

SENATE BILL 6406

State of Washington 57th Legislature

2002 Regular Session

By Senators Costa, Eide, Fairley, Kastama, Jacobsen, Rasmussen, Gardner and Oke

Read first time 01/16/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to vehicular homicide; reenacting and amending RCW  
2 9.94A.515 and 9.94A.030; and prescribing penalties.

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

4 **Sec. 1.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s  
5 4, 2001 c 217 s 12, and 2001 c 17 s 1 are each reenacted and amended to  
6 read as follows:

7 TABLE 2

8 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

9	XVI	Aggravated Murder 1 (RCW 10.95.020)
10	XV	Homicide by abuse (RCW 9A.32.055)
11		Malicious explosion 1 (RCW 70.74.280(1))
12		Murder 1 (RCW 9A.32.030)
13	XIV	Murder 2 (RCW 9A.32.050)
14	XIII	Malicious explosion 2 (RCW 70.74.280(2))
15		Malicious placement of an explosive 1 (RCW
16		70.74.270(1))

1 XII Assault 1 (RCW 9A.36.011)  
2 Assault of a Child 1 (RCW 9A.36.120)  
3 Malicious placement of an imitation device  
4 1 (RCW 70.74.272(1)(a))  
5 Rape 1 (RCW 9A.44.040)  
6 Rape of a Child 1 (RCW 9A.44.073)

7 XI Manslaughter 1 (RCW 9A.32.060)  
8 Rape 2 (RCW 9A.44.050)  
9 Rape of a Child 2 (RCW 9A.44.076)  
10 Vehicular Homicide, by being under the  
11 influence of intoxicating liquor or  
12 any drug (RCW 46.61.520)

13 X Child Molestation 1 (RCW 9A.44.083)  
14 Indecent Liberties (with forcible  
15 compulsion) (RCW 9A.44.100(1)(a))  
16 Kidnapping 1 (RCW 9A.40.020)  
17 Leading Organized Crime (RCW  
18 9A.82.060(1)(a))  
19 Malicious explosion 3 (RCW 70.74.280(3))  
20 Manufacture of methamphetamine (RCW  
21 69.50.401(a)(1)(ii))  
22 Over 18 and deliver heroin,  
23 methamphetamine, a narcotic from  
24 Schedule I or II, or flunitrazepam  
25 from Schedule IV to someone under 18  
26 (RCW 69.50.406)  
27 Sexually Violent Predator Escape (RCW  
28 9A.76.115)

29 IX Assault of a Child 2 (RCW 9A.36.130)  
30 Controlled Substance Homicide (RCW  
31 69.50.415)  
32 Explosive devices prohibited (RCW  
33 70.74.180)  
34 Hit and Run--Death (RCW 46.52.020(4)(a))  
35 Homicide by Watercraft, by being under the  
36 influence of intoxicating liquor or  
37 any drug (RCW 79A.60.050)

1           Inciting Criminal Profiteering (RCW  
2           9A.82.060(1)(b))  
3           Malicious placement of an explosive 2 (RCW  
4           70.74.270(2))  
5           Over 18 and deliver narcotic from Schedule  
6           III, IV, or V or a nonnarcotic, except  
7           flunitrazepam or methamphetamine, from  
8           Schedule I-V to someone under 18 and 3  
9           years junior (RCW 69.50.406)  
10          Robbery 1 (RCW 9A.56.200)  
11          Sexual Exploitation (RCW 9.68A.040)  
12          (~~Vehicular Homicide, by being under the~~  
13           ~~influence of intoxicating liquor or~~  
14           ~~any drug (RCW 46.61.520))~~)  
  
15   VIII       Arson 1 (RCW 9A.48.020)  
16           Deliver or possess with intent to deliver  
17           m e t h a m p h e t a m i n e     ( R C W  
18           69.50.401(a)(1)(ii))  
19           Homicide by Watercraft, by the operation of  
20           any vessel in a reckless manner (RCW  
21           79A.60.050)  
22           Manslaughter 2 (RCW 9A.32.070)  
23           Manufacture, deliver, or possess with  
24           intent to deliver amphetamine (RCW  
25           69.50.401(a)(1)(ii))  
26           Manufacture, deliver, or possess with  
27           intent to deliver heroin or cocaine  
28           (RCW 69.50.401(a)(1)(i))  
29           Possession of Ephedrine, Pseudoephedrine,  
30           or Anhydrous Ammonia with intent to  
31           manufacture methamphetamine (RCW  
32           69.50.440)  
33           Promoting Prostitution 1 (RCW 9A.88.070)  
34           Selling for profit (controlled or  
35           counterfeit) any controlled substance  
36           (RCW 69.50.410)  
37           Theft of Anhydrous Ammonia (RCW 69.55.010)

1 Vehicular Homicide, by the operation of any  
2 vehicle in a reckless manner (RCW  
3 46.61.520)

4 VII Burglary 1 (RCW 9A.52.020)  
5 Child Molestation 2 (RCW 9A.44.086)  
6 Dealing in depictions of minor engaged in  
7 sexually explicit conduct (RCW  
8 9.68A.050)  
9 Drive-by Shooting (RCW 9A.36.045)  
10 Homicide by Watercraft, by disregard for  
11 the safety of others (RCW 79A.60.050)  
12 Indecent Liberties (without forcible  
13 compulsion) (RCW 9A.44.100(1) (b) and  
14 (c))  
15 Introducing Contraband 1 (RCW 9A.76.140)  
16 Involving a minor in drug dealing (RCW  
17 69.50.401(f))  
18 Malicious placement of an explosive 3 (RCW  
19 70.74.270(3))  
20 Sending, bringing into state depictions of  
21 minor engaged in sexually explicit  
22 conduct (RCW 9.68A.060)  
23 Unlawful Possession of a Firearm in the  
24 first degree (RCW 9.41.040(1)(a))  
25 Use of a Machine Gun in Commission of a  
26 Felony (RCW 9.41.225)  
27 Vehicular Homicide, by disregard for the  
28 safety of others (RCW 46.61.520)

29 VI Bail Jumping with Murder 1 (RCW  
30 9A.76.170(3)(a))  
31 Bribery (RCW 9A.68.010)  
32 Incest 1 (RCW 9A.64.020(1))  
33 Intimidating a Judge (RCW 9A.72.160)  
34 Intimidating a Juror/Witness (RCW  
35 9A.72.110, 9A.72.130)  
36 Malicious placement of an imitation device  
37 2 (RCW 70.74.272(1)(b))

1 Manufacture, deliver, or possess with  
2 intent to deliver narcotics from  
3 Schedule I or II (except heroin or  
4 cocaine) or flunitrazepam from  
5 Schedule IV (RCW 69.50.401(a)(1)(i))  
6 Rape of a Child 3 (RCW 9A.44.079)  
7 Theft of a Firearm (RCW 9A.56.300)  
8 Unlawful Storage of Anhydrous Ammonia (RCW  
9 69.55.020)

10 V Abandonment of dependent person 1 (RCW  
11 9A.42.060)

12 Advancing money or property for  
13 extortionate extension of credit (RCW  
14 9A.82.030)

15 Bail Jumping with class A Felony (RCW  
16 9A.76.170(3)(b))

17 Child Molestation 3 (RCW 9A.44.089)  
18 Criminal Mistreatment 1 (RCW 9A.42.020)  
19 Custodial Sexual Misconduct 1 (RCW  
20 9A.44.160)

21 Delivery of imitation controlled substance  
22 by person eighteen or over to person  
23 under eighteen (RCW 69.52.030(2))

24 Domestic Violence Court Order Violation  
25 (RCW 10.99.040, 10.99.050, 26.09.300,  
26 26.10.220, 26.26.138, 26.50.110,  
27 26.52.070, or 74.34.145)

28 Extortion 1 (RCW 9A.56.120)  
29 Extortionate Extension of Credit (RCW  
30 9A.82.020)

31 Extortionate Means to Collect Extensions of  
32 Credit (RCW 9A.82.040)

33 Incest 2 (RCW 9A.64.020(2))  
34 Kidnapping 2 (RCW 9A.40.030)  
35 Perjury 1 (RCW 9A.72.020)  
36 Persistent prison misbehavior (RCW  
37 9.94.070)

38 Possession of a Stolen Firearm (RCW  
39 9A.56.310)

1 Rape 3 (RCW 9A.44.060)  
2 Rendering Criminal Assistance 1 (RCW  
3 9A.76.070)  
4 Sexual Misconduct with a Minor 1 (RCW  
5 9A.44.093)  
6 Sexually Violating Human Remains (RCW  
7 9A.44.105)  
8 Stalking (RCW 9A.46.110)

9 IV Arson 2 (RCW 9A.48.030)  
10 Assault 2 (RCW 9A.36.021)  
11 Assault by Watercraft (RCW 79A.60.060)  
12 Bribing a Witness/Bribe Received by Witness  
13 (RCW 9A.72.090, 9A.72.100)  
14 Commercial Bribery (RCW 9A.68.060)  
15 Counterfeiting (RCW 9.16.035(4))  
16 Escape 1 (RCW 9A.76.110)  
17 Hit and Run--Injury (RCW 46.52.020(4)(b))  
18 Hit and Run with Vessel--Injury Accident  
19 (RCW 79A.60.200(3))  
20 Identity Theft 1 (RCW 9.35.020(2)(a))  
21 Indecent Exposure to Person Under Age  
22 Fourteen (subsequent sex offense) (RCW  
23 9A.88.010)  
24 Influencing Outcome of Sporting Event (RCW  
25 9A.82.070)  
26 Knowingly Trafficking in Stolen Property  
27 (RCW 9A.82.050(2))  
28 Malicious Harassment (RCW 9A.36.080)  
29 Manufacture, deliver, or possess with  
30 intent to deliver narcotics from  
31 Schedule III, IV, or V or nonnarcotics  
32 from Schedule I-V (except marijuana,  
33 amphetamine, methamphetamines, or  
34 flunitrazepam) (RCW 69.50.401(a)(1)  
35 (iii) through (v))  
36 Residential Burglary (RCW 9A.52.025)  
37 Robbery 2 (RCW 9A.56.210)  
38 Theft of Livestock 1 (RCW 9A.56.080)  
39 Threats to Bomb (RCW 9.61.160)

1 Use of Proceeds of Criminal Profiteering  
2 (RCW 9A.82.080 (1) and (2))  
3 Vehicular Assault, by being under the  
4 influence of intoxicating liquor or  
5 any drug, or by the operation or  
6 driving of a vehicle in a reckless  
7 manner (RCW 46.61.522)  
8 Willful Failure to Return from Furlough  
9 (RCW 72.66.060)

10 III Abandonment of dependent person 2 (RCW  
11 9A.42.070)  
12 Assault 3 (RCW 9A.36.031)  
13 Assault of a Child 3 (RCW 9A.36.140)  
14 Bail Jumping with class B or C Felony (RCW  
15 9A.76.170(3)(c))  
16 Burglary 2 (RCW 9A.52.030)  
17 Communication with a Minor for Immoral  
18 Purposes (RCW 9.68A.090)  
19 Criminal Gang Intimidation (RCW 9A.46.120)  
20 Criminal Mistreatment 2 (RCW 9A.42.030)  
21 Custodial Assault (RCW 9A.36.100)  
22 Delivery of a material in lieu of a  
23 controlled substance (RCW  
24 69.50.401(c))  
25 Escape 2 (RCW 9A.76.120)  
26 Extortion 2 (RCW 9A.56.130)  
27 Harassment (RCW 9A.46.020)  
28 Intimidating a Public Servant (RCW  
29 9A.76.180)  
30 Introducing Contraband 2 (RCW 9A.76.150)  
31 Maintaining a Dwelling or Place for  
32 Controlled Substances (RCW  
33 69.50.402(a)(6))  
34 Malicious Injury to Railroad Property (RCW  
35 81.60.070)  
36 Manufacture, deliver, or possess with  
37 intent to deliver marijuana (RCW  
38 69.50.401(a)(1)(iii))

1 Manufacture, distribute, or possess with  
2 intent to distribute an imitation  
3 controlled substance (RCW  
4 69.52.030(1))  
5 Patronizing a Juvenile Prostitute (RCW  
6 9.68A.100)  
7 Perjury 2 (RCW 9A.72.030)  
8 Possession of Incendiary Device (RCW  
9 9.40.120)  
10 Possession of Machine Gun or Short-Barreled  
11 Shotgun or Rifle (RCW 9.41.190)  
12 Promoting Prostitution 2 (RCW 9A.88.080)  
13 Recklessly Trafficking in Stolen Property  
14 (RCW 9A.82.050(1))  
15 Securities Act violation (RCW 21.20.400)  
16 Tampering with a Witness (RCW 9A.72.120)  
17 Telephone Harassment (subsequent conviction  
18 or threat of death) (RCW 9.61.230)  
19 Theft of Livestock 2 (RCW 9A.56.080)  
20 Unlawful Imprisonment (RCW 9A.40.040)  
21 Unlawful possession of firearm in the  
22 second degree (RCW 9.41.040(1)(b))  
23 Unlawful Use of Building for Drug Purposes  
24 (RCW 69.53.010)  
25 Vehicular Assault, by the operation or  
26 driving of a vehicle with disregard  
27 for the safety of others (RCW  
28 46.61.522)  
29 Willful Failure to Return from Work Release  
30 (RCW 72.65.070)  
31 II Computer Trespass 1 (RCW 9A.52.110)  
32 Counterfeiting (RCW 9.16.035(3))  
33 Create, deliver, or possess a counterfeit  
34 controlled substance (RCW  
35 69.50.401(b))  
36 Escape from Community Custody (RCW  
37 72.09.310)  
38 Health Care False Claims (RCW 48.80.030)  
39 Identity Theft 2 (RCW 9.35.020(2)(b))



1 Improperly Obtaining Financial Information  
2 (RCW 9.35.010)  
3 Malicious Mischief 1 (RCW 9A.48.070)  
4 Possession of controlled substance that is  
5 either heroin or narcotics from  
6 Schedule I or II or flunitrazepam from  
7 Schedule IV (RCW 69.50.401(d))  
8 Possession of phencyclidine (PCP) (RCW  
9 69.50.401(d))  
10 Possession of Stolen Property 1 (RCW  
11 9A.56.150)  
12 Theft 1 (RCW 9A.56.030)  
13 Theft of Rental, Leased, or Lease-purchased  
14 Property (valued at one thousand five  
15 hundred dollars or more) (RCW  
16 9A.56.096(4))  
17 Trafficking in Insurance Claims (RCW  
18 48.30A.015)  
19 Unlawful Practice of Law (RCW 2.48.180)  
20 Unlicensed Practice of a Profession or  
21 Business (RCW 18.130.190(7))  
22 I Attempting to Elude a Pursuing Police  
23 Vehicle (RCW 46.61.024)  
24 False Verification for Welfare (RCW  
25 74.08.055)  
26 Forged Prescription (RCW 69.41.020)  
27 Forged Prescription for a Controlled  
28 Substance (RCW 69.50.403)  
29 Forgery (RCW 9A.60.020)  
30 Malicious Mischief 2 (RCW 9A.48.080)  
31 Possess Controlled Substance that is a  
32 Narcotic from Schedule III, IV, or V  
33 or Non-narcotic from Schedule I-V  
34 (except phencyclidine or  
35 flunitrazepam) (RCW 69.50.401(d))  
36 Possession of Stolen Property 2 (RCW  
37 9A.56.160)  
38 Reckless Burning 1 (RCW 9A.48.040)

1 Taking Motor Vehicle Without Permission  
2 (RCW 9A.56.070)  
3 Theft 2 (RCW 9A.56.040)  
4 Theft of Rental, Leased, or Lease-purchased  
5 Property (valued at two hundred fifty  
6 dollars or more but less than one  
7 thousand five hundred dollars) (RCW  
8 9A.56.096(4))  
9 Unlawful Issuance of Checks or Drafts (RCW  
10 9A.56.060)  
11 Unlawful Use of Food Stamps (RCW 9.91.140  
12 (2) and (3))  
13 Vehicle Prowl 1 (RCW 9A.52.095)

14 **Sec. 2.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s  
15 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

16 Unless the context clearly requires otherwise, the definitions in  
17 this section apply throughout this chapter.

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

20 (2) "Collect," or any derivative thereof, "collect and remit," or  
21 "collect and deliver," when used with reference to the department,  
22 means that the department, either directly or through a collection  
23 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
24 and enforcing the offender's sentence with regard to the legal  
25 financial obligation, receiving payment thereof from the offender, and,  
26 consistent with current law, delivering daily the entire payment to the  
27 superior court clerk without depositing it in a departmental account.

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

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

33 (5) "Community custody" means that portion of an offender's  
34 sentence of confinement in lieu of earned release time or imposed  
35 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
36 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
37 community subject to controls placed on the offender's movement and  
38 activities by the department. For offenders placed on community

1 custody for crimes committed on or after July 1, 2000, the department  
2 shall assess the offender's risk of reoffense and may establish and  
3 modify conditions of community custody, in addition to those imposed by  
4 the court, based upon the risk to community safety.

5 (6) "Community custody range" means the minimum and maximum period  
6 of community custody included as part of a sentence under RCW  
7 9.94A.715, as established by the commission or the legislature under  
8 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

9 (7) "Community placement" means that period during which the  
10 offender is subject to the conditions of community custody and/or  
11 postrelease supervision, which begins either upon completion of the  
12 term of confinement (postrelease supervision) or at such time as the  
13 offender is transferred to community custody in lieu of earned release.  
14 Community placement may consist of entirely community custody, entirely  
15 postrelease supervision, or a combination of the two.

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

19 (9) "Community supervision" means a period of time during which a  
20 convicted offender is subject to crime-related prohibitions and other  
21 sentence conditions imposed by a court pursuant to this chapter or RCW  
22 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
23 a chemical dependency that has contributed to his or her offense, the  
24 conditions of supervision may, subject to available resources, include  
25 treatment. For purposes of the interstate compact for out-of-state  
26 supervision of parolees and probationers, RCW 9.95.270, community  
27 supervision is the functional equivalent of probation and should be  
28 considered the same as probation by other states.

29 (10) "Confinement" means total or partial confinement.

30 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
31 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
32 acceptance of a plea of guilty.

33 (12) "Crime-related prohibition" means an order of a court  
34 prohibiting conduct that directly relates to the circumstances of the  
35 crime for which the offender has been convicted, and shall not be  
36 construed to mean orders directing an offender affirmatively to  
37 participate in rehabilitative programs or to otherwise perform  
38 affirmative conduct. However, affirmative acts necessary to monitor  
39 compliance with the order of a court may be required by the department.

1 (13) "Criminal history" means the list of a defendant's prior  
2 convictions and juvenile adjudications, whether in this state, in  
3 federal court, or elsewhere. The history shall include, where known,  
4 for each conviction (a) whether the defendant has been placed on  
5 probation and the length and terms thereof; and (b) whether the  
6 defendant has been incarcerated and the length of incarceration.

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

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

16 (16) "Department" means the department of corrections.

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

25 (18) "Disposable earnings" means that part of the earnings of an  
26 offender remaining after the deduction from those earnings of any  
27 amount required by law to be withheld. For the purposes of this  
28 definition, "earnings" means compensation paid or payable for personal  
29 services, whether denominated as wages, salary, commission, bonuses, or  
30 otherwise, and, notwithstanding any other provision of law making the  
31 payments exempt from garnishment, attachment, or other process to  
32 satisfy a court-ordered legal financial obligation, specifically  
33 includes periodic payments pursuant to pension or retirement programs,  
34 or insurance policies of any type, but does not include payments made  
35 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
36 or Title 74 RCW.

37 (19) "Drug offender sentencing alternative" is a sentencing option  
38 available to persons convicted of a felony offense other than a violent

1 offense or a sex offense and who are eligible for the option under RCW  
2 9.94A.660.

3 (20) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of  
5 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
6 controlled substance (RCW 69.50.403);

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

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

13 (21) "Earned release" means earned release from confinement as  
14 provided in RCW 9.94A.728.

15 (22) "Escape" means:

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

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

25 (23) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
27 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
28 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

1 (26) "Home detention" means a program of partial confinement  
2 available to offenders wherein the offender is confined in a private  
3 residence subject to electronic surveillance.

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

18 (28) "Most serious offense" means any of the following felonies or  
19 a felony attempt to commit any of the following felonies:

20 (a) Any felony defined under any law as a class A felony or  
21 criminal solicitation of or criminal conspiracy to commit a class A  
22 felony;

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

28 (g) Incest when committed against a child under age fourteen;

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

38 (q) Vehicular assault, when caused by the operation or driving of  
39 a vehicle by a person while under the influence of intoxicating liquor

1 or any drug or by the operation or driving of a vehicle in a reckless  
2 manner;

3 (r) Vehicular homicide, when proximately caused by the driving of  
4 any vehicle by any person while under the influence of intoxicating  
5 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
6 any vehicle in a reckless manner;

7 (s) Any other class B felony offense with a finding of sexual  
8 motivation;

9 (t) Any other felony with a deadly weapon verdict under RCW  
10 9.94A.602;

11 (u) Any felony offense in effect at any time prior to December 2,  
12 1993, that is comparable to a most serious offense under this  
13 subsection, or any federal or out-of-state conviction for an offense  
14 that under the laws of this state would be a felony classified as a  
15 most serious offense under this subsection;

16 (v)(i) A prior conviction for indecent liberties under RCW  
17 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
18 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
19 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
20 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

21 (ii) A prior conviction for indecent liberties under RCW  
22 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
23 if: (A) The crime was committed against a child under the age of  
24 fourteen; or (B) the relationship between the victim and perpetrator is  
25 included in the definition of indecent liberties under RCW  
26 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
27 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
28 through July 27, 1997.

29 (29) "Nonviolent offense" means an offense which is not a violent  
30 offense.

31 (30) "Offender" means a person who has committed a felony  
32 established by state law and is eighteen years of age or older or is  
33 less than eighteen years of age but whose case is under superior court  
34 jurisdiction under RCW 13.04.030 or has been transferred by the  
35 appropriate juvenile court to a criminal court pursuant to RCW  
36 13.40.110. Throughout this chapter, the terms "offender" and  
37 "defendant" are used interchangeably.

38 (31) "Partial confinement" means confinement for no more than one  
39 year in a facility or institution operated or utilized under contract

1 by the state or any other unit of government, or, if home detention or  
2 work crew has been ordered by the court, in an approved residence, for  
3 a substantial portion of each day with the balance of the day spent in  
4 the community. Partial confinement includes work release, home  
5 detention, work crew, and a combination of work crew and home  
6 detention.

7 (32) "Persistent offender" is an offender who:

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

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

18 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
19 of a child in the first degree, child molestation in the first degree,  
20 rape in the second degree, rape of a child in the second degree, or  
21 indecent liberties by forcible compulsion; (B) any of the following  
22 offenses with a finding of sexual motivation: Murder in the first  
23 degree, murder in the second degree, homicide by abuse, kidnapping in  
24 the first degree, kidnapping in the second degree, assault in the first  
25 degree, assault in the second degree, assault of a child in the first  
26 degree, or burglary in the first degree; or (C) an attempt to commit  
27 any crime listed in this subsection (32)(b)(i); and

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



1 (33) "Postrelease supervision" is that portion of an offender's  
2 community placement that is not community custody.

3 (34) "Restitution" means a specific sum of money ordered by the  
4 sentencing court to be paid by the offender to the court over a  
5 specified period of time as payment of damages. The sum may include  
6 both public and private costs.

7 (35) "Risk assessment" means the application of an objective  
8 instrument supported by research and adopted by the department for the  
9 purpose of assessing an offender's risk of reoffense, taking into  
10 consideration the nature of the harm done by the offender, place and  
11 circumstances of the offender related to risk, the offender's  
12 relationship to any victim, and any information provided to the  
13 department by victims. The results of a risk assessment shall not be  
14 based on unconfirmed or unconfirmable allegations.

15 (36) "Serious traffic offense" means:

16 (a) Driving while under the influence of intoxicating liquor or any  
17 drug (RCW 46.61.502), actual physical control while under the influence  
18 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
19 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
20 or

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

24 (37) "Serious violent offense" is a subcategory of violent offense  
25 and means:

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

27 (ii) Homicide by abuse;

28 (iii) Murder in the second degree;

29 (iv) Manslaughter in the first degree;

30 (v) Vehicular homicide, when proximately caused by the driving of  
31 any vehicle by any person while under the influence of intoxicating  
32 liquor or any drug as defined by RCW 46.61.502;

33 (vi) Assault in the first degree;

34 (~~(vi)~~) (vii) Kidnapping in the first degree;

35 (~~(vii)~~) (viii) Rape in the first degree;

36 (~~(viii)~~) (ix) Assault of a child in the first degree; or

37 (~~(ix)~~) (x) An attempt, criminal solicitation, or criminal  
38 conspiracy to commit one of these felonies; or

1 (b) 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 serious  
3 violent offense under (a) of this subsection.

4 (38) "Sex offense" means:

5 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
6 RCW 9A.44.130(11);

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

8 (iii) A felony that is a violation of chapter 9.68A RCW other than  
9 RCW 9.68A.070 or 9.68A.080; or

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

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

15 (c) A felony with a finding of sexual motivation under RCW  
16 9.94A.835 or 13.40.135; or

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

20 (39) "Sexual motivation" means that one of the purposes for which  
21 the defendant committed the crime was for the purpose of his or her  
22 sexual gratification.

23 (40) "Standard sentence range" means the sentencing court's  
24 discretionary range in imposing a nonappealable sentence.

25 (41) "Statutory maximum sentence" means the maximum length of time  
26 for which an offender may be confined as punishment for a crime as  
27 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
28 crime, or other statute defining the maximum penalty for a crime.

29 (42) "Total confinement" means confinement inside the physical  
30 boundaries of a facility or institution operated or utilized under  
31 contract by the state or any other unit of government for twenty-four  
32 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

33 (43) "Transition training" means written and verbal instructions  
34 and assistance provided by the department to the offender during the  
35 two weeks prior to the offender's successful completion of the work  
36 ethic camp program. The transition training shall include instructions  
37 in the offender's requirements and obligations during the offender's  
38 period of community custody.

1 (44) "Victim" means any person who has sustained emotional,  
2 psychological, physical, or financial injury to person or property as  
3 a direct result of the crime charged.

4 (45) "Violent offense" means:

5 (a) Any of the following felonies:

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

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

10 (iii) Manslaughter in the first degree;

11 (iv) Manslaughter in the second degree;

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

13 (vi) Kidnapping in the second degree;

14 (vii) Arson in the second degree;

15 (viii) Assault in the second degree;

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

17 (x) Extortion in the first degree;

18 (xi) Robbery in the second degree;

19 (xii) Drive-by shooting; and

20 (xiii) Vehicular assault, when caused by the operation or driving  
21 of a vehicle by a person while under the influence of intoxicating  
22 liquor or any drug or by the operation or driving of a vehicle in a  
23 reckless manner(~~(/and~~

24 ~~(xiv) Vehicular homicide, when proximately caused by the driving of~~  
25 ~~any vehicle by any person while under the influence of intoxicating~~  
26 ~~liquor or any drug as defined by RCW 46.61.502, or by the operation of~~  
27 ~~any vehicle in a reckless manner));~~

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

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

34 (46) "Work crew" means a program of partial confinement consisting  
35 of civic improvement tasks for the benefit of the community that  
36 complies with RCW 9.94A.725.

37 (47) "Work ethic camp" means an alternative incarceration program  
38 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
39 the cost of corrections by requiring offenders to complete a

1 comprehensive array of real-world job and vocational experiences,  
2 character-building work ethics training, life management skills  
3 development, substance abuse rehabilitation, counseling, literacy  
4 training, and basic adult education.

5 (48) "Work release" means a program of partial confinement  
6 available to offenders who are employed or engaged as a student in a  
7 regular course of study at school.

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