
HOUSE BILL 3211

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By Representatives O'Brien, Rodne, Lovick, Kessler, Clements, Ericks, Hankins, Jarrett, Haigh, Kirby, Williams, Anderson, Simpson, Kilmer, Nixon, Green, Lantz, Conway, McDonald, Sells, Roach, Strow, Alexander, McCune, Priest, Newhouse, Buri, Springer and Morrell

Read first time 01/25/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to authorizing special verdicts that would result
2 in more severe punishment for certain sex offenses against children by
3 increasing the minimum sentences for rape of a child in the first
4 degree, rape of a child in the second degree, and child molestation in
5 the first degree, when a special allegation that the offense was
6 predatory has been made and proven beyond a reasonable doubt and by
7 increasing the minimum sentences for rape in the first degree, rape in
8 the second degree, indecent liberties by forcible compulsion, and
9 kidnapping in the first degree with sexual motivation, when a special
10 allegation that the victim was under a certain age at the time of the
11 crime has been made and proven beyond a reasonable doubt; amending RCW
12 9.94A.712, 9.94A.712, 9.94A.030, and 9.94A.030; adding new sections to
13 chapter 9.94A RCW; prescribing penalties; providing an effective date;
14 providing an expiration date; and declaring an emergency.

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

16 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
17 to read as follows:

18 (1) In a prosecution for rape of a child in the first degree, rape
19 of a child in the second degree, or child molestation in the first

1 degree, the prosecuting attorney shall file a special allegation that
2 the offense was predatory whenever sufficient admissible evidence
3 exists, which, when considered with the most plausible, reasonably
4 foreseeable defense that could be raised under the evidence, would
5 justify a finding by a reasonable and objective fact-finder that the
6 offense was predatory.

7 (2) Once a special allegation has been made under this section, the
8 state has the burden to prove beyond a reasonable doubt that the
9 offense was predatory. If a jury is had, the jury shall, if it finds
10 the defendant guilty, also find a special verdict as to whether the
11 offense was predatory. If no jury is had, the court shall make a
12 finding of fact as to whether the offense was predatory.

13 (3) The prosecuting attorney shall not withdraw a special
14 allegation filed under this section without the approval of the court
15 through an order of dismissal of the allegation. The court may not
16 dismiss the special allegation unless it finds that the order is
17 necessary to correct an error in the initial charging decision or that
18 there are evidentiary problems that make proving the special allegation
19 doubtful.

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

22 (1) In a prosecution for rape in the first degree, rape in the
23 second degree, indecent liberties by forcible compulsion, or kidnapping
24 in the first degree where a special allegation has been made under RCW
25 9.94A.835, the prosecuting attorney shall file a special allegation
26 that the victim of the offense was under fifteen years of age at the
27 time of the offense whenever sufficient admissible evidence exists,
28 which, when considered with the most plausible, reasonably foreseeable
29 defense that could be raised under the evidence, would justify a
30 finding by a reasonable and objective fact-finder that the victim was
31 under fifteen years of age at the time of the offense.

32 (2) Once a special allegation has been made under this section, the
33 state has the burden to prove beyond a reasonable doubt that the victim
34 was under fifteen years of age at the time of the offense. If a jury
35 is had, the jury shall, if it finds the defendant guilty, also find a
36 special verdict as to whether the victim was under the age of fifteen

1 at the time of the offense. If no jury is had, the court shall make a
2 finding of fact as to whether the victim was under the age of fifteen
3 at the time of the offense.

4 (3) The prosecuting attorney shall not withdraw a special
5 allegation filed under this section without the approval of the court
6 through an order of dismissal of the allegation. The court may not
7 dismiss the special allegation unless it finds that the order is
8 necessary to correct an error in the initial charging decision or that
9 there are evidentiary problems that make proving the special allegation
10 doubtful.

11 **Sec. 3.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read
12 as follows:

13 (1) An offender who is not a persistent offender shall be sentenced
14 under this section if the offender:

15 (a) Is convicted of:

16 (i) Rape in the first degree, rape in the second degree, rape of a
17 child in the first degree, child molestation in the first degree, rape
18 of a child in the second degree, or indecent liberties by forcible
19 compulsion;

20 (ii) Any of the following offenses with a finding of sexual
21 motivation: Murder in the first degree, murder in the second degree,
22 homicide by abuse, kidnapping in the first degree, kidnapping in the
23 second degree, assault in the first degree, assault in the second
24 degree, assault of a child in the first degree, or burglary in the
25 first degree; or

26 (iii) An attempt to commit any crime listed in this subsection
27 (1)(a);
28 committed on or after September 1, 2001; or

29 (b) Has a prior conviction for an offense listed in RCW
30 9.94A.030(33)(b), and is convicted of any sex offense which was
31 committed after September 1, 2001.

32 For purposes of this subsection (1)(b), failure to register is not
33 a sex offense.

34 (2) An offender convicted of rape of a child in the first or second
35 degree or child molestation in the first degree who was seventeen years
36 of age or younger at the time of the offense shall not be sentenced
37 under this section.

1 (3)(a) Upon a finding that the offender is subject to sentencing
2 under this section, the court shall impose a sentence to a maximum term
3 (~~consisting of the statutory maximum sentence for the offense~~) and a
4 minimum term (~~either within the standard sentence range for the~~
5 ~~offense, or outside the standard sentence range pursuant to RCW~~
6 ~~9.94A.535, if the offender is otherwise eligible for such a sentence~~).

7 (b) The maximum term shall consist of the statutory maximum
8 sentence for the offense.

9 (c)(i) Except as provided in (c)(ii) of this subsection, the
10 minimum term shall be either within the standard sentence range for the
11 offense, or outside the standard sentence range pursuant to RCW
12 9.94A.535, if the offender is otherwise eligible for such a sentence.

13 (ii) If the offense that caused the offender to be sentenced under
14 this section was rape of a child in the first degree, rape of a child
15 in the second degree, or child molestation in the first degree, and
16 there has been a finding that the offense was predatory under section
17 1 of this act, the minimum term shall be either the maximum of the
18 standard sentence range or twenty-five years, whichever is greater. If
19 the offense that caused the offender to be sentenced under this section
20 was rape in the first degree, rape in the second degree, indecent
21 liberties by forcible compulsion, or kidnapping in the first degree
22 with a finding of sexual motivation, and there has been a finding that
23 the victim was under the age of fifteen at the time of the offense
24 under section 2 of this act, the minimum term shall be either the
25 maximum of the standard range for the offense or twenty-five years,
26 whichever is greater.

27 (d) The minimum terms in (c)(ii) of this subsection do not apply to
28 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v).
29 The minimum term for such a juvenile shall be imposed under (c)(i) of
30 this subsection.

31 (4) A person sentenced under subsection (3) of this section shall
32 serve the sentence in a facility or institution operated, or utilized
33 under contract, by the state.

34 (5) When a court sentences a person to the custody of the
35 department under this section, the court shall, in addition to the
36 other terms of the sentence, sentence the offender to community custody
37 under the supervision of the department and the authority of the board

1 for any period of time the person is released from total confinement
2 before the expiration of the maximum sentence.

3 (6)(a)(i) Unless a condition is waived by the court, the conditions
4 of community custody shall include those provided for in RCW
5 9.94A.700(4). The conditions may also include those provided for in
6 RCW 9.94A.700(5). The court may also order the offender to participate
7 in rehabilitative programs or otherwise perform affirmative conduct
8 reasonably related to the circumstances of the offense, the offender's
9 risk of reoffending, or the safety of the community, and the department
10 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
11 9.95.425, and 9.95.430.

12 (ii) If the offense that caused the offender to be sentenced under
13 this section was an offense listed in subsection (1)(a) of this section
14 and the victim of the offense was under eighteen years of age at the
15 time of the offense, the court shall, as a condition of community
16 custody, prohibit the offender from residing in a community protection
17 zone.

18 (b) As part of any sentence under this section, the court shall
19 also require the offender to comply with any conditions imposed by the
20 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

21 **Sec. 4.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
22 as follows:

23 (1) An offender who is not a persistent offender shall be sentenced
24 under this section if the offender:

25 (a) Is convicted of:

26 (i) Rape in the first degree, rape in the second degree, rape of a
27 child in the first degree, child molestation in the first degree, rape
28 of a child in the second degree, or indecent liberties by forcible
29 compulsion;

30 (ii) Any of the following offenses with a finding of sexual
31 motivation: Murder in the first degree, murder in the second degree,
32 homicide by abuse, kidnapping in the first degree, kidnapping in the
33 second degree, assault in the first degree, assault in the second
34 degree, assault of a child in the first degree, or burglary in the
35 first degree; or

36 (iii) An attempt to commit any crime listed in this subsection
37 (1)(a);

1 committed on or after September 1, 2001; or

2 (b) Has a prior conviction for an offense listed in RCW
3 9.94A.030(32)(b), and is convicted of any sex offense which was
4 committed after September 1, 2001.

5 For purposes of this subsection (1)(b), failure to register is not
6 a sex offense.

7 (2) An offender convicted of rape of a child in the first or second
8 degree or child molestation in the first degree who was seventeen years
9 of age or younger at the time of the offense shall not be sentenced
10 under this section.

11 (3)(a) Upon a finding that the offender is subject to sentencing
12 under this section, the court shall impose a sentence to a maximum term
13 (~~consisting of the statutory maximum sentence for the offense~~) and a
14 minimum term (~~either within the standard sentence range for the
15 offense, or outside the standard sentence range pursuant to RCW
16 9.94A.535, if the offender is otherwise eligible for such a sentence~~).

17 (b) The maximum term shall consist of the statutory maximum
18 sentence for the offense.

19 (c)(i) Except as provided in (c)(ii) of this subsection, the
20 minimum term shall be either within the standard sentence range for the
21 offense, or outside the standard sentence range pursuant to RCW
22 9.94A.535, if the offender is otherwise eligible for such a sentence.

23 (ii) If the offense that caused the offender to be sentenced under
24 this section was rape of a child in the first degree, rape of a child
25 in the second degree, or child molestation in the first degree, and
26 there has been a finding that the offense was predatory under section
27 1 of this act, the minimum term shall be either the maximum of the
28 standard sentence range or twenty-five years, whichever is greater. If
29 the offense that caused the offender to be sentenced under this section
30 was rape in the first degree, rape in the second degree, indecent
31 liberties by forcible compulsion, or kidnapping in the first degree
32 with a finding of sexual motivation, and there has been a finding that
33 the victim was under the age of fifteen at the time of the offense
34 under section 2 of this act, the minimum term shall be either the
35 maximum of the standard range for the offense or twenty-five years,
36 whichever is greater.

37 (d) The minimum terms in (c)(ii) of this subsection do not apply to

1 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v).
2 The minimum term for such a juvenile shall be imposed under (c)(i) of
3 this subsection.

4 (4) A person sentenced under subsection (3) of this section shall
5 serve the sentence in a facility or institution operated, or utilized
6 under contract, by the state.

7 (5) When a court sentences a person to the custody of the
8 department under this section, the court shall, in addition to the
9 other terms of the sentence, sentence the offender to community custody
10 under the supervision of the department and the authority of the board
11 for any period of time the person is released from total confinement
12 before the expiration of the maximum sentence.

13 (6)(a) Unless a condition is waived by the court, the conditions of
14 community custody shall include those provided for in RCW 9.94A.700(4).
15 The conditions may also include those provided for in RCW 9.94A.700(5).
16 The court may also order the offender to participate in rehabilitative
17 programs or otherwise perform affirmative conduct reasonably related to
18 the circumstances of the offense, the offender's risk of reoffending,
19 or the safety of the community, and the department and the board shall
20 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
21 9.95.430.

22 (b) As part of any sentence under this section, the court shall
23 also require the offender to comply with any conditions imposed by the
24 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

25 **Sec. 5.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
26 as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

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

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

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

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

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

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

18 (6) "Community custody range" means the minimum and maximum period
19 of community custody included as part of a sentence under RCW
20 9.94A.715, as established by the commission or the legislature under
21 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

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

35 (10) "Community supervision" means a period of time during which a
36 convicted offender is subject to crime-related prohibitions and other
37 sentence conditions imposed by a court pursuant to this chapter or RCW
38 16.52.200(6) or 46.61.524. Where the court finds that any offender has

1 a chemical dependency that has contributed to his or her offense, the
2 conditions of supervision may, subject to available resources, include
3 treatment. For purposes of the interstate compact for out-of-state
4 supervision of parolees and probationers, RCW 9.95.270, community
5 supervision is the functional equivalent of probation and should be
6 considered the same as probation by other states.

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

8 (12) "Conviction" means an adjudication of guilt pursuant to Titles
9 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
10 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

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

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

27 (20) "Drug offender sentencing alternative" is a sentencing option
28 available to persons convicted of a felony offense other than a violent
29 offense or a sex offense and who are eligible for the option under RCW
30 9.94A.660.

31 (21) "Drug offense" means:

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

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

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

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

6 (23) "Escape" means:

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

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

16 (24) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
18 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
19 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

32 (28) "Legal financial obligation" means a sum of money that is
33 ordered by a superior court of the state of Washington for legal
34 financial obligations which may include restitution to the victim,
35 statutorily imposed crime victims' compensation fees as assessed
36 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
37 court-appointed attorneys' fees, and costs of defense, fines, and any
38 other financial obligation that is assessed to the offender as a result

1 of a felony conviction. Upon conviction for vehicular assault while
2 under the influence of intoxicating liquor or any drug, RCW
3 46.61.522(1)(b), or vehicular homicide while under the influence of
4 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
5 obligations may also include payment to a public agency of the expense
6 of an emergency response to the incident resulting in the conviction,
7 subject to RCW 38.52.430.

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

10 (a) Any felony defined under any law as a class A felony or
11 criminal solicitation of or criminal conspiracy to commit a class A
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

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

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

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

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

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

13 (ii) A prior conviction for indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
15 if: (A) The crime was committed against a child under the age of
16 fourteen; or (B) the relationship between the victim and perpetrator is
17 included in the definition of indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
20 through July 27, 1997.

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

23 (31) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case is under superior court
26 jurisdiction under RCW 13.04.030 or has been transferred by the
27 appropriate juvenile court to a criminal court pursuant to RCW
28 13.40.110. Throughout this chapter, the terms "offender" and
29 "defendant" are used interchangeably.

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

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

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

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

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

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

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

35 (35) "Predatory" means: (a) The perpetrator of the crime was a
36 stranger to the victim, as defined in this section; (b) the perpetrator
37 established or promoted a relationship with the victim prior to the
38 offense and the victimization of the victim was a significant reason

1 the perpetrator established or promoted the relationship; or (c) the
2 perpetrator was: (i) A teacher and the victim was a pupil under his or
3 her authority or supervision; (ii) a coach and the victim was a member
4 of a team coached by the perpetrator; or (iii) a pastor, elder, or
5 person in authority in any religious organization, and the victim was
6 under his or her authority or supervision as part of church or
7 religious activities.

8 (36) "Private school" means a school regulated under chapter
9 28A.195 or 28A.205 RCW.

10 ~~((36))~~ (37) "Public school" has the same meaning as in RCW
11 28A.150.010.

12 ~~((37))~~ (38) "Restitution" means a specific sum of money ordered
13 by the sentencing court to be paid by the offender to the court over a
14 specified period of time as payment of damages. The sum may include
15 both public and private costs.

16 ~~((38))~~ (39) "Risk assessment" means the application of an
17 objective instrument supported by research and adopted by the
18 department for the purpose of assessing an offender's risk of
19 reoffense, taking into consideration the nature of the harm done by the
20 offender, place and circumstances of the offender related to risk, the
21 offender's relationship to any victim, and any information provided to
22 the department by victims. The results of a risk assessment shall not
23 be based on unconfirmed or unconfirmable allegations.

24 ~~((39))~~ (40) "Serious traffic offense" means:

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

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

33 ~~((40))~~ (41) "Serious violent offense" is a subcategory of violent
34 offense and means:

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

36 (ii) Homicide by abuse;

37 (iii) Murder in the second degree;

38 (iv) Manslaughter in the first degree;

1 (v) Assault in the first degree;
2 (vi) Kidnapping in the first degree;
3 (vii) Rape in the first degree;
4 (viii) Assault of a child in the first degree; or
5 (ix) An attempt, criminal solicitation, or criminal conspiracy to
6 commit one of these felonies; or
7 (b) Any federal or out-of-state conviction for an offense that
8 under the laws of this state would be a felony classified as a serious
9 violent offense under (a) of this subsection.

10 ~~((41))~~ (42) "Sex offense" means:
11 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
12 RCW 9A.44.130(11);
13 (ii) A violation of RCW 9A.64.020;
14 (iii) A felony that is a violation of chapter 9.68A RCW other than
15 RCW 9.68A.070 or 9.68A.080; or
16 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
17 criminal solicitation, or criminal conspiracy to commit such crimes;
18 (b) Any conviction for a felony offense in effect at any time prior
19 to July 1, 1976, that is comparable to a felony classified as a sex
20 offense in (a) of this subsection;
21 (c) A felony with a finding of sexual motivation under RCW
22 9.94A.835 or 13.40.135; or
23 (d) Any federal or out-of-state conviction for an offense that
24 under the laws of this state would be a felony classified as a sex
25 offense under (a) of this subsection.

26 ~~((42))~~ (43) "Sexual motivation" means that one of the purposes
27 for which the defendant committed the crime was for the purpose of his
28 or her sexual gratification.

29 ~~((43))~~ (44) "Standard sentence range" means the sentencing
30 court's discretionary range in imposing a nonappealable sentence.

31 ~~((44))~~ (45) "Statutory maximum sentence" means the maximum length
32 of time for which an offender may be confined as punishment for a crime
33 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
34 the crime, or other statute defining the maximum penalty for a crime.

35 ~~((45))~~ (46) "Stranger" means that the victim did not know the
36 offender twenty-four hours before the offense.

37 (47) "Total confinement" means confinement inside the physical

1 boundaries of a facility or institution operated or utilized under
2 contract by the state or any other unit of government for twenty-four
3 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

4 ~~((46))~~ (48) "Transition training" means written and verbal
5 instructions and assistance provided by the department to the offender
6 during the two weeks prior to the offender's successful completion of
7 the work ethic camp program. The transition training shall include
8 instructions in the offender's requirements and obligations during the
9 offender's period of community custody.

10 ~~((47))~~ (49) "Victim" means any person who has sustained
11 emotional, psychological, physical, or financial injury to person or
12 property as a direct result of the crime charged.

13 ~~((48))~~ (50) "Violent offense" means:

14 (a) Any of the following felonies:

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

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

19 (iii) Manslaughter in the first degree;

20 (iv) Manslaughter in the second degree;

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

22 (vi) Kidnapping in the second degree;

23 (vii) Arson in the second degree;

24 (viii) Assault in the second degree;

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

26 (x) Extortion in the first degree;

27 (xi) Robbery in the second degree;

28 (xii) Drive-by shooting;

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

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

37 (b) Any conviction for a felony offense in effect at any time prior

1 to July 1, 1976, that is comparable to a felony classified as a violent
2 offense in (a) of this subsection; and

3 (c) 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 violent
5 offense under (a) or (b) of this subsection.

6 (~~(49)~~) (51) "Work crew" means a program of partial confinement
7 consisting of civic improvement tasks for the benefit of the community
8 that complies with RCW 9.94A.725.

9 (~~(50)~~) (52) "Work ethic camp" means an alternative incarceration
10 program as provided in RCW 9.94A.690 designed to reduce recidivism and
11 lower the cost of corrections by requiring offenders to complete a
12 comprehensive array of real-world job and vocational experiences,
13 character-building work ethics training, life management skills
14 development, substance abuse rehabilitation, counseling, literacy
15 training, and basic adult education.

16 (~~(51)~~) (53) "Work release" means a program of partial confinement
17 available to offenders who are employed or engaged as a student in a
18 regular course of study at school.

19 **Sec. 6.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
20 as follows:

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter.

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

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

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

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

1 (5) "Community custody" means that portion of an offender's
2 sentence of confinement in lieu of earned release time or imposed
3 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
4 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
5 community subject to controls placed on the offender's movement and
6 activities by the department. For offenders placed on community
7 custody for crimes committed on or after July 1, 2000, the department
8 shall assess the offender's risk of reoffense and may establish and
9 modify conditions of community custody, in addition to those imposed by
10 the court, based upon the risk to community safety.

11 (6) "Community custody range" means the minimum and maximum period
12 of community custody included as part of a sentence under RCW
13 9.94A.715, as established by the commission or the legislature under
14 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

22 (8) "Community restitution" means compulsory service, without
23 compensation, performed for the benefit of the community by the
24 offender.

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

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

36 (11) "Conviction" means an adjudication of guilt pursuant to Titles
37 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
38 acceptance of a plea of guilty.

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

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

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

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

19 (c) The determination of a defendant's criminal history is distinct
20 from the determination of an offender score. A prior conviction that
21 was not included in an offender score calculated pursuant to a former
22 version of the sentencing reform act remains part of the defendant's
23 criminal history.

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

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

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

34 (17) "Determinate sentence" means a sentence that states with
35 exactitude the number of actual years, months, or days of total
36 confinement, of partial confinement, of community supervision, the
37 number of actual hours or days of community restitution work, or
38 dollars or terms of a legal financial obligation. The fact that an

1 offender through earned release can reduce the actual period of
2 confinement shall not affect the classification of the sentence as a
3 determinate sentence.

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

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

20 (20) "Drug offense" means:

21 (a) Any felony violation of chapter 69.50 RCW except possession of
22 a controlled substance (RCW 69.50.4013) or forged prescription for a
23 controlled substance (RCW 69.50.403);

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

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

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

32 (22) "Escape" means:

33 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
34 first degree (RCW 9A.76.110), escape in the second degree (RCW
35 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
36 willful failure to return from work release (RCW 72.65.070), or willful
37 failure to be available for supervision by the department while in
38 community custody (RCW 72.09.310); 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 an escape
3 under (a) of this subsection.

4 (23) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
6 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
7 and-run injury-accident (RCW 46.52.020(4)); or

8 (b) 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 felony
10 traffic offense under (a) of this subsection.

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

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

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

20 (27) "Legal financial obligation" means a sum of money that is
21 ordered by a superior court of the state of Washington for legal
22 financial obligations which may include restitution to the victim,
23 statutorily imposed crime victims' compensation fees as assessed
24 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
25 court-appointed attorneys' fees, and costs of defense, fines, and any
26 other financial obligation that is assessed to the offender as a result
27 of a felony conviction. Upon conviction for vehicular assault while
28 under the influence of intoxicating liquor or any drug, RCW
29 46.61.522(1)(b), or vehicular homicide while under the influence of
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
31 obligations may also include payment to a public agency of the expense
32 of an emergency response to the incident resulting in the conviction,
33 subject to RCW 38.52.430.

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

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

- 1 (b) Assault in the second degree;
- 2 (c) Assault of a child in the second degree;
- 3 (d) Child molestation in the second degree;
- 4 (e) Controlled substance homicide;
- 5 (f) Extortion in the first degree;
- 6 (g) Incest when committed against a child under age fourteen;
- 7 (h) Indecent liberties;
- 8 (i) Kidnapping in the second degree;
- 9 (j) Leading organized crime;
- 10 (k) Manslaughter in the first degree;
- 11 (l) Manslaughter in the second degree;
- 12 (m) Promoting prostitution in the first degree;
- 13 (n) Rape in the third degree;
- 14 (o) Robbery in the second degree;
- 15 (p) Sexual exploitation;
- 16 (q) Vehicular assault, when caused by the operation or driving of
17 a vehicle by a person while under the influence of intoxicating liquor
18 or any drug or by the operation or driving of a vehicle in a reckless
19 manner;
- 20 (r) Vehicular homicide, when proximately caused by the driving of
21 any vehicle by any person while under the influence of intoxicating
22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
23 any vehicle in a reckless manner;
- 24 (s) Any other class B felony offense with a finding of sexual
25 motivation;
- 26 (t) Any other felony with a deadly weapon verdict under RCW
27 9.94A.602;
- 28 (u) Any felony offense in effect at any time prior to December 2,
29 1993, that is comparable to a most serious offense under this
30 subsection, or any federal or out-of-state conviction for an offense
31 that under the laws of this state would be a felony classified as a
32 most serious offense under this subsection;
- 33 (v)(i) A prior conviction for indecent liberties under RCW
34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997.

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

11 (30) "Offender" means a person who has committed a felony
12 established by state law and is eighteen years of age or older or is
13 less than eighteen years of age but whose case is under superior court
14 jurisdiction under RCW 13.04.030 or has been transferred by the
15 appropriate juvenile court to a criminal court pursuant to RCW
16 13.40.110. Throughout this chapter, the terms "offender" and
17 "defendant" are used interchangeably.

18 (31) "Partial confinement" means confinement for no more than one
19 year in a facility or institution operated or utilized under contract
20 by the state or any other unit of government, or, if home detention or
21 work crew has been ordered by the court, in an approved residence, for
22 a substantial portion of each day with the balance of the day spent in
23 the community. Partial confinement includes work release, home
24 detention, work crew, and a combination of work crew and home
25 detention.

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

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

29 (ii) Has, before the commission of the offense under (a) of this
30 subsection, been convicted as an offender on at least two separate
31 occasions, whether in this state or elsewhere, of felonies that under
32 the laws of this state would be considered most serious offenses and
33 would be included in the offender score under RCW 9.94A.525; provided
34 that of the two or more previous convictions, at least one conviction
35 must have occurred before the commission of any of the other most
36 serious offenses for which the offender was previously convicted; or

37 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
38 of a child in the first degree, child molestation in the first degree,

1 rape in the second degree, rape of a child in the second degree, or
2 indecent liberties by forcible compulsion; (B) any of the following
3 offenses with a finding of sexual motivation: Murder in the first
4 degree, murder in the second degree, homicide by abuse, kidnapping in
5 the first degree, kidnapping in the second degree, assault in the first
6 degree, assault in the second degree, assault of a child in the first
7 degree, or burglary in the first degree; or (C) an attempt to commit
8 any crime listed in this subsection (32)(b)(i); and

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

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

23 (34) "Predatory" means: (a) The perpetrator of the crime was a
24 stranger to the victim, as defined in this section; (b) the perpetrator
25 established or promoted a relationship with the victim prior to the
26 offense and the victimization of the victim was a significant reason
27 the perpetrator established or promoted the relationship; or (c) the
28 perpetrator was: (i) A teacher and the victim was a pupil under his or
29 her authority or supervision; (ii) a coach and the victim was a member
30 of a team coached by the perpetrator; or (iii) a pastor, elder, or
31 person in authority in any religious organization, and the victim was
32 under his or her authority or supervision as part of church or
33 religious activities.

34 (35) "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 (~~(35)~~) (36) "Risk assessment" means the application of an
2 objective instrument supported by research and adopted by the
3 department for the purpose of assessing an offender's risk of
4 reoffense, taking into consideration the nature of the harm done by the
5 offender, place and circumstances of the offender related to risk, the
6 offender's relationship to any victim, and any information provided to
7 the department by victims. The results of a risk assessment shall not
8 be based on unconfirmed or unconfirmable allegations.

9 (~~(36)~~) (37) "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 (~~(37)~~) (38) "Serious violent offense" is a subcategory of violent
19 offense 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 (~~(38)~~) (39) "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 (~~(39)~~) (40) "Sexual motivation" means that one of the purposes
12 for which the defendant committed the crime was for the purpose of his
13 or her sexual gratification.

14 (~~(40)~~) (41) "Standard sentence range" means the sentencing
15 court's discretionary range in imposing a nonappealable sentence.

16 (~~(41)~~) (42) "Statutory maximum sentence" means the maximum length
17 of time for which an offender may be confined as punishment for a crime
18 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
19 the crime, or other statute defining the maximum penalty for a crime.

20 (~~(42)~~) (43) "Stranger" means that the victim did not know the
21 offender twenty-four hours before the offense.

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

26 (~~(43)~~) (45) "Transition training" means written and verbal
27 instructions and assistance provided by the department to the offender
28 during the two weeks prior to the offender's successful completion of
29 the work ethic camp program. The transition training shall include
30 instructions in the offender's requirements and obligations during the
31 offender's period of community custody.

32 (~~(44)~~) (46) "Victim" means any person who has sustained
33 emotional, psychological, physical, or financial injury to person or
34 property as a direct result of the crime charged.

35 (~~(45)~~) (47) "Violent offense" means:

36 (a) Any of the following felonies:

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

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

3 (iii) Manslaughter in the first degree;

4 (iv) Manslaughter in the second degree;

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

6 (vi) Kidnapping in the second degree;

7 (vii) Arson in the second degree;

8 (viii) Assault in the second degree;

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

10 (x) Extortion in the first degree;

11 (xi) Robbery in the second degree;

12 (xii) Drive-by shooting;

13 (xiii) Vehicular assault, when caused by the operation or driving
14 of a vehicle by a person while under the influence of intoxicating
15 liquor or any drug or by the operation or driving of a vehicle in a
16 reckless manner; and

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

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 violent
23 offense in (a) of this subsection; and

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

27 (~~(46)~~) (48) "Work crew" means a program of partial confinement
28 consisting of civic improvement tasks for the benefit of the community
29 that complies with RCW 9.94A.725.

30 (~~(47)~~) (49) "Work ethic camp" means an alternative incarceration
31 program as provided in RCW 9.94A.690 designed to reduce recidivism and
32 lower the cost of corrections by requiring offenders to complete a
33 comprehensive array of real-world job and vocational experiences,
34 character-building work ethics training, life management skills
35 development, substance abuse rehabilitation, counseling, literacy
36 training, and basic adult education.

37 (~~(48)~~) (50) "Work release" means a program of partial confinement

1 available to offenders who are employed or engaged as a student in a
2 regular course of study at school.

3 NEW SECTION. **Sec. 7.** Sections 3 and 5 of this act expire July 1,
4 2006.

5 NEW SECTION. **Sec. 8.** Sections 4 and 6 of this act take effect
6 July 1, 2006.

7 NEW SECTION. **Sec. 9.** Sections 1 through 3 and 5 of this act are
8 necessary for the immediate preservation of the public peace, health,
9 or safety, or support of the state government and its existing public
10 institutions, and take effect immediately.

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