
HOUSE BILL 3277

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By Representatives O'Brien, Rodne, Kirby, Williams, Darneille, Sells, Kessler, Lovick, Ericks, Simpson, Kilmer, Lantz, Anderson, Takko, Green, Moeller, Campbell, Morris, Hunt, Conway and Fromhold

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1 AN ACT Relating to authorizing special verdicts that would result
2 in more severe punishment for certain sex offenses against children and
3 vulnerable adults by increasing the minimum sentences to twenty-five
4 years or the maximum of the standard sentence range, whichever is
5 greater, for rape of a child in the first degree, rape of a child in
6 the second degree, and child molestation in the first degree, when a
7 special allegation that the offense was predatory has been made and
8 proven beyond a reasonable doubt, by increasing the minimum sentences
9 to twenty-five years or the maximum of the standard sentence range,
10 whichever is greater, for rape in the first degree, rape in the second
11 degree, indecent liberties by forcible compulsion, and kidnapping in
12 the first degree with sexual motivation, when a special allegation that
13 the victim was under age fifteen at the time of the crime has been made
14 and proven beyond a reasonable doubt, and by increasing the minimum
15 sentences to twenty-five years or the maximum of the standard sentence
16 range, whichever is greater, for rape in the first degree, rape in the
17 second degree by forcible compulsion, indecent liberties by forcible
18 compulsion, and kidnapping in the first degree with sexual motivation,
19 when a special allegation that the victim was, at the time of the
20 crime, developmentally disabled, mentally disordered, or a frail elder
21 or vulnerable adult, has been made and proven beyond a reasonable

1 doubt, without making any change to the sentencing grid, RCW 9.94A.510,
2 or the seriousness level table, RCW 9.94A.515; amending RCW 9.94A.712,
3 9.94A.712, 9.94A.030, and 9.94A.030; adding new sections to chapter
4 9.94A RCW; prescribing penalties; providing an effective date;
5 providing an expiration date; and declaring an emergency.

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

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

9 (1) In a prosecution for rape of a child in the first degree, rape
10 of a child in the second degree, or child molestation in the first
11 degree, the prosecuting attorney shall file a special allegation that
12 the offense was predatory whenever sufficient admissible evidence
13 exists, which, when considered with the most plausible, reasonably
14 foreseeable defense that could be raised under the evidence, would
15 justify a finding by a reasonable and objective fact-finder that the
16 offense was predatory.

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

23 (3) The prosecuting attorney shall not withdraw a special
24 allegation filed under this section without the approval of the court
25 through an order of dismissal of the allegation. The court may not
26 dismiss the special allegation unless it finds that the order is
27 necessary to correct an error in the initial charging decision or that
28 there are evidentiary problems that make proving the special allegation
29 doubtful.

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

32 (1) In a prosecution for rape in the first degree, rape in the
33 second degree, indecent liberties by forcible compulsion, or kidnapping
34 in the first degree with sexual motivation, the prosecuting attorney
35 shall file a special allegation that the victim of the offense was

1 under fifteen years of age at the time of the offense whenever
2 sufficient admissible evidence exists, which, when considered with the
3 most plausible, reasonably foreseeable defense that could be raised
4 under the evidence, would justify a finding by a reasonable and
5 objective fact-finder that the victim was under fifteen years of age at
6 the time of the offense.

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 victim
9 was under fifteen years of age at the time of the offense. If a jury
10 is had, the jury shall, if it finds the defendant guilty, also find a
11 special verdict as to whether the victim was under the age of fifteen
12 at the time of the offense. If no jury is had, the court shall make a
13 finding of fact as to whether the victim was under the age of fifteen
14 at the time of the offense.

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

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

24 (1) In a prosecution for rape in the first degree, rape in the
25 second degree with forcible compulsion, indecent liberties with
26 forcible compulsion, or kidnapping in the first degree with sexual
27 motivation, the prosecuting attorney shall file a special allegation
28 that the victim of the offense was, at the time of the offense,
29 developmentally disabled, mentally disordered, or a frail elder or
30 vulnerable adult, whenever sufficient admissible evidence exists,
31 which, when considered with the most plausible, reasonably foreseeable
32 defense that could be raised under the evidence, would justify a
33 finding by a reasonable and objective fact-finder that the victim was,
34 at the time of the offense, developmentally disabled, mentally
35 disordered, or a frail elder or vulnerable adult.

36 (2) Once a special allegation has been made under this section, the
37 state has the burden to prove beyond a reasonable doubt that the victim

1 was, at the time of the offense, developmentally disabled, mentally
2 disordered, or a frail elder or vulnerable adult. If a jury is had,
3 the jury shall, if it finds the defendant guilty, also find a special
4 verdict as to whether the victim was, at the time of the offense,
5 developmentally disabled, mentally disordered, or a frail elder or
6 vulnerable adult. If no jury is had, the court shall make a finding of
7 fact as to whether the victim was, at the time of the offense,
8 developmentally disabled, mentally disordered, or a frail elder or
9 vulnerable adult.

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

17 (4) For purposes of this section, "developmentally disabled,"
18 "mentally disordered," and "frail elder or vulnerable adult" have the
19 same meaning as in RCW 9A.44.010.

20 **Sec. 4.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read
21 as follows:

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

24 (a) Is convicted of:

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

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

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

37 committed on or after September 1, 2001; or

1 (b) Has a prior conviction for an offense listed in RCW
2 9.94A.030(33)(b), and is convicted of any sex offense which was
3 committed after September 1, 2001.

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

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

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

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

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

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

1 motivation, and there has been a finding under section 3 of this act
2 that the victim was, at the time of the offense, developmentally
3 disabled, mentally disordered, or a frail elder or vulnerable adult,
4 the minimum sentence shall be either the maximum of the standard
5 sentence range for the offense or twenty-five years, whichever is
6 greater.

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

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

14 (5) When a court sentences a person to the custody of the
15 department under this section, the court shall, in addition to the
16 other terms of the sentence, sentence the offender to community custody
17 under the supervision of the department and the authority of the board
18 for any period of time the person is released from total confinement
19 before the expiration of the maximum sentence.

20 (6)(a)(i) Unless a condition is waived by the court, the conditions
21 of community custody shall include those provided for in RCW
22 9.94A.700(4). The conditions may also include those provided for in
23 RCW 9.94A.700(5). The court may also order the offender to participate
24 in rehabilitative programs or otherwise perform affirmative conduct
25 reasonably related to the circumstances of the offense, the offender's
26 risk of reoffending, or the safety of the community, and the department
27 and the board shall enforce such conditions pursuant to RCW 9.94A.713,
28 9.95.425, and 9.95.430.

29 (ii) If the offense that caused the offender to be sentenced under
30 this section was an offense listed in subsection (1)(a) of this section
31 and the victim of the offense was under eighteen years of age at the
32 time of the offense, the court shall, as a condition of community
33 custody, prohibit the offender from residing in a community protection
34 zone.

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

1 **Sec. 5.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
2 as follows:

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

5 (a) Is convicted of:

6 (i) Rape in the first degree, rape in the second degree, rape of a
7 child in the first degree, child molestation in the first degree, rape
8 of a child in the second degree, or indecent liberties by forcible
9 compulsion;

10 (ii) Any of the following offenses with a finding of sexual
11 motivation: Murder in the first degree, murder in the second degree,
12 homicide by abuse, kidnapping in the first degree, kidnapping in the
13 second degree, assault in the first degree, assault in the second
14 degree, assault of a child in the first degree, or burglary in the
15 first degree; or

16 (iii) An attempt to commit any crime listed in this subsection
17 (1)(a);
18 committed on or after September 1, 2001; or

19 (b) Has a prior conviction for an offense listed in RCW
20 9.94A.030(32)(b), and is convicted of any sex offense which was
21 committed after September 1, 2001.

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

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

28 (3)(a) Upon a finding that the offender is subject to sentencing
29 under this section, the court shall impose a sentence to a maximum term
30 ~~((consisting of the statutory maximum sentence for the offense))~~ and a
31 minimum term ~~((either within the standard sentence range for the
32 offense, or outside the standard sentence range pursuant to RCW
33 9.94A.535, if the offender is otherwise eligible for such a sentence)).~~

34 (b) The maximum term shall consist of the statutory maximum
35 sentence for the offense.

36 (c)(i) Except as provided in (c)(ii) of this subsection, the
37 minimum term shall be either within the standard sentence range for the

1 offense, or outside the standard sentence range pursuant to RCW
2 9.94A.535, if the offender is otherwise eligible for such a sentence.

3 (ii) If the offense that caused the offender to be sentenced under
4 this section was rape of a child in the first degree, rape of a child
5 in the second degree, or child molestation in the first degree, and
6 there has been a finding that the offense was predatory under section
7 1 of this act, the minimum term shall be either the maximum of the
8 standard sentence range for the offense or twenty-five years, whichever
9 is greater. If the offense that caused the offender to be sentenced
10 under this section was rape in the first degree, rape in the second
11 degree, indecent liberties by forcible compulsion, or kidnapping in the
12 first degree with sexual motivation, and there has been a finding that
13 the victim was under the age of fifteen at the time of the offense
14 under section 2 of this act, the minimum term shall be either the
15 maximum of the standard sentence range for the offense or twenty-five
16 years, whichever is greater. If the offense that caused the offender
17 to be sentenced under this section is rape in the first degree, rape in
18 the second degree with forcible compulsion, indecent liberties with
19 forcible compulsion, or kidnapping in the first degree with sexual
20 motivation, and there has been a finding under section 3 of this act
21 that the victim was, at the time of the offense, developmentally
22 disabled, mentally disordered, or a frail elder or vulnerable adult,
23 the minimum sentence shall be either the maximum of the standard
24 sentence range for the offense or twenty-five years, whichever is
25 greater.

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

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

33 (5) When a court sentences a person to the custody of the
34 department under this section, the court shall, in addition to the
35 other terms of the sentence, sentence the offender to community custody
36 under the supervision of the department and the authority of the board
37 for any period of time the person is released from total confinement
38 before the expiration of the maximum sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (9) "Community restitution" means compulsory service, without
20 compensation, performed for the benefit of the community by the
21 offender.

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

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

33 (12) "Conviction" means an adjudication of guilt pursuant to Titles
34 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
35 acceptance of a plea of guilty.

36 (13) "Crime-related prohibition" means an order of a court
37 prohibiting conduct that directly relates to the circumstances of the
38 crime for which the offender has been convicted, and shall not be

1 construed to mean orders directing an offender affirmatively to
2 participate in rehabilitative programs or to otherwise perform
3 affirmative conduct. However, affirmative acts necessary to monitor
4 compliance with the order of a court may be required by the department.

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

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

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

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

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

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

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

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

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

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

17 (21) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of
19 a controlled substance (RCW 69.50.4013) or forged prescription for a
20 controlled substance (RCW 69.50.403);

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

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

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

29 (23) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
31 first degree (RCW 9A.76.110), escape in the second degree (RCW
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
33 willful failure to return from work release (RCW 72.65.070), or willful
34 failure to be available for supervision by the department while in
35 community custody (RCW 72.09.310); or

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

1 (24) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
4 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

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

36 (b) Assault in the second degree;

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

38 (d) Child molestation in the second degree;

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

1 included in the definition of indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
3 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
4 through July 27, 1997.

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

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

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

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

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

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

33 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
34 of a child in the first degree, child molestation in the first degree,
35 rape in the second degree, rape of a child in the second degree, or
36 indecent liberties by forcible compulsion; (B) any of the following
37 offenses with a finding of sexual motivation: Murder in the first
38 degree, murder in the second degree, homicide by abuse, kidnapping in

1 the first degree, kidnapping in the second degree, assault in the first
2 degree, assault in the second degree, assault of a child in the first
3 degree, or burglary in the first degree; or (C) an attempt to commit
4 any crime listed in this subsection (33)(b)(i); and

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

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

19 (35) "Predatory" means: (a) The perpetrator of the crime was a
20 stranger to the victim, as defined in this section; (b) the perpetrator
21 established or promoted a relationship with the victim prior to the
22 offense and the victimization of the victim was a significant reason
23 the perpetrator established or promoted the relationship; or (c) the
24 perpetrator was: (i) A teacher, counselor, volunteer, or other person
25 in authority in any public or private school and the victim was a
26 student of the school under his or her authority or supervision. For
27 purposes of this subsection, "school" does not include home-based
28 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
29 volunteer, or other person in authority in any recreational activity
30 and the victim was a participant in the activity under his or her
31 authority or supervision; or (iii) a pastor, elder, volunteer, or other
32 person in authority in any church or religious organization, and the
33 victim was a member or participant of the organization under his or her
34 authority.

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

37 ((+36+)) (37) "Public school" has the same meaning as in RCW
38 28A.150.010.

1 (~~(37)~~) (38) "Restitution" means a specific sum of money ordered
2 by the sentencing court to be paid by the offender to the court over a
3 specified period of time as payment of damages. The sum may include
4 both public and private costs.

5 (~~(38)~~) (39) "Risk assessment" means the application of an
6 objective instrument supported by research and adopted by the
7 department for the purpose of assessing an offender's risk of
8 reoffense, taking into consideration the nature of the harm done by the
9 offender, place and circumstances of the offender related to risk, the
10 offender's relationship to any victim, and any information provided to
11 the department by victims. The results of a risk assessment shall not
12 be based on unconfirmed or unconfirmable allegations.

13 (~~(39)~~) (40) "Serious traffic offense" means:

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

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

22 (~~(40)~~) (41) "Serious violent offense" is a subcategory of violent
23 offense and means:

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

25 (ii) Homicide by abuse;

26 (iii) Murder in the second degree;

27 (iv) Manslaughter in the first degree;

28 (v) Assault in the first degree;

29 (vi) Kidnapping in the first degree;

30 (vii) Rape in the first degree;

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

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

34 (b) 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 serious
36 violent offense under (a) of this subsection.

37 (~~(41)~~) (42) "Sex offense" means:

1 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
2 RCW 9A.44.130(11);
3 (ii) A violation of RCW 9A.64.020;
4 (iii) A felony that is a violation of chapter 9.68A RCW other than
5 RCW 9.68A.070 or 9.68A.080; or
6 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
7 criminal solicitation, or criminal conspiracy to commit such crimes;
8 (b) Any conviction for a felony offense in effect at any time prior
9 to July 1, 1976, that is comparable to a felony classified as a sex
10 offense in (a) of this subsection;
11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.835 or 13.40.135; or
13 (d) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a sex
15 offense under (a) of this subsection.
16 ~~((42))~~ (43) "Sexual motivation" means that one of the purposes
17 for which the defendant committed the crime was for the purpose of his
18 or her sexual gratification.
19 ~~((43))~~ (44) "Standard sentence range" means the sentencing
20 court's discretionary range in imposing a nonappealable sentence.
21 ~~((44))~~ (45) "Statutory maximum sentence" means the maximum length
22 of time for which an offender may be confined as punishment for a crime
23 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
24 the crime, or other statute defining the maximum penalty for a crime.
25 ~~((45))~~ (46) "Stranger" means that the victim did not know the
26 offender twenty-four hours before the offense.
27 (47) "Total confinement" means confinement inside the physical
28 boundaries of a facility or institution operated or utilized under
29 contract by the state or any other unit of government for twenty-four
30 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
31 ~~((46))~~ (48) "Transition training" means written and verbal
32 instructions and assistance provided by the department to the offender
33 during the two weeks prior to the offender's successful completion of
34 the work ethic camp program. The transition training shall include
35 instructions in the offender's requirements and obligations during the
36 offender's period of community custody.
37 ~~((47))~~ (49) "Victim" means any person who has sustained

1 emotional, psychological, physical, or financial injury to person or
2 property as a direct result of the crime charged.

3 ~~((48))~~ (50) "Violent offense" means:

4 (a) Any of the following felonies:

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

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

9 (iii) Manslaughter in the first degree;

10 (iv) Manslaughter in the second degree;

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

12 (vi) Kidnapping in the second degree;

13 (vii) Arson in the second degree;

14 (viii) Assault in the second degree;

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

16 (x) Extortion in the first degree;

17 (xi) Robbery in the second degree;

18 (xii) Drive-by shooting;

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

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

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

30 (c) 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 violent
32 offense under (a) or (b) of this subsection.

33 ~~((49))~~ (51) "Work crew" means a program of partial confinement
34 consisting of civic improvement tasks for the benefit of the community
35 that complies with RCW 9.94A.725.

36 ~~((50))~~ (52) "Work ethic camp" means an alternative incarceration
37 program as provided in RCW 9.94A.690 designed to reduce recidivism and
38 lower the cost of corrections by requiring offenders to complete a

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

5 ~~((+51+))~~ (53) "Work release" means a program of partial confinement
6 available to offenders who are employed or engaged as a student in a
7 regular course of study at school.

8 **Sec. 7.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

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

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

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

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

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

1 (6) "Community custody range" means the minimum and maximum period
2 of community custody included as part of a sentence under RCW
3 9.94A.715, as established by the commission or the legislature under
4 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

12 (8) "Community restitution" means compulsory service, without
13 compensation, performed for the benefit of the community by the
14 offender.

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

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

26 (11) "Conviction" means an adjudication of guilt pursuant to Titles
27 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
28 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

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

32 (18) "Disposable earnings" means that part of the earnings of an
33 offender remaining after the deduction from those earnings of any
34 amount required by law to be withheld. For the purposes of this
35 definition, "earnings" means compensation paid or payable for personal
36 services, whether denominated as wages, salary, commission, bonuses, or
37 otherwise, and, notwithstanding any other provision of law making the
38 payments exempt from garnishment, attachment, or other process to

1 satisfy a court-ordered legal financial obligation, specifically
2 includes periodic payments pursuant to pension or retirement programs,
3 or insurance policies of any type, but does not include payments made
4 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
5 or Title 74 RCW.

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

10 (20) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession of
12 a controlled substance (RCW 69.50.4013) or forged prescription for a
13 controlled substance (RCW 69.50.403);

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

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

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

22 (22) "Escape" means:

23 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
24 first degree (RCW 9A.76.110), escape in the second degree (RCW
25 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
26 willful failure to return from work release (RCW 72.65.070), or willful
27 failure to be available for supervision by the department while in
28 community custody (RCW 72.09.310); 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 an escape
31 under (a) of this subsection.

32 (23) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
34 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
35 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

1 (l) Manslaughter in the second degree;
2 (m) Promoting prostitution in the first degree;
3 (n) Rape in the third degree;
4 (o) Robbery in the second degree;
5 (p) Sexual exploitation;
6 (q) Vehicular assault, when caused by the operation or driving of
7 a vehicle by a person while under the influence of intoxicating liquor
8 or any drug or by the operation or driving of a vehicle in a reckless
9 manner;
10 (r) Vehicular homicide, when proximately caused by the driving of
11 any vehicle by any person while under the influence of intoxicating
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of
13 any vehicle in a reckless manner;
14 (s) Any other class B felony offense with a finding of sexual
15 motivation;
16 (t) Any other felony with a deadly weapon verdict under RCW
17 9.94A.602;
18 (u) Any felony offense in effect at any time prior to December 2,
19 1993, that is comparable to a most serious offense under this
20 subsection, or any federal or out-of-state conviction for an offense
21 that under the laws of this state would be a felony classified as a
22 most serious offense under this subsection;
23 (v)(i) A prior conviction for indecent liberties under RCW
24 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
25 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
26 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
27 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
28 (ii) A prior conviction for indecent liberties under RCW
29 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
30 if: (A) The crime was committed against a child under the age of
31 fourteen; or (B) the relationship between the victim and perpetrator is
32 included in the definition of indecent liberties under RCW
33 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
34 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
35 through July 27, 1997.
36 (29) "Nonviolent offense" means an offense which is not a violent
37 offense.

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

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

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

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

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

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

37 (ii) Has, before the commission of the offense under (b)(i) of this
38 subsection, been convicted as an offender on at least one occasion,

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

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

13 (34) "Predatory" means: (a) The perpetrator of the crime was a
14 stranger to the victim, as defined in this section; (b) the perpetrator
15 established or promoted a relationship with the victim prior to the
16 offense and the victimization of the victim was a significant reason
17 the perpetrator established or promoted the relationship; or (c) the
18 perpetrator was: (i) A teacher, counselor, volunteer, or other person
19 in authority in any public or private school and the victim was a
20 student of the school under his or her authority or supervision. For
21 purposes of this subsection, "school" does not include home-based
22 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
23 volunteer, or other person in authority in any recreational activity
24 and the victim was a participant in the activity under his or her
25 authority or supervision; or (iii) a pastor, elder, volunteer, or other
26 person in authority in any church or religious organization, and the
27 victim was a member or participant of the organization under his or her
28 authority.

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

33 ((+35+)) (36) "Risk assessment" means the application of an
34 objective instrument supported by research and adopted by the
35 department for the purpose of assessing an offender's risk of
36 reoffense, taking into consideration the nature of the harm done by the
37 offender, place and circumstances of the offender related to risk, the

1 offender's relationship to any victim, and any information provided to
2 the department by victims. The results of a risk assessment shall not
3 be based on unconfirmed or unconfirmable allegations.

4 ~~((36))~~ (37) "Serious traffic offense" means:

5 (a) Driving while under the influence of intoxicating liquor or any
6 drug (RCW 46.61.502), actual physical control while under the influence
7 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
8 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
9 or

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

13 ~~((37))~~ (38) "Serious violent offense" is a subcategory of violent
14 offense and means:

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

16 (ii) Homicide by abuse;

17 (iii) Murder in the second degree;

18 (iv) Manslaughter in the first degree;

19 (v) Assault in the first degree;

20 (vi) Kidnapping in the first degree;

21 (vii) Rape in the first degree;

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

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

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

28 ~~((38))~~ (39) "Sex offense" means:

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

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

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

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

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

1 (c) A felony with a finding of sexual motivation under RCW
2 9.94A.835 or 13.40.135; or
3 (d) 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 sex
5 offense under (a) of this subsection.
6 ~~((39))~~ (40) "Sexual motivation" means that one of the purposes
7 for which the defendant committed the crime was for the purpose of his
8 or her sexual gratification.
9 ~~((40))~~ (41) "Standard sentence range" means the sentencing
10 court's discretionary range in imposing a nonappealable sentence.
11 ~~((41))~~ (42) "Statutory maximum sentence" means the maximum length
12 of time for which an offender may be confined as punishment for a crime
13 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
14 the crime, or other statute defining the maximum penalty for a crime.
15 ~~((42))~~ (43) "Stranger" means that the victim did not know the
16 offender twenty-four hours before the offense.
17 (44) "Total confinement" means confinement inside the physical
18 boundaries of a facility or institution operated or utilized under
19 contract by the state or any other unit of government for twenty-four
20 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
21 ~~((43))~~ (45) "Transition training" means written and verbal
22 instructions and assistance provided by the department to the offender
23 during the two weeks prior to the offender's successful completion of
24 the work ethic camp program. The transition training shall include
25 instructions in the offender's requirements and obligations during the
26 offender's period of community custody.
27 ~~((44))~~ (46) "Victim" means any person who has sustained
28 emotional, psychological, physical, or financial injury to person or
29 property as a direct result of the crime charged.
30 ~~((45))~~ (47) "Violent offense" means:
31 (a) Any of the following felonies:
32 (i) Any felony defined under any law as a class A felony or an
33 attempt to commit a class A felony;
34 (ii) Criminal solicitation of or criminal conspiracy to commit a
35 class A felony;
36 (iii) Manslaughter in the first degree;
37 (iv) Manslaughter in the second degree;
38 (v) Indecent liberties if committed by forcible compulsion;

1 (vi) Kidnapping in the second degree;
2 (vii) Arson in the second degree;
3 (viii) Assault in the second degree;
4 (ix) Assault of a child in the second degree;
5 (x) Extortion in the first degree;
6 (xi) Robbery in the second degree;
7 (xii) Drive-by shooting;
8 (xiii) Vehicular assault, when caused by the operation or driving
9 of a vehicle by a person while under the influence of intoxicating
10 liquor or any drug or by the operation or driving of a vehicle in a
11 reckless manner; and

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

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

19 (c) 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 violent
21 offense under (a) or (b) of this subsection.

22 ~~((46))~~ (48) "Work crew" means a program of partial confinement
23 consisting of civic improvement tasks for the benefit of the community
24 that complies with RCW 9.94A.725.

25 ~~((47))~~ (49) "Work ethic camp" means an alternative incarceration
26 program as provided in RCW 9.94A.690 designed to reduce recidivism and
27 lower the cost of corrections by requiring offenders to complete a
28 comprehensive array of real-world job and vocational experiences,
29 character-building work ethics training, life management skills
30 development, substance abuse rehabilitation, counseling, literacy
31 training, and basic adult education.

32 ~~((48))~~ (50) "Work release" means a program of partial confinement
33 available to offenders who are employed or engaged as a student in a
34 regular course of study at school.

35 NEW SECTION. **Sec. 8.** Sections 4 and 6 of this act expire July 1,
36 2006.

1 NEW SECTION. **Sec. 9.** Sections 5 and 7 of this act take effect
2 July 1, 2006.

3 NEW SECTION. **Sec. 10.** Sections 1 through 4 and 6 of this act are
4 necessary for the immediate preservation of the public peace, health,
5 or safety, or support of the state government and its existing public
6 institutions, and take effect immediately.

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