicted as an offender, and was 18 years of age or
6 older on the offense date, on at least two separate occasions,
7 whether in this state or elsewhere, of felonies that under the laws
8 of this state would be considered most serious offenses and would be
9 included in the offender score under RCW 9.94A.525; provided that of
10 the two or more previous convictions, at least one conviction must
11 have occurred before the commission of any of the other most serious
12 offenses for which the offender was previously convicted; or

13 (b) (i) Has been convicted, and was 18 years of age or older on
14 the offense date, of: (A) Rape in the first degree, rape of a child
15 in the first degree, child molestation in the first degree, rape in
16 the second degree, rape of a child in the second degree, or indecent
17 liberties by forcible compulsion; (B) any of the following offenses
18 with a finding of sexual motivation: Murder in the first degree,
19 murder in the second degree, homicide by abuse, kidnapping in the
20 first degree, kidnapping in the second degree, assault in the first
21 degree, assault in the second degree, assault of a child in the first
22 degree, assault of a child in the second degree, or burglary in the
23 first degree; or (C) an attempt to commit any crime listed in this
24 subsection (38) (b) (i); and

25 (ii) Has, before the commission of the offense under (b) (i) of
26 this subsection, been convicted as an offender, and was 18 years of
27 age or older on the offense date, on at least one occasion, whether
28 in this state or elsewhere, of an offense listed in (b) (i) of this
29 subsection or any federal or out-of-state offense or offense under
30 prior Washington law that is comparable to the offenses listed in
31 (b) (i) of this subsection. (~~(A conviction for rape of a child in the~~
32 ~~first degree constitutes a conviction under (b) (i) of this subsection~~
33 ~~only when the offender was 16 years of age or older when the offender~~
34 ~~committed the offense. A conviction for rape of a child in the second~~
35 ~~degree constitutes a conviction under (b) (i) of this subsection only~~
36 ~~when the offender was 18 years of age or older when the offender~~
37 ~~committed the offense.))~~

38 (39) "Predatory" means: (a) The perpetrator of the crime was a
39 stranger to the victim, as defined in this section; (b) the
40 perpetrator established or promoted a relationship with the victim

1 prior to the offense and the victimization of the victim was a
2 significant reason the perpetrator established or promoted the
3 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
4 volunteer, or other person in authority in any public or private
5 school and the victim was a student of the school under his or her
6 authority or supervision. For purposes of this subsection, "school"
7 does not include home-based instruction as defined in RCW
8 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
9 authority in any recreational activity and the victim was a
10 participant in the activity under his or her authority or
11 supervision; (iii) a pastor, elder, volunteer, or other person in
12 authority in any church or religious organization, and the victim was
13 a member or participant of the organization under his or her
14 authority; or (iv) a teacher, counselor, volunteer, or other person
15 in authority providing home-based instruction and the victim was a
16 student receiving home-based instruction while under his or her
17 authority or supervision. For purposes of this subsection: (A) "Home-
18 based instruction" has the same meaning as defined in RCW
19 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
20 in authority" does not include the parent or legal guardian of the
21 victim.

22 (40) "Private school" means a school regulated under chapter
23 28A.195 or 28A.205 RCW.

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

25 (42) "Recidivist offense" means a felony offense where a prior
26 conviction of the same offense or other specified offense is an
27 element of the crime including, but not limited to:

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

30 (b) Cyber harassment, RCW 9A.90.120(2)(b)(i);

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

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

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

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

35 (g) Violation of a no-contact or protection order, RCW 7.105.450
36 or former RCW 26.50.110(5).

37 (43) "Repetitive domestic violence offense" means any:

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

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

3 (iii) Domestic violence violation of a protection order under
4 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
5 violation of a domestic violence protection order under chapter 7.105
6 RCW, that is not a felony offense;

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

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

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

15 (44) "Restitution" means a specific sum of money ordered by the
16 sentencing court to be paid by the offender to the court over a
17 specified period of time as payment of damages. The sum may include
18 both public and private costs.

19 (45) "Risk assessment" means the application of the risk
20 instrument recommended to the department by the Washington state
21 institute for public policy as having the highest degree of
22 predictive accuracy for assessing an offender's risk of reoffense.

23 (46) "Serious traffic offense" means:

24 (a) (i) Nonfelony driving while under the influence of
25 intoxicating liquor or any drug (RCW 46.61.502);

26 (ii) Nonfelony actual physical control while under the influence
27 of intoxicating liquor or any drug (RCW 46.61.504);

28 (iii) Reckless driving (RCW 46.61.500);

29 (iv) Negligent driving if the conviction is the result of a
30 charge that was originally filed as a violation of RCW 46.61.502 or
31 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
32 46.61.522 while under the influence of intoxicating liquor or any
33 drug (RCW 46.61.5249);

34 (v) Reckless endangerment if the conviction is the result of a
35 charge that was originally filed as a violation of RCW 46.61.502 or
36 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
37 46.61.522 while under the influence of intoxicating liquor or any
38 drug (RCW 9A.36.050); or

39 (vi) Hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

4 (c) This definition applies for the purpose of a personal
5 driver's license only and does not apply to violations related to a
6 commercial motor vehicle under RCW 46.25.090.

7 (47) "Serious violent offense" is a subcategory of violent
8 offense and means:

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

10 (ii) Homicide by abuse;

11 (iii) Murder in the second degree;

12 (iv) Manslaughter in the first degree;

13 (v) Assault in the first degree;

14 (vi) Kidnapping in the first degree;

15 (vii) Rape in the first degree;

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

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

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

22 (48) "Sex offense" means:

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

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

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

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

31 (v) A felony violation of RCW 9A.44.132(1) (failure to register
32 as a sex offender) if the person has been convicted of violating RCW
33 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
34 prior to June 10, 2010, on at least one prior occasion;

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

38 (c) A felony with a finding of sexual motivation under RCW
39 9.94A.835 or 13.40.135; or

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

4 (49) "Sexual motivation" means that one of the purposes for which
5 the defendant committed the crime was for the purpose of his or her
6 sexual gratification.

7 (50) "Standard sentence range" means the sentencing court's
8 discretionary range in imposing a nonappealable sentence.

9 (51) "Statutory maximum sentence" means the maximum length of
10 time for which an offender may be confined as punishment for a crime
11 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute
12 defining the crime, or other statute defining the maximum penalty for
13 a crime.

14 (52) "Stranger" means that the victim did not know the offender
15 24 hours before the offense.

16 (53) "Total confinement" means confinement inside the physical
17 boundaries of a facility or institution operated or utilized under
18 contract by the state or any other unit of government for 24 hours a
19 day, or pursuant to RCW 72.64.050 and 72.64.060.

20 (54) "Transition training" means written and verbal instructions
21 and assistance provided by the department to the offender during the
22 two weeks prior to the offender's successful completion of the work
23 ethic camp program. The transition training shall include
24 instructions in the offender's requirements and obligations during
25 the offender's period of community custody.

26 (55) "Victim" means any person who has sustained emotional,
27 psychological, physical, or financial injury to person or property as
28 a direct result of the crime charged.

29 (56) "Victim of domestic violence" means an intimate partner or
30 household member who has been subjected to the infliction of physical
31 harm or sexual and psychological abuse by an intimate partner or
32 household member as part of a pattern of assaultive, coercive, and
33 controlling behaviors directed at achieving compliance from or
34 control over that intimate partner or household member. Domestic
35 violence includes, but is not limited to, the offenses listed in RCW
36 10.99.020 and 26.50.010 committed by an intimate partner or household
37 member against a victim who is an intimate partner or household
38 member.

39 (57) "Victim of sex trafficking, prostitution, or commercial
40 sexual abuse of a minor" means a person who has been forced or

1 coerced to perform a commercial sex act including, but not limited
2 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
3 9.68A.101, and the trafficking victims protection act of 2000, 22
4 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
5 commercial sex act when they were less than 18 years of age including
6 but not limited to the offenses defined in chapter 9.68A RCW.

7 (58) "Victim of sexual assault" means any person who is a victim
8 of a sexual assault offense, nonconsensual sexual conduct, or
9 nonconsensual sexual penetration and as a result suffers physical,
10 emotional, financial, or psychological impacts. Sexual assault
11 offenses include, but are not limited to, the offenses defined in
12 chapter 9A.44 RCW.

13 (59) "Violent offense" means:

14 (a) Any of the following felonies:

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

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

19 (iii) Manslaughter in the first degree;

20 (iv) Manslaughter in the second degree;

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

22 (vi) Kidnapping in the second degree;

23 (vii) Arson in the second degree;

24 (viii) Assault in the second degree;

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

26 (x) Extortion in the first degree;

27 (xi) Robbery in the second degree;

28 (xii) Drive-by shooting;

29 (xiii) Vehicular assault, when caused by the operation or driving
30 of a vehicle by a person while under the influence of intoxicating
31 liquor or any drug or by the operation or driving of a vehicle in a
32 reckless manner; and

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

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

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

4 (60) "Work crew" means a program of partial confinement
5 consisting of civic improvement tasks for the benefit of the
6 community that complies with RCW 9.94A.725.

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

14 (62) "Work release" means a program of partial confinement
15 available to offenders who are employed or engaged as a student in a
16 regular course of study at school.

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

19 (1) In any criminal case wherein a person has been sentenced as a
20 persistent offender, the person must have a resentencing hearing if a
21 conviction for an offense that occurred when the offender was under
22 the age of 18 was used as a basis for the finding that the person was
23 a persistent offender. The prosecuting attorney for the county in
24 which any offender was sentenced as a persistent offender shall
25 review each sentencing document. If a conviction for an offense that
26 occurred when the person was under the age of 18 was used as a basis
27 for a finding that an offender was a persistent offender, the
28 prosecuting attorney shall, or the person may, make a motion for
29 relief from sentence to the original sentencing court.

30 (2) The sentencing court shall grant the motion if it finds that
31 a conviction for an offense that was committed when the person was
32 under the age of 18 was used as a basis for a finding that the person
33 was a persistent offender and shall immediately set an expedited date
34 for resentencing. At resentencing, the court shall sentence the
35 person as if the conviction for an offense occurring under the age of
36 18 was not a most serious offense at the time the original sentence
37 was imposed.

38 (3) Notwithstanding the provisions of RCW 9.94A.345, for purposes
39 of resentencing under this section or sentencing any person as a

1 persistent offender after the effective date of this section, an
2 offense occurring when the offender was under the age of 18 shall not
3 be considered a most serious offense regardless of whether the
4 offense was committed before, on, or after the effective date of
5 chapter 187, Laws of 2019 [July 28, 2019].

6 NEW SECTION. **Sec. 4.** This act applies retroactively to persons
7 incarcerated in total confinement as persistent offenders on the
8 effective date of this section, regardless of the date of the offense
9 or conviction that resulted in the person being sentenced as a
10 persistent offender.

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