

HOUSE BILL 1209

State of Washington 59th Legislature 2005 Regular Session

By Representative O'Brien

Read first time 01/18/2005. Referred to Committee on Judiciary.

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

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

4 Sec. 1. RCW 9.94A.515 and 2004 c 176 s 2 and 2004 c 94 s 3 are
5 each reenacted and amended to read as follows:
6

TABLE 2

CRIMES INCLUDED WITHIN
EACH SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
XV Homicide by abuse (RCW 9A.32.055)
Malicious explosion 1 (RCW 70.74.280(1))
Murder 1 (RCW 9A.32.030)
XIV Murder 2 (RCW 9A.32.050)

1 Trafficking 1 (RCW 9A.40.100(1))
2 XIII Malicious explosion 2 (RCW
3 70.74.280(2))
4 Malicious placement of an explosive 1
5 (RCW 70.74.270(1))
6 XII Assault 1 (RCW 9A.36.011)
7 Assault of a Child 1 (RCW 9A.36.120)
8 Malicious placement of an imitation
9 device 1 (RCW 70.74.272(1)(a))
10 Rape 1 (RCW 9A.44.040)
11 Rape of a Child 1 (RCW 9A.44.073)
12 Trafficking 2 (RCW 9A.40.100(2))
13 XI Manslaughter 1 (RCW 9A.32.060)
14 Rape 2 (RCW 9A.44.050)
15 Rape of a Child 2 (RCW 9A.44.076)
16 Vehicular Homicide, by being under
17 the influence of intoxicating
18 liquor or any drug (RCW
19 46.61.520)
20 X Child Molestation 1 (RCW 9A.44.083)
21 Indecent Liberties (with forcible
22 compulsion) (RCW
23 9A.44.100(1)(a))
24 Kidnapping 1 (RCW 9A.40.020)
25 Leading Organized Crime (RCW
26 9A.82.060(1)(a))
27 Malicious explosion 3 (RCW
28 70.74.280(3))
29 Sexually Violent Predator Escape
30 (RCW 9A.76.115)
31 Vehicular Homicide, by the operation
32 of any vehicle in a reckless
33 manner (RCW 46.61.520)
34 IX Assault of a Child 2 (RCW 9A.36.130)
35 Explosive devices prohibited (RCW
36 70.74.180)

1 Hit and Run--Death (RCW
2 46.52.020(4)(a))
3 Homicide by Watercraft, by being
4 under the influence of intoxicating
5 liquor or any drug (RCW
6 79A.60.050)
7 Inciting Criminal Profiteering (RCW
8 9A.82.060(1)(b))
9 Malicious placement of an explosive 2
10 (RCW 70.74.270(2))
11 Robbery 1 (RCW 9A.56.200)
12 Sexual Exploitation (RCW 9.68A.040)
13 (~~Vehicular Homicide, by being under~~
14 ~~the influence of intoxicating~~
15 ~~liquor or any drug (RCW~~
16 ~~46.61.520))~~)
17 VIII Arson 1 (RCW 9A.48.020)
18 Homicide by Watercraft, by the
19 operation of any vessel in a
20 reckless manner (RCW
21 79A.60.050)
22 Manslaughter 2 (RCW 9A.32.070)
23 Promoting Prostitution 1 (RCW
24 9A.88.070)
25 Theft of Ammonia (RCW 69.55.010)
26 (~~Vehicular Homicide, by the operation~~
27 ~~of any vehicle in a reckless~~
28 ~~manner (RCW 46.61.520))~~)
29 Vehicular Homicide, by disregard for
30 the safety of others (RCW
31 46.61.520)
32 VII Burglary 1 (RCW 9A.52.020)
33 Child Molestation 2 (RCW 9A.44.086)
34 Civil Disorder Training (RCW
35 9A.48.120)

1 Dealing in depictions of minor
2 engaged in sexually explicit
3 conduct (RCW 9.68A.050)
4 Drive-by Shooting (RCW 9A.36.045)
5 Homicide by Watercraft, by disregard
6 for the safety of others (RCW
7 79A.60.050)
8 Indecent Liberties (without forcible
9 compulsion) (RCW 9A.44.100(1)
10 (b) and (c))
11 Introducing Contraband 1 (RCW
12 9A.76.140)
13 Malicious placement of an explosive 3
14 (RCW 70.74.270(3))
15 Sending, bringing into state depictions
16 of minor engaged in sexually
17 explicit conduct (RCW
18 9.68A.060)
19 Unlawful Possession of a Firearm in
20 the first degree (RCW
21 9.41.040(1))
22 Use of a Machine Gun in Commission
23 of a Felony (RCW 9.41.225)
24 ((Vehicular Homicide, by disregard for
25 the safety of others (RCW-
26 46.61.520)))
27 VI Bail Jumping with Murder 1 (RCW
28 9A.76.170(3)(a))
29 Bribery (RCW 9A.68.010)
30 Incest 1 (RCW 9A.64.020(1))
31 Intimidating a Judge (RCW
32 9A.72.160)
33 Intimidating a Juror/Witness (RCW
34 9A.72.110, 9A.72.130)
35 Malicious placement of an imitation
36 device 2 (RCW 70.74.272(1)(b))
37 Rape of a Child 3 (RCW 9A.44.079)

1 Theft of a Firearm (RCW 9A.56.300)
2 Unlawful Storage of Ammonia (RCW
3 69.55.020)
4 V Abandonment of dependent person 1
5 (RCW 9A.42.060)
6 Advancing money or property for
7 extortionate extension of credit
8 (RCW 9A.82.030)
9 Bail Jumping with class A Felony
10 (RCW 9A.76.170(3)(b))
11 Child Molestation 3 (RCW 9A.44.089)
12 Criminal Mistreatment 1 (RCW
13 9A.42.020)
14 Custodial Sexual Misconduct 1 (RCW
15 9A.44.160)
16 Domestic Violence Court Order
17 Violation (RCW 10.99.040,
18 10.99.050, 26.09.300, 26.10.220,
19 26.26.138, 26.50.110, 26.52.070,
20 or 74.34.145)
21 Extortion 1 (RCW 9A.56.120)
22 Extortionate Extension of Credit
23 (RCW 9A.82.020)
24 Extortionate Means to Collect
25 Extensions of Credit (RCW
26 9A.82.040)
27 Incest 2 (RCW 9A.64.020(2))
28 Kidnapping 2 (RCW 9A.40.030)
29 Perjury 1 (RCW 9A.72.020)
30 Persistent prison misbehavior (RCW
31 9.94.070)
32 Possession of a Stolen Firearm (RCW
33 9A.56.310)
34 Rape 3 (RCW 9A.44.060)
35 Rendering Criminal Assistance 1
36 (RCW 9A.76.070)

1 Sexual Misconduct with a Minor 1
2 (RCW 9A.44.093)
3 Sexually Violating Human Remains
4 (RCW 9A.44.105)
5 Stalking (RCW 9A.46.110)
6 Taking Motor Vehicle Without
7 Permission 1 (RCW 9A.56.070)
8 IV Arson 2 (RCW 9A.48.030)
9 Assault 2 (RCW 9A.36.021)
10 Assault by Watercraft (RCW
11 79A.60.060)
12 Bribing a Witness/Bribe Received by
13 Witness (RCW 9A.72.090,
14 9A.72.100)
15 Cheating 1 (RCW 9A.46.1961)
16 Commercial Bribery (RCW
17 9A.68.060)
18 Counterfeiting (RCW 9.16.035(4))
19 Endangerment with a Controlled
20 Substance (RCW 9A.42.100)
21 Escape 1 (RCW 9A.76.110)
22 Hit and Run--Injury (RCW
23 46.52.020(4)(b))
24 Hit and Run with Vessel--Injury
25 Accident (RCW 79A.60.200(3))
26 Identity Theft 1 (RCW 9.35.020(2))
27 Indecent Exposure to Person Under
28 Age Fourteen (subsequent sex
29 offense) (RCW 9A.88.010)
30 Influencing Outcome of Sporting
31 Event (RCW 9A.82.070)
32 Malicious Harassment (RCW
33 9A.36.080)
34 Residential Burglary (RCW
35 9A.52.025)
36 Robbery 2 (RCW 9A.56.210)
37 Theft of Livestock 1 (RCW 9A.56.080)

1 Threats to Bomb (RCW 9.61.160)
2 Trafficking in Stolen Property 1 (RCW
3 9A.82.050)
4 Unlawful factoring of a credit card or
5 payment card transaction (RCW
6 9A.56.290(4)(b))
7 Unlawful transaction of health
8 coverage as a health care service
9 contractor (RCW 48.44.016(3))
10 Unlawful transaction of health
11 coverage as a health maintenance
12 organization (RCW 48.46.033(3))
13 Unlawful transaction of insurance
14 business (RCW 48.15.023(3))
15 Unlicensed practice as an insurance
16 professional (RCW 48.17.063(3))
17 Use of Proceeds of Criminal
18 Profiteering (RCW 9A.82.080 (1)
19 and (2))
20 Vehicular Assault, by being under the
21 influence of intoxicating liquor or
22 any drug, or by the operation or
23 driving of a vehicle in a reckless
24 manner (RCW 46.61.522)
25 Willful Failure to Return from
26 Furlough (RCW 72.66.060)
27 III Abandonment of dependent person 2
28 (RCW 9A.42.070)
29 Assault 3 (RCW 9A.36.031)
30 Assault of a Child 3 (RCW 9A.36.140)
31 Bail Jumping with class B or C Felony
32 (RCW 9A.76.170(3)(c))
33 Burglary 2 (RCW 9A.52.030)
34 Communication with a Minor for
35 Immoral Purposes (RCW
36 9.68A.090)

1 Criminal Gang Intimidation (RCW
2 9A.46.120)
3 Criminal Mistreatment 2 (RCW
4 9A.42.030)
5 Custodial Assault (RCW 9A.36.100)
6 Cyberstalking (subsequent conviction
7 or threat of death) (RCW
8 9.61.260(3))
9 Escape 2 (RCW 9A.76.120)
10 Extortion 2 (RCW 9A.56.130)
11 Harassment (RCW 9A.46.020)
12 Intimidating a Public Servant (RCW
13 9A.76.180)
14 Introducing Contraband 2 (RCW
15 9A.76.150)
16 Malicious Injury to Railroad Property
17 (RCW 81.60.070)
18 Patronizing a Juvenile Prostitute
19 (RCW 9.68A.100)
20 Perjury 2 (RCW 9A.72.030)
21 Possession of Incendiary Device (RCW
22 9.40.120)
23 Possession of Machine Gun or Short-
24 Barreled Shotgun or Rifle (RCW
25 9.41.190)
26 Promoting Prostitution 2 (RCW
27 9A.88.080)
28 Securities Act violation (RCW
29 21.20.400)
30 Tampering with a Witness (RCW
31 9A.72.120)
32 Telephone Harassment (subsequent
33 conviction or threat of death)
34 (RCW 9.61.230(2))
35 Theft of Livestock 2 (RCW 9A.56.083)
36 Trafficking in Stolen Property 2 (RCW
37 9A.82.055)

1 Unlawful Imprisonment (RCW
2 9A.40.040)
3 Unlawful possession of firearm in the
4 second degree (RCW 9.41.040(2))
5 Vehicular Assault, by the operation or
6 driving of a vehicle with disregard
7 for the safety of others (RCW
8 46.61.522)
9 Willful Failure to Return from Work
10 Release (RCW 72.65.070)
11 II Computer Trespass 1 (RCW
12 9A.52.110)
13 Counterfeiting (RCW 9.16.035(3))
14 Escape from Community Custody
15 (RCW 72.09.310)
16 Health Care False Claims (RCW
17 48.80.030)
18 Identity Theft 2 (RCW 9.35.020(3))
19 Improperly Obtaining Financial
20 Information (RCW 9.35.010)
21 Malicious Mischief 1 (RCW
22 9A.48.070)
23 Possession of Stolen Property 1 (RCW
24 9A.56.150)
25 Theft 1 (RCW 9A.56.030)
26 Theft of Rental, Leased, or Lease-
27 purchased Property (valued at one
28 thousand five hundred dollars or
29 more) (RCW 9A.56.096(5)(a))
30 Trafficking in Insurance Claims (RCW
31 48.30A.015)
32 Unlawful factoring of a credit card or
33 payment card transaction (RCW
34 9A.56.290(4)(a))
35 Unlawful Practice of Law (RCW
36 2.48.180)

1 Unlicensed Practice of a Profession or
2 Business (RCW 18.130.190(7))
3 I Attempting to Elude a Pursuing Police
4 Vehicle (RCW 46.61.024)
5 False Verification for Welfare (RCW
6 74.08.055)
7 Forgery (RCW 9A.60.020)
8 Fraudulent Creation or Revocation of a
9 Mental Health Advance Directive
10 (RCW 9A.60.060)
11 Malicious Mischief 2 (RCW
12 9A.48.080)
13 Mineral Trespass (RCW 78.44.330)
14 Possession of Stolen Property 2 (RCW
15 9A.56.160)
16 Reckless Burning 1 (RCW 9A.48.040)
17 Taking Motor Vehicle Without
18 Permission 2 (RCW 9A.56.075)
19 Theft 2 (RCW 9A.56.040)
20 Theft of Rental, Leased, or Lease-
21 purchased Property (valued at two
22 hundred fifty dollars or more but
23 less than one thousand five
24 hundred dollars) (RCW
25 9A.56.096(5)(b))
26 Transaction of insurance business
27 beyond the scope of licensure
28 (RCW 48.17.063(4))
29 Unlawful Issuance of Checks or Drafts
30 (RCW 9A.56.060)
31 Unlawful Possession of Fictitious
32 Identification (RCW 9A.56.320)
33 Unlawful Possession of Instruments of
34 Financial Fraud (RCW
35 9A.56.320)
36 Unlawful Possession of Payment
37 Instruments (RCW 9A.56.320)

1 Unlawful Possession of a Personal
2 Identification Device (RCW
3 9A.56.320)
4 Unlawful Production of Payment
5 Instruments (RCW 9A.56.320)
6 Unlawful Trafficking in Food Stamps
7 (RCW 9.91.142)
8 Unlawful Use of Food Stamps (RCW
9 9.91.144)
10 Vehicle Prowl 1 (RCW 9A.52.095)

11 **Sec. 2.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

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

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

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

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

30 (5) "Community custody" means that portion of an offender's
31 sentence of confinement in lieu of earned release time or imposed
32 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
33 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
34 community subject to controls placed on the offender's movement and
35 activities by the department. For offenders placed on community
36 custody for crimes committed on or after July 1, 2000, the department

1 shall assess the offender's risk of reoffense and may establish and
2 modify conditions of community custody, in addition to those imposed by
3 the court, based upon the risk to community safety.

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

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

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

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

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

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

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

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

8 (b) A conviction may be removed from a defendant's criminal history
9 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
10 a similar out-of-state statute, or if the conviction has been vacated
11 pursuant to a governor's pardon.

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

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

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

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

27 (17) "Determinate sentence" means a sentence that states with
28 exactitude the number of actual years, months, or days of total
29 confinement, of partial confinement, of community supervision, the
30 number of actual hours or days of community restitution work, or
31 dollars or terms of a legal financial obligation. The fact that an
32 offender through earned release can reduce the actual period of
33 confinement shall not affect the classification of the sentence as a
34 determinate sentence.

35 (18) "Disposable earnings" means that part of the earnings of an
36 offender remaining after the deduction from those earnings of any
37 amount required by law to be withheld. For the purposes of this
38 definition, "earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonuses, or
2 otherwise, and, notwithstanding any other provision of law making the
3 payments exempt from garnishment, attachment, or other process to
4 satisfy a court-ordered legal financial obligation, specifically
5 includes periodic payments pursuant to pension or retirement programs,
6 or insurance policies of any type, but does not include payments made
7 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
8 or Title 74 RCW.

9 (19) "Drug offender sentencing alternative" is a sentencing option
10 available to persons convicted of a felony offense other than a violent
11 offense or a sex offense and who are eligible for the option under RCW
12 9.94A.660.

13 (20) "Drug offense" means:

14 (a) Any felony violation of chapter 69.50 RCW except possession of
15 a controlled substance (RCW 69.50.4013) or forged prescription for a
16 controlled substance (RCW 69.50.403);

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

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

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

25 (22) "Escape" means:

26 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
27 first degree (RCW 9A.76.110), escape in the second degree (RCW
28 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
29 willful failure to return from work release (RCW 72.65.070), or willful
30 failure to be available for supervision by the department while in
31 community custody (RCW 72.09.310); or

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

35 (23) "Felony traffic offense" means:

36 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
37 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
38 and-run injury-accident (RCW 46.52.020(4)); 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 felony
3 traffic offense under (a) of this subsection.

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

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

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

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

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

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

32 (b) Assault in the second degree;

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

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

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

38 (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) Robbery in the second degree;
8 (p) Sexual exploitation;
9 (q) Vehicular assault, when caused by the operation or driving of
10 a vehicle by a person while under the influence of intoxicating liquor
11 or any drug or by the operation or driving of a vehicle in a reckless
12 manner;
13 (r) Vehicular homicide, when proximately caused by the driving of
14 any vehicle by any person while under the influence of intoxicating
15 liquor or any drug as defined by RCW 46.61.502, or by the operation of
16 any vehicle in a reckless manner;
17 (s) Any other class B felony offense with a finding of sexual
18 motivation;
19 (t) Any other felony with a deadly weapon verdict under RCW
20 9.94A.602;
21 (u) Any felony offense in effect at any time prior to December 2,
22 1993, that is comparable to a most serious offense under this
23 subsection, or any federal or out-of-state conviction for an offense
24 that under the laws of this state would be a felony classified as a
25 most serious offense under this subsection;
26 (v)(i) A prior conviction for indecent liberties under RCW
27 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
28 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
29 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
30 (a), (b), and (d) as it existed from June 11, 1986, 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
34 fourteen; 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, 1997,
37 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
38 through July 27, 1997.

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

3 (30) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case is under superior court
6 jurisdiction under RCW 13.04.030 or has been transferred by the
7 appropriate juvenile court to a criminal court pursuant to RCW
8 13.40.110. Throughout this chapter, the terms "offender" and
9 "defendant" are used interchangeably.

10 (31) "Partial confinement" means confinement for no more than one
11 year in a facility or institution operated or utilized under contract
12 by the state or any other unit of government, or, if home detention or
13 work crew has been ordered by the court, in an approved residence, for
14 a substantial portion of each day with the balance of the day spent in
15 the community. Partial confinement includes work release, home
16 detention, work crew, and a combination of work crew and home
17 detention.

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

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

21 (ii) Has, before the commission of the offense under (a) of this
22 subsection, been convicted as an offender on at least two separate
23 occasions, whether in this state or elsewhere, of felonies that under
24 the laws of this state would be considered most serious offenses and
25 would be included in the offender score under RCW 9.94A.525; provided
26 that of the two or more previous convictions, at least one conviction
27 must have occurred before the commission of any of the other most
28 serious offenses for which the offender was previously convicted; or

29 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
30 of a child in the first degree, child molestation in the first degree,
31 rape in the second degree, rape of a child in the second degree, or
32 indecent liberties by forcible compulsion; (B) any of the following
33 offenses with a finding of sexual motivation: Murder in the first
34 degree, murder in the second degree, homicide by abuse, kidnapping in
35 the first degree, kidnapping in the second degree, assault in the first
36 degree, assault in the second degree, assault of a child in the first
37 degree, or burglary in the first degree; or (C) an attempt to commit
38 any crime listed in this subsection (32)(b)(i); and

1 (ii) Has, before the commission of the offense under (b)(i) of this
2 subsection, been convicted as an offender on at least one occasion,
3 whether in this state or elsewhere, of an offense listed in (b)(i) of
4 this subsection or any federal or out-of-state offense or offense under
5 prior Washington law that is comparable to the offenses listed in
6 (b)(i) of this subsection. A conviction for rape of a child in the
7 first degree constitutes a conviction under (b)(i) of this subsection
8 only when the offender was sixteen years of age or older when the
9 offender committed the offense. A conviction for rape of a child in
10 the second degree constitutes a conviction under (b)(i) of this
11 subsection only when the offender was eighteen years of age or older
12 when the offender committed the offense.

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

15 (34) "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 (35) "Risk assessment" means the application of an objective
20 instrument supported by research and adopted by the department for the
21 purpose of assessing an offender's risk of reoffense, taking into
22 consideration the nature of the harm done by the offender, place and
23 circumstances of the offender related to risk, the offender's
24 relationship to any victim, and any information provided to the
25 department by victims. The results of a risk assessment shall not be
26 based on unconfirmed or unconfirmable allegations.

27 (36) "Serious traffic offense" means:

28 (a) Driving while under the influence of intoxicating liquor or any
29 drug (RCW 46.61.502), actual physical control while under the influence
30 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
31 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
32 or

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

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

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

1 (ii) Homicide by abuse;
2 (iii) Murder in the second degree;
3 (iv) Manslaughter in the first degree;
4 (v) Assault in the first degree;
5 (vi) Kidnapping in the first degree;
6 (vii) Rape in the first degree;
7 (viii) Assault of a child in the first degree; or
8 (ix) An attempt, criminal solicitation, or criminal conspiracy to
9 commit one of these felonies; or
10 (b) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as a serious
12 violent offense under (a) of this subsection.
13 (38) "Sex offense" means:
14 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
15 RCW 9A.44.130(11);
16 (ii) A violation of RCW 9A.64.020;
17 (iii) A felony that is a violation of chapter 9.68A RCW other than
18 RCW 9.68A.070 or 9.68A.080; or
19 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
20 criminal solicitation, or criminal conspiracy to commit such crimes;
21 (b) Any conviction for a felony offense in effect at any time prior
22 to July 1, 1976, that is comparable to a felony classified as a sex
23 offense in (a) of this subsection;
24 (c) A felony with a finding of sexual motivation under RCW
25 9.94A.835 or 13.40.135; or
26 (d) Any federal or out-of-state conviction for an offense that
27 under the laws of this state would be a felony classified as a sex
28 offense under (a) of this subsection.
29 (39) "Sexual motivation" means that one of the purposes for which
30 the defendant committed the crime was for the purpose of his or her
31 sexual gratification.
32 (40) "Standard sentence range" means the sentencing court's
33 discretionary range in imposing a nonappealable sentence.
34 (41) "Statutory maximum sentence" means the maximum length of time
35 for which an offender may be confined as punishment for a crime as
36 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
37 crime, or other statute defining the maximum penalty for a crime.

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

5 (43) "Transition training" means written and verbal instructions
6 and assistance provided by the department to the offender during the
7 two weeks prior to the offender's successful completion of the work
8 ethic camp program. The transition training shall include instructions
9 in the offender's requirements and obligations during the offender's
10 period of community custody.

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

14 (45) "Violent offense" means:

15 (a) Any of the following felonies:

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

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

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

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

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

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

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

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

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

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

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

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

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

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

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