
HOUSE BILL 2410

State of Washington

59th Legislature

2006 Regular Session

By Representatives O'Brien, Rodne, Ericks, Lovick, Anderson, Jarrett, McDonald, Williams, Clibborn, Buck, Conway, P. Sullivan, Tom, Takko, Lantz, Kilmer, Fromhold, B. Sullivan, Morrell, Simpson, Springer, Green, Miloscia, Sells and Campbell

Prefiled 1/3/2006. Read first time 01/09/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to designating the crime of possessing depictions
2 of a minor engaged in sexually explicit conduct as a sex offense;
3 amending RCW 9.94A.030 and 9.94A.030; providing an effective date;
4 providing an expiration date; and declaring an emergency.

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

6 **Sec. 1.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

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

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

6 (5) "Community custody" means that portion of an offender's
7 sentence of confinement in lieu of earned release time or imposed
8 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
9 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
10 community subject to controls placed on the offender's movement and
11 activities by the department. For offenders placed on community
12 custody for crimes committed on or after July 1, 2000, the department
13 shall assess the offender's risk of reoffense and may establish and
14 modify conditions of community custody, in addition to those imposed by
15 the court, based upon the risk to community safety.

16 (6) "Community custody range" means the minimum and maximum period
17 of community custody included as part of a sentence under RCW
18 9.94A.715, as established by the commission or the legislature under
19 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

20 (7) "Community placement" means that period during which the
21 offender is subject to the conditions of community custody and/or
22 postrelease supervision, which begins either upon completion of the
23 term of confinement (postrelease supervision) or at such time as the
24 offender is transferred to community custody in lieu of earned release.
25 Community placement may consist of entirely community custody, entirely
26 postrelease supervision, or a combination of the two.

27 (8) "Community protection zone" means the area within eight hundred
28 eighty feet of the facilities and grounds of a public or private
29 school.

30 (9) "Community restitution" means compulsory service, without
31 compensation, performed for the benefit of the community by the
32 offender.

33 (10) "Community supervision" means a period of time during which a
34 convicted offender is subject to crime-related prohibitions and other
35 sentence conditions imposed by a court pursuant to this chapter or RCW
36 16.52.200(6) or 46.61.524. Where the court finds that any offender has
37 a chemical dependency that has contributed to his or her offense, the
38 conditions of supervision may, subject to available resources, include

1 treatment. For purposes of the interstate compact for out-of-state
2 supervision of parolees and probationers, RCW 9.95.270, community
3 supervision is the functional equivalent of probation and should be
4 considered the same as probation by other states.

5 (11) "Confinement" means total or partial confinement.

6 (12) "Conviction" means an adjudication of guilt pursuant to Titles
7 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
8 acceptance of a plea of guilty.

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

16 (14) "Criminal history" means the list of a defendant's prior
17 convictions and juvenile adjudications, whether in this state, in
18 federal court, or elsewhere.

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

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

27 (c) The determination of a defendant's criminal history is distinct
28 from the determination of an offender score. A prior conviction that
29 was not included in an offender score calculated pursuant to a former
30 version of the sentencing reform act remains part of the defendant's
31 criminal history.

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

36 (16) "Day reporting" means a program of enhanced supervision
37 designed to monitor the offender's daily activities and compliance with

1 sentence conditions, and in which the offender is required to report
2 daily to a specific location designated by the department or the
3 sentencing court.

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

5 (18) "Determinate sentence" means a sentence that states with
6 exactitude the number of actual years, months, or days of total
7 confinement, of partial confinement, of community supervision, the
8 number of actual hours or days of community restitution work, or
9 dollars or terms of a legal financial obligation. The fact that an
10 offender through earned release can reduce the actual period of
11 confinement shall not affect the classification of the sentence as a
12 determinate sentence.

13 (19) "Disposable earnings" means that part of the earnings of an
14 offender remaining after the deduction from those earnings of any
15 amount required by law to be withheld. For the purposes of this
16 definition, "earnings" means compensation paid or payable for personal
17 services, whether denominated as wages, salary, commission, bonuses, or
18 otherwise, and, notwithstanding any other provision of law making the
19 payments exempt from garnishment, attachment, or other process to
20 satisfy a court-ordered legal financial obligation, specifically
21 includes periodic payments pursuant to pension or retirement programs,
22 or insurance policies of any type, but does not include payments made
23 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
24 or Title 74 RCW.

25 (20) "Drug offender sentencing alternative" is a sentencing option
26 available to persons convicted of a felony offense other than a violent
27 offense or a sex offense and who are eligible for the option under RCW
28 9.94A.660.

29 (21) "Drug offense" means:

30 (a) Any felony violation of chapter 69.50 RCW except possession of
31 a controlled substance (RCW 69.50.4013) or forged prescription for a
32 controlled substance (RCW 69.50.403);

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

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

1 (22) "Earned release" means earned release from confinement as
2 provided in RCW 9.94A.728.

3 (23) "Escape" means:

4 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
5 first degree (RCW 9A.76.110), escape in the second degree (RCW
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
7 willful failure to return from work release (RCW 72.65.070), or willful
8 failure to be available for supervision by the department while in
9 community custody (RCW 72.09.310); 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 an escape
12 under (a) of this subsection.

13 (24) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
16 and-run injury-accident (RCW 46.52.020(4)); or

17 (b) 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 felony
19 traffic offense under (a) of this subsection.

20 (25) "Fine" means a specific sum of money ordered by the sentencing
21 court to be paid by the offender to the court over a specific period of
22 time.

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

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

29 (28) "Legal financial obligation" means a sum of money that is
30 ordered by a superior court of the state of Washington for legal
31 financial obligations which may include restitution to the victim,
32 statutorily imposed crime victims' compensation fees as assessed
33 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
34 court-appointed attorneys' fees, and costs of defense, fines, and any
35 other financial obligation that is assessed to the offender as a result
36 of a felony conviction. Upon conviction for vehicular assault while
37 under the influence of intoxicating liquor or any drug, RCW
38 46.61.522(1)(b), or vehicular homicide while under the influence of

1 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
2 obligations may also include payment to a public agency of the expense
3 of an emergency response to the incident resulting in the conviction,
4 subject to RCW 38.52.430.

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

7 (a) Any felony defined under any law as a class A felony or
8 criminal solicitation of or criminal conspiracy to commit a class A
9 felony;

10 (b) Assault in the second degree;

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

12 (d) Child molestation in the second degree;

13 (e) Controlled substance homicide;

14 (f) Extortion in the first degree;

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

16 (h) Indecent liberties;

17 (i) Kidnapping in the second degree;

18 (j) Leading organized crime;

19 (k) Manslaughter in the first degree;

20 (l) Manslaughter in the second degree;

21 (m) Promoting prostitution in the first degree;

22 (n) Rape in the third degree;

23 (o) Robbery in the second degree;

24 (p) Sexual exploitation;

25 (q) Vehicular assault, when caused by the operation or driving of
26 a vehicle by a person while under the influence of intoxicating liquor
27 or any drug or by the operation or driving of a vehicle in a reckless
28 manner;

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

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

35 (t) Any other felony with a deadly weapon verdict under RCW
36 9.94A.602;

37 (u) Any felony offense in effect at any time prior to December 2,
38 1993, that is comparable to a most serious offense under this

1 subsection, or any federal or out-of-state conviction for an offense
2 that under the laws of this state would be a felony classified as a
3 most serious offense under this subsection;

4 (v)(i) A prior conviction for indecent liberties under RCW
5 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
6 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
7 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
8 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

9 (ii) A prior conviction for indecent liberties under RCW
10 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
11 if: (A) The crime was committed against a child under the age of
12 fourteen; or (B) the relationship between the victim and perpetrator is
13 included in the definition of indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
15 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
16 through July 27, 1997.

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

19 (31) "Offender" means a person who has committed a felony
20 established by state law and is eighteen years of age or older or is
21 less than eighteen years of age but whose case is under superior court
22 jurisdiction under RCW 13.04.030 or has been transferred by the
23 appropriate juvenile court to a criminal court pursuant to RCW
24 13.40.110. Throughout this chapter, the terms "offender" and
25 "defendant" are used interchangeably.

26 (32) "Partial confinement" means confinement for no more than one
27 year in a facility or institution operated or utilized under contract
28 by the state or any other unit of government, or, if home detention or
29 work crew has been ordered by the court, in an approved residence, for
30 a substantial portion of each day with the balance of the day spent in
31 the community. Partial confinement includes work release, home
32 detention, work crew, and a combination of work crew and home
33 detention.

34 (33) "Persistent offender" is an offender who:

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

37 (ii) Has, before the commission of the offense under (a) of this
38 subsection, been convicted as an offender on at least two separate

1 occasions, whether in this state or elsewhere, of felonies that under
2 the laws of this state would be considered most serious offenses and
3 would be included in the offender score under RCW 9.94A.525; provided
4 that of the two or more previous convictions, at least one conviction
5 must have occurred before the commission of any of the other most
6 serious offenses for which the offender was previously convicted; or

7 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
8 of a child in the first degree, child molestation in the first degree,
9 rape in the second degree, rape of a child in the second degree, or
10 indecent liberties by forcible compulsion; (B) any of the following
11 offenses with a finding of sexual motivation: Murder in the first
12 degree, murder in the second degree, homicide by abuse, kidnapping in
13 the first degree, kidnapping in the second degree, assault in the first
14 degree, assault in the second degree, assault of a child in the first
15 degree, or burglary in the first degree; or (C) an attempt to commit
16 any crime listed in this subsection (33)(b)(i); and

17 (ii) Has, before the commission of the offense under (b)(i) of this
18 subsection, been convicted as an offender on at least one occasion,
19 whether in this state or elsewhere, of an offense listed in (b)(i) of
20 this subsection or any federal or out-of-state offense or offense under
21 prior Washington law that is comparable to the offenses listed in
22 (b)(i) of this subsection. A conviction for rape of a child in the
23 first degree constitutes a conviction under (b)(i) of this subsection
24 only when the offender was sixteen years of age or older when the
25 offender committed the offense. A conviction for rape of a child in
26 the second degree constitutes a conviction under (b)(i) of this
27 subsection only when the offender was eighteen years of age or older
28 when the offender committed the offense.

29 (34) "Postrelease supervision" is that portion of an offender's
30 community placement that is not community custody.

31 (35) "Private school" means a school regulated under chapter
32 28A.195 or 28A.205 RCW.

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

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

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

9 (39) "Serious traffic offense" means:

10 (a) Driving while under the influence of intoxicating liquor or any
11 drug (RCW 46.61.502), actual physical control while under the influence
12 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
13 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
14 or

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

18 (40) "Serious violent offense" is a subcategory of violent offense
19 and means:

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

21 (ii) Homicide by abuse;

22 (iii) Murder in the second degree;

23 (iv) Manslaughter in the first degree;

24 (v) Assault in the first degree;

25 (vi) Kidnapping in the first degree;

26 (vii) Rape in the first degree;

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

28 (ix) An attempt, criminal solicitation, or criminal conspiracy to
29 commit one of these felonies; 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 serious
32 violent offense under (a) of this subsection.

33 (41) "Sex offense" means:

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

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

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

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

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

6 (c) A felony with a finding of sexual motivation under RCW
7 9.94A.835 or 13.40.135; or

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

11 (42) "Sexual motivation" means that one of the purposes for which
12 the defendant committed the crime was for the purpose of his or her
13 sexual gratification.

14 (43) "Standard sentence range" means the sentencing court's
15 discretionary range in imposing a nonappealable sentence.

16 (44) "Statutory maximum sentence" means the maximum length of time
17 for which an offender may be confined as punishment for a crime as
18 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
19 crime, or other statute defining the maximum penalty for a crime.

20 (45) "Total confinement" means confinement inside the physical
21 boundaries of a facility or institution operated or utilized under
22 contract by the state or any other unit of government for twenty-four
23 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

30 (47) "Victim" means any person who has sustained emotional,
31 psychological, physical, or financial injury to person or property as
32 a direct result of the crime charged.

33 (48) "Violent offense" means:

34 (a) Any of the following felonies:

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

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

1 (iii) Manslaughter in the first degree;
2 (iv) Manslaughter in the second degree;
3 (v) Indecent liberties if committed by forcible compulsion;
4 (vi) Kidnapping in the second degree;
5 (vii) Arson in the second degree;
6 (viii) Assault in the second degree;
7 (ix) Assault of a child in the second degree;
8 (x) Extortion in the first degree;
9 (xi) Robbery in the second degree;
10 (xii) Drive-by shooting;
11 (xiii) Vehicular assault, when caused by the operation or driving
12 of a vehicle by a person while under the influence of intoxicating
13 liquor or any drug or by the operation or driving of a vehicle in a
14 reckless manner; and
15 (xiv) Vehicular homicide, when proximately caused by the driving of
16 any vehicle by any person while under the influence of intoxicating
17 liquor or any drug as defined by RCW 46.61.502, or by the operation of
18 any vehicle in a reckless manner;
19 (b) Any conviction for a felony offense in effect at any time prior
20 to July 1, 1976, that is comparable to a felony classified as a violent
21 offense in (a) of this subsection; and
22 (c) Any federal or out-of-state conviction for an offense that
23 under the laws of this state would be a felony classified as a violent
24 offense under (a) or (b) of this subsection.
25 (49) "Work crew" means a program of partial confinement consisting
26 of civic improvement tasks for the benefit of the community that
27 complies with RCW 9.94A.725.
28 (50) "Work ethic camp" means an alternative incarceration program
29 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
30 the cost of corrections by requiring offenders to complete a
31 comprehensive array of real-world job and vocational experiences,
32 character-building work ethics training, life management skills
33 development, substance abuse rehabilitation, counseling, literacy
34 training, and basic adult education.
35 (51) "Work release" means a program of partial confinement
36 available to offenders who are employed or engaged as a student in a
37 regular course of study at school.

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

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

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

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

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

16 (4) "Community corrections officer" means an employee of the
17 department who is responsible for carrying out specific duties in
18 supervision of sentenced offenders and monitoring of sentence
19 conditions.

20 (5) "Community custody" means that portion of an offender's
21 sentence of confinement in lieu of earned release time or imposed
22 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
23 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
24 community subject to controls placed on the offender's movement and
25 activities by the department. For offenders placed on community
26 custody for crimes committed on or after July 1, 2000, the department
27 shall assess the offender's risk of reoffense and may establish and
28 modify conditions of community custody, in addition to those imposed by
29 the court, based upon the risk to community safety.

30 (6) "Community custody range" means the minimum and maximum period
31 of community custody included as part of a sentence under RCW
32 9.94A.715, as established by the commission or the legislature under
33 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

34 (7) "Community placement" means that period during which the
35 offender is subject to the conditions of community custody and/or
36 postrelease supervision, which begins either upon completion of the
37 term of confinement (postrelease supervision) or at such time as the

1 offender is transferred to community custody in lieu of earned release.
2 Community placement may consist of entirely community custody, entirely
3 postrelease supervision, or a combination of the two.

4 (8) "Community restitution" means compulsory service, without
5 compensation, performed for the benefit of the community by the
6 offender.

7 (9) "Community supervision" means a period of time during which a
8 convicted offender is subject to crime-related prohibitions and other
9 sentence conditions imposed by a court pursuant to this chapter or RCW
10 16.52.200(6) or 46.61.524. Where the court finds that any offender has
11 a chemical dependency that has contributed to his or her offense, the
12 conditions of supervision may, subject to available resources, include
13 treatment. For purposes of the interstate compact for out-of-state
14 supervision of parolees and probationers, RCW 9.95.270, community
15 supervision is the functional equivalent of probation and should be
16 considered the same as probation by other states.

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

18 (11) "Conviction" means an adjudication of guilt pursuant to Titles
19 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
20 acceptance of a plea of guilty.

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

28 (13) "Criminal history" means the list of a defendant's prior
29 convictions and juvenile adjudications, whether in this state, in
30 federal court, or elsewhere.

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

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

1 (c) The determination of a defendant's criminal history is distinct
2 from the determination of an offender score. A prior conviction that
3 was not included in an offender score calculated pursuant to a former
4 version of the sentencing reform act remains part of the defendant's
5 criminal history.

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

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

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

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

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

36 (19) "Drug offender sentencing alternative" is a sentencing option
37 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 69.50.4013) 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;

1 (q) Vehicular assault, when caused by the operation or driving of
2 a vehicle by a person while under the influence of intoxicating liquor
3 or any drug or by the operation or driving of a vehicle in a reckless
4 manner;

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

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

11 (t) Any other felony with a deadly weapon verdict under RCW
12 9.94A.602;

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

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

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

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

33 (30) "Offender" means a person who has committed a felony
34 established by state law and is eighteen years of age or older or is
35 less than eighteen years of age but whose case is under superior court
36 jurisdiction under RCW 13.04.030 or has been transferred by the
37 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

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

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

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

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

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

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

1 only when the offender was sixteen years of age or older when the
2 offender committed the offense. A conviction for rape of a child in
3 the second degree constitutes a conviction under (b)(i) of this
4 subsection only when the offender was eighteen years of age or older
5 when the offender committed the offense.

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

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

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

20 (36) "Serious traffic offense" means:

21 (a) Driving while under the influence of intoxicating liquor or any
22 drug (RCW 46.61.502), actual physical control while under the influence
23 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
24 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
25 or

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

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

- 31 (a)(i) Murder in the first degree;
32 (ii) Homicide by abuse;
33 (iii) Murder in the second degree;
34 (iv) Manslaughter in the first degree;
35 (v) Assault in the first degree;
36 (vi) Kidnapping in the first degree;
37 (vii) Rape in the first degree;
38 (viii) Assault of a child in the first degree; or

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

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

6 (38) "Sex offense" means:

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

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

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

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

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

17 (c) A felony with a finding of sexual motivation under RCW
18 9.94A.835 or 13.40.135; or

19 (d) 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 sex
21 offense under (a) of this subsection.

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

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

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

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

35 (43) "Transition training" means written and verbal instructions
36 and assistance provided by the department to the offender during the
37 two weeks prior to the offender's successful completion of the work

1 ethic camp program. The transition training shall include instructions
2 in the offender's requirements and obligations during the offender's
3 period of community custody.

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

7 (45) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

23 (xiii) Vehicular assault, when caused by the operation or driving
24 of a vehicle by a person while under the influence of intoxicating
25 liquor or any drug or by the operation or driving of a vehicle in a
26 reckless manner; and

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

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

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

37 (46) "Work crew" means a program of partial confinement consisting

1 of civic improvement tasks for the benefit of the community that
2 complies with RCW 9.94A.725.

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

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

13 NEW SECTION. **Sec. 3.** Section 1 of this act is necessary for the
14 immediate preservation of the public peace, health, or safety, or
15 support of the state government and its existing public institutions,
16 and takes effect immediately.

17 NEW SECTION. **Sec. 4.** Section 1 of this act expires July 1, 2006.

18 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect July 1,
19 2006.

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