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HOUSE BILL 3303

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State of Washington

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2006 Regular Session

By Representatives Pearson, Shabro, Ericksen, Serben, McDonald, Ahern and Roach

Read first time 02/03/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to sex offenders; amending RCW 9.94A.712,  
2 9.94A.712, 9.94A.030, and 9.94A.030; reenacting and amending RCW  
3 9.94A.670; adding new sections to chapter 9.94A RCW; prescribing  
4 penalties; providing an effective date; providing an expiration date;  
5 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

1 the defendant guilty, also find a special verdict as to whether the  
2 offense was predatory. If no jury is had, the court shall make a  
3 finding of fact as to whether the offense was predatory.

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

13 (1) In a prosecution for rape in the first degree, rape in the  
14 second degree, indecent liberties by forcible compulsion, or kidnapping  
15 in the first degree with sexual motivation, the prosecuting attorney  
16 shall file a special allegation that the victim of the offense was  
17 under fifteen years of age at the time of the offense whenever  
18 sufficient admissible evidence exists, which, when considered with the  
19 most plausible, reasonably foreseeable defense that could be raised  
20 under the evidence, would justify a finding by a reasonable and  
21 objective fact-finder that the victim was under fifteen years of age at  
22 the time of the offense.

23 (2) Once a special allegation has been made under this section, the  
24 state has the burden to prove beyond a reasonable doubt that the victim  
25 was under fifteen years of age at the time of the offense. If a jury  
26 is had, the jury shall, if it finds the defendant guilty, also find a  
27 special verdict as to whether the victim was under the age of fifteen  
28 at the time of the offense. If no jury is had, the court shall make a  
29 finding of fact as to whether the victim was under the age of fifteen  
30 at the time of the offense.

31 (3) The prosecuting attorney shall not withdraw a special  
32 allegation filed under this section without the approval of the court  
33 through an order of dismissal of the allegation. The court may not  
34 dismiss the special allegation unless it finds that the order is  
35 necessary to correct an error in the initial charging decision or that  
36 there are evidentiary problems that make proving the special allegation  
37 doubtful.

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

3        (1) In a prosecution for rape in the first degree, rape in the  
4 second degree with forcible compulsion, indecent liberties with  
5 forcible compulsion, or kidnapping in the first degree with sexual  
6 motivation, the prosecuting attorney shall file a special allegation  
7 that the victim of the offense was, at the time of the offense,  
8 developmentally disabled, mentally disordered, or a frail elder or  
9 vulnerable adult, whenever sufficient admissible evidence exists,  
10 which, when considered with the most plausible, reasonably foreseeable  
11 defense that could be raised under the evidence, would justify a  
12 finding by a reasonable and objective fact-finder that the victim was,  
13 at the time of the offense, developmentally disabled, mentally  
14 disordered, or a frail elder or vulnerable adult.

15        (2) Once a special allegation has been made under this section, the  
16 state has the burden to prove beyond a reasonable doubt that the victim  
17 was, at the time of the offense, developmentally disabled, mentally  
18 disordered, or a frail elder or vulnerable adult. If a jury is had,  
19 the jury shall, if it finds the defendant guilty, also find a special  
20 verdict as to whether the victim was, at the time of the offense,  
21 developmentally disabled, mentally disordered, or a frail elder or  
22 vulnerable adult. If no jury is had, the court shall make a finding of  
23 fact as to whether the victim was, at the time of the offense,  
24 developmentally disabled, mentally disordered, or a frail elder or  
25 vulnerable adult.

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

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

36        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 9.94A RCW  
37 to read as follows:

1 (1) In a prosecution for rape in the first degree, the prosecuting  
2 attorney shall file a special allegation that the victim of the offense  
3 was under twelve years of age at the time of the offense whenever  
4 sufficient admissible evidence exists, which, when considered with the  
5 most plausible, reasonably foreseeable defense that could be raised  
6 under the evidence, would justify a finding by a reasonable and  
7 objective fact-finder that the victim was under twelve years of age at  
8 the time of the offense.

9 (2) Once a special allegation has been made under this section, the  
10 state has the burden to prove beyond a reasonable doubt that the victim  
11 was under twelve years of age at the time of the offense. If a jury is  
12 had, the jury shall, if it finds the defendant guilty, also find a  
13 special verdict as to whether the victim was under the age of twelve at  
14 the time of the offense. If no jury is had, the court shall make a  
15 finding of fact as to whether the victim was under the age of twelve at  
16 the time of the offense.

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

24 **Sec. 5.** RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read  
25 as follows:

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

28 (a) Is convicted of:

29 (i) Rape in the first degree, rape in the second degree, rape of a  
30 child in the first degree, child molestation in the first degree, rape  
31 of a child in the second degree, or indecent liberties by forcible  
32 compulsion;

33 (ii) Any of the following offenses with a finding of sexual  
34 motivation: Murder in the first degree, murder in the second degree,  
35 homicide by abuse, kidnapping in the first degree, kidnapping in the  
36 second degree, assault in the first degree, assault in the second

1 degree, assault of a child in the first degree, or burglary in the  
2 first degree; or

3 (iii) An attempt to commit any crime listed in this subsection  
4 (1)(a);  
5 committed on or after September 1, 2001; or

6 (b) Has a prior conviction for an offense listed in RCW  
7 9.94A.030(33)(b), and is convicted of any sex offense which was  
8 committed after September 1, 2001.

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

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

15 (3)(a) Upon a finding that the offender is subject to sentencing  
16 under this section, the court shall impose a sentence to a maximum term  
17 (~~consisting of the statutory maximum sentence for the offense~~) and a  
18 minimum term (~~either within the standard sentence range for the  
19 offense, or outside the standard sentence range pursuant to RCW  
20 9.94A.535, if the offender is otherwise eligible for such a sentence~~).

21 (b) The maximum term shall consist of the statutory maximum  
22 sentence for the offense.

23 (c)(i) Except as provided in (c)(ii) of this subsection, the  
24 minimum term shall be either within the standard sentence range for the  
25 offense, or outside the standard sentence range pursuant to RCW  
26 9.94A.535, if the offender is otherwise eligible for such a sentence.

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

1 maximum of the standard sentence range for the offense or twenty-five  
2 years, whichever is greater. If the offense that caused the offender  
3 to be sentenced under this section is rape in the first degree, rape in  
4 the second degree with forcible compulsion, indecent liberties with  
5 forcible compulsion, or kidnapping in the first degree with sexual  
6 motivation, and there has been a finding under section 3 of this act  
7 that the victim was, at the time of the offense, developmentally  
8 disabled, mentally disordered, or a frail elder or vulnerable adult,  
9 the minimum sentence shall be either the maximum of the standard  
10 sentence range for the offense or twenty-five years, whichever is  
11 greater. If the offense that caused the offender to be sentenced under  
12 this section was rape in the first degree and there has been a finding  
13 that the victim was under the age of twelve at the time of the offense  
14 under section 4 of this act, the minimum term shall be life.

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

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

22 (5) When a court sentences a person to the custody of the  
23 department under this section, the court shall, in addition to the  
24 other terms of the sentence, sentence the offender to community custody  
25 under the supervision of the department and the authority of the board  
26 for any period of time the person is released from total confinement  
27 before the expiration of the maximum sentence.

28 (6)(a)(i) Unless a condition is waived by the court, the conditions  
29 of community custody shall include those provided for in RCW  
30 9.94A.700(4). The conditions may also include those provided for in  
31 RCW 9.94A.700(5). The court may also order the offender to participate  
32 in rehabilitative programs or otherwise perform affirmative conduct  
33 reasonably related to the circumstances of the offense, the offender's  
34 risk of reoffending, or the safety of the community, and the department  
35 and the board shall enforce such conditions pursuant to RCW 9.94A.713,  
36 9.95.425, and 9.95.430.

37 (ii) If the offense that caused the offender to be sentenced under  
38 this section was an offense listed in subsection (1)(a) of this section

1 and the victim of the offense was under eighteen years of age at the  
2 time of the offense, the court shall, as a condition of community  
3 custody, prohibit the offender from residing in a community protection  
4 zone.

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

8 **Sec. 6.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read  
9 as follows:

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

12 (a) Is convicted of:

13 (i) Rape in the first degree, rape in the second degree, rape of a  
14 child in the first degree, child molestation in the first degree, rape  
15 of a child in the second degree, or indecent liberties by forcible  
16 compulsion;

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

23 (iii) An attempt to commit any crime listed in this subsection  
24 (1)(a);  
25 committed on or after September 1, 2001; or

26 (b) Has a prior conviction for an offense listed in RCW  
27 9.94A.030(32)(b), and is convicted of any sex offense which was  
28 committed after September 1, 2001.

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

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

35 (3)(a) Upon a finding that the offender is subject to sentencing  
36 under this section, the court shall impose a sentence to a maximum term  
37 (~~(consisting of the statutory maximum sentence for the offense)~~) and a

1 minimum term (~~either within the standard sentence range for the~~  
2 ~~offense, or outside the standard sentence range pursuant to RCW~~  
3 ~~9.94A.535, if the offender is otherwise eligible for such a sentence~~)).

4 (b) The maximum term shall consist of the statutory maximum  
5 sentence for the offense.

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

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

36 (d) The minimum terms in (c)(ii) of this subsection do not apply to  
37 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v).

1 The minimum term for such a juvenile shall be imposed under (c)(i) of  
2 this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (21) "Drug offense" means:

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

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

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

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

3 (23) "Escape" means:

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

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

13 (24) "Felony traffic offense" means:

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

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

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

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

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

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

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

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

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

10 (b) Assault in the second degree;

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

12 (d) Child molestation in the second degree;

13 (e) Controlled substance homicide;

14 (f) Extortion in the first degree;

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

16 (h) Indecent liberties;

17 (i) Kidnapping in the second degree;

18 (j) Leading organized crime;

19 (k) Manslaughter in the first degree;

20 (l) Manslaughter in the second degree;

21 (m) Promoting prostitution in the first degree;

22 (n) Rape in the third degree;

23 (o) Robbery in the second degree;

24 (p) Sexual exploitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (35) "Predatory" means: (a) The perpetrator of the crime was a  
32 stranger to the victim, as defined in this section; (b) the perpetrator  
33 established or promoted a relationship with the victim prior to the  
34 offense and the victimization of the victim was a significant reason  
35 the perpetrator established or promoted the relationship; or (c) the  
36 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
37 in authority in any public or private school and the victim was a  
38 student of the school under his or her authority or supervision. For

1 purposes of this subsection, "school" does not include home-based  
2 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
3 volunteer, or other person in authority in any recreational activity  
4 and the victim was a participant in the activity under his or her  
5 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
6 person in authority in any church or religious organization, and the  
7 victim was a member or participant of the organization under his or her  
8 authority.

9 (36) "Private school" means a school regulated under chapter  
10 28A.195 or 28A.205 RCW.

11 ~~((36))~~ (37) "Public school" has the same meaning as in RCW  
12 28A.150.010.

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

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

25 ~~((39))~~ (40) "Serious traffic offense" means:

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

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

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

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

37 (ii) Homicide by abuse;

38 (iii) Murder in the second degree;

1 (iv) Manslaughter in the first degree;  
2 (v) Assault in the first degree;  
3 (vi) Kidnapping in the first degree;  
4 (vii) Rape in the first degree;  
5 (viii) Assault of a child in the first degree; or  
6 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
7 commit one of these felonies; 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 serious  
10 violent offense under (a) of this subsection.  
11 ~~((41))~~ (42) "Sex offense" means:  
12 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
13 RCW 9A.44.130(11);  
14 (ii) A violation of RCW 9A.64.020;  
15 (iii) A felony that is a violation of chapter 9.68A RCW other than  
16 RCW 9.68A.070 or 9.68A.080; or  
17 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
18 criminal solicitation, or criminal conspiracy to commit such crimes;  
19 (b) Any conviction for a felony offense in effect at any time prior  
20 to July 1, 1976, that is comparable to a felony classified as a sex  
21 offense in (a) of this subsection;  
22 (c) A felony with a finding of sexual motivation under RCW  
23 9.94A.835 or 13.40.135; or  
24 (d) 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 sex  
26 offense under (a) of this subsection.  
27 ~~((42))~~ (43) "Sexual motivation" means that one of the purposes  
28 for which the defendant committed the crime was for the purpose of his  
29 or her sexual gratification.  
30 ~~((43))~~ (44) "Standard sentence range" means the sentencing  
31 court's discretionary range in imposing a nonappealable sentence.  
32 ~~((44))~~ (45) "Statutory maximum sentence" means the maximum length  
33 of time for which an offender may be confined as punishment for a crime  
34 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
35 the crime, or other statute defining the maximum penalty for a crime.  
36 ~~((45))~~ (46) "Stranger" means that the victim did not know the  
37 offender twenty-four hours before the offense.

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

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

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

14        ~~((48))~~ (50) "Violent offense" means:

15        (a) Any of the following felonies:

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

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

20        (iii) Manslaughter in the first degree;

21        (iv) Manslaughter in the second degree;

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

23        (vi) Kidnapping in the second degree;

24        (vii) Arson in the second degree;

25        (viii) Assault in the second degree;

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

27        (x) Extortion in the first degree;

28        (xi) Robbery in the second degree;

29        (xii) Drive-by shooting;

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

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

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

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

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

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

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

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

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

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

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

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

35 (4) "Community corrections officer" means an employee of the  
36 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence  
2 conditions.

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

13 (6) "Community custody range" means the minimum and maximum period  
14 of community custody included as part of a sentence under RCW  
15 9.94A.715, as established by the commission or the legislature under  
16 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

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

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

1 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
2 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
3 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

37 (17) "Determinate sentence" means a sentence that states with  
38 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the  
2 number of actual hours or days of community restitution work, or  
3 dollars or terms of a legal financial obligation. The fact that an  
4 offender through earned release can reduce the actual period of  
5 confinement shall not affect the classification of the sentence as a  
6 determinate sentence.

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

19 (19) "Drug offender sentencing alternative" is a sentencing option  
20 available to persons convicted of a felony offense other than a violent  
21 offense or a sex offense and who are eligible for the option under RCW  
22 9.94A.660.

23 (20) "Drug offense" means:

24 (a) Any felony violation of chapter 69.50 RCW except possession of  
25 a controlled substance (RCW 69.50.4013) or forged prescription for a  
26 controlled substance (RCW 69.50.403);

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

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

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

35 (22) "Escape" means:

36 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
37 first degree (RCW 9A.76.110), escape in the second degree (RCW  
38 9A.76.120), willful failure to return from furlough (RCW 72.66.060),

1 willful failure to return from work release (RCW 72.65.070), or willful  
2 failure to be available for supervision by the department while in  
3 community custody (RCW 72.09.310); or

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

7 (23) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
9 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
10 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

1 (a) Any felony defined under any law as a class A felony or  
2 criminal solicitation of or criminal conspiracy to commit a class A  
3 felony;

4 (b) Assault in the second degree;

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

6 (d) Child molestation in the second degree;

7 (e) Controlled substance homicide;

8 (f) Extortion in the first degree;

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

10 (h) Indecent liberties;

11 (i) Kidnapping in the second degree;

12 (j) Leading organized crime;

13 (k) Manslaughter in the first degree;

14 (l) Manslaughter in the second degree;

15 (m) Promoting prostitution in the first degree;

16 (n) Rape in the third degree;

17 (o) Robbery in the second degree;

18 (p) Sexual exploitation;

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

23 (r) 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 (s) Any other class B felony offense with a finding of sexual  
28 motivation;

29 (t) Any other felony with a deadly weapon verdict under RCW  
30 9.94A.602;

31 (u) Any felony offense in effect at any time prior to December 2,  
32 1993, that is comparable to a most serious offense under this  
33 subsection, or any federal or out-of-state conviction for an offense  
34 that under the laws of this state would be a felony classified as a  
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW  
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.

1 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
2 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
3 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

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

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

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

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

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

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

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

1 must have occurred before the commission of any of the other most  
2 serious offenses for which the offender was previously convicted; or

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

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

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

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

1 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
2 person in authority in any church or religious organization, and the  
3 victim was a member or participant of the organization under his or her  
4 authority.

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

9 ((+35+)) (36) "Risk assessment" means the application of an  
10 objective instrument supported by research and adopted by the  
11 department for the purpose of assessing an offender's risk of  
12 reoffense, taking into consideration the nature of the harm done by the  
13 offender, place and circumstances of the offender related to risk, the  
14 offender's relationship to any victim, and any information provided to  
15 the department by victims. The results of a risk assessment shall not  
16 be based on unconfirmed or unconfirmable allegations.

17 ((+36+)) (37) "Serious traffic offense" means:

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

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

26 ((+37+)) (38) "Serious violent offense" is a subcategory of violent  
27 offense and means:

- 28 (a)(i) Murder in the first degree;  
29 (ii) Homicide by abuse;  
30 (iii) Murder in the second degree;  
31 (iv) Manslaughter in the first degree;  
32 (v) Assault in the first degree;  
33 (vi) Kidnapping in the first degree;  
34 (vii) Rape in the first degree;  
35 (viii) Assault of a child in the first degree; or  
36 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
37 commit one of these felonies; or

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

4 (~~(38)~~) (39) "Sex offense" means:

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

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

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

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

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

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

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

20 (~~(39)~~) (40) "Sexual motivation" means that one of the purposes  
21 for which the defendant committed the crime was for the purpose of his  
22 or her sexual gratification.

23 (~~(40)~~) (41) "Standard sentence range" means the sentencing  
24 court's discretionary range in imposing a nonappealable sentence.

25 (~~(41)~~) (42) "Statutory maximum sentence" means the maximum length  
26 of time for which an offender may be confined as punishment for a crime  
27 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
28 the crime, or other statute defining the maximum penalty for a crime.

29 (~~(42)~~) (43) "Stranger" means that the victim did not know the  
30 offender twenty-four hours before the offense.

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

35 (~~(43)~~) (45) "Transition training" means written and verbal  
36 instructions and assistance provided by the department to the offender  
37 during the two weeks prior to the offender's successful completion of

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

4 ~~((44))~~ (46) "Victim" means any person who has sustained  
5 emotional, psychological, physical, or financial injury to person or  
6 property as a direct result of the crime charged.

7 ~~((45))~~ (47) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

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

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

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

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

37 ~~((46))~~ (48) "Work crew" means a program of partial confinement

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

3 ~~((47))~~ (49) "Work ethic camp" means an alternative incarceration  
4 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
5 lower the cost of corrections by requiring offenders to complete a  
6 comprehensive array of real-world job and vocational experiences,  
7 character-building work ethics training, life management skills  
8 development, substance abuse rehabilitation, counseling, literacy  
9 training, and basic adult education.

10 ~~((48))~~ (50) "Work release" means a program of partial confinement  
11 available to offenders who are employed or engaged as a student in a  
12 regular course of study at school.

13 **Sec. 9.** RCW 9.94A.670 and 2004 c 176 s 4 and 2004 c 38 s 9 are  
14 each reenacted and amended to read as follows:

15 (1) Unless the context clearly requires otherwise, the definitions  
16 in this subsection apply to this section only.

17 (a) "Family member" means a relative by blood, marriage, or  
18 adoption, or a foster parent.

19 (b) "Sex offender treatment provider" or "treatment provider" means  
20 a certified sex offender treatment provider or a certified affiliate  
21 sex offender treatment provider as defined in RCW 18.155.020.

22 ~~((b))~~ (c) "Substantial bodily harm" means bodily injury that  
23 involves a temporary but substantial disfigurement, or that causes a  
24 temporary but substantial loss or impairment of the function of any  
25 body part or organ, or that causes a fracture of any body part or  
26 organ.

27 ~~((e))~~ (d) "Victim" means any person who has sustained emotional,  
28 psychological, physical, or financial injury to person or property as  
29 a result of the crime charged. "Victim" also means a parent or  
30 guardian of a victim who is a minor child unless the parent or guardian  
31 is the perpetrator of the offense.

32 (2) An offender is eligible for the special sex offender sentencing  
33 alternative if:

34 (a) The offender has been convicted of a sex offense other than a  
35 violation of RCW 9A.44.050 or a sex offense that is also a serious  
36 violent offense;

1 (b) The offender has no prior convictions for a sex offense as  
2 defined in RCW 9.94A.030 or any other felony sex offenses in this or  
3 any other state;

4 (c) The offender has no prior adult convictions for a violent  
5 offense that was committed within five years of the date the current  
6 offense was committed;

7 (d) The offense did not result in substantial bodily harm to the  
8 victim;

9 (e) The offender had an established relationship with, or  
10 connection to, the victim such that the sole connection with the victim  
11 was not the commission of the crime; (~~and~~)

12 (f) The offender's standard sentence range for the offense includes  
13 the possibility of confinement for less than eleven years;

14 (g) The offender was the immediate victim's family member; and

15 (h) The immediate victim or immediate victim's family agrees to the  
16 sentence imposed under this section.

17 (3) If the court finds the offender is eligible for this  
18 alternative, the court, on its own motion or the motion of the state or  
19 the offender, may order an examination to determine whether the  
20 offender is amenable to treatment.

21 (a) The report of the examination shall include at a minimum the  
22 following:

23 (i) The offender's version of the facts and the official version of  
24 the facts;

25 (ii) The offender's offense history;

26 (iii) An assessment of problems in addition to alleged deviant  
27 behaviors;

28 (iv) The offender's social and employment situation; and

29 (v) Other evaluation measures used.

30 The report shall set forth the sources of the examiner's  
31 information.

32 (b) The examiner shall assess and report regarding the offender's  
33 amenability to treatment and relative risk to the community. A  
34 proposed treatment plan shall be provided and shall include, at a  
35 minimum:

36 (i) Frequency and type of contact between offender and therapist;

37 (ii) Specific issues to be addressed in the treatment and  
38 description of planned treatment modalities;

1 (iii) Monitoring plans, including any requirements regarding living  
2 conditions, lifestyle requirements, and monitoring by family members  
3 and others;

4 (iv) Anticipated length of treatment; and

5 (v) Recommended crime-related prohibitions and affirmative  
6 conditions, which must include, to the extent known, an identification  
7 of specific activities or behaviors that are precursors to the  
8 offender's offense cycle, including, but not limited to, activities or  
9 behaviors such as viewing or listening to pornography or use of alcohol  
10 or controlled substances.

11 (c) The court on its own motion may order, or on a motion by the  
12 state shall order, a second examination regarding the offender's  
13 amenability to treatment. The examiner shall be selected by the party  
14 making the motion. The offender shall pay the cost of any second  
15 examination ordered unless the court finds the defendant to be indigent  
16 in which case the state shall pay the cost.

17 (4) After receipt of the reports, the court shall consider whether  
18 the offender and the community will benefit from use of this  
19 alternative, consider whether the alternative is too lenient in light  
20 of the extent and circumstances of the offense, consider whether the  
21 offender has victims in addition to the victim of the offense, consider  
22 whether the offender is amenable to treatment, consider the risk the  
23 offender would present to the community, to the victim, or to persons  
24 of similar age and circumstances as the victim, and consider the  
25 victim's opinion whether the offender should receive a treatment  
26 disposition under this section. The court shall give great weight to  
27 the victim's opinion whether the offender should receive a treatment  
28 disposition under this section. If the sentence imposed is contrary to  
29 the victim's opinion, the court shall enter written findings stating  
30 its reasons for imposing the treatment disposition. The fact that the  
31 offender admits to his or her offense does not, by itself, constitute  
32 amenability to treatment. If the court determines that this  
33 alternative is appropriate, the court shall then impose a sentence or,  
34 pursuant to RCW 9.94A.712, a minimum term of sentence, within the  
35 standard sentence range. If the sentence imposed is less than eleven  
36 years of confinement, the court may suspend the execution of the  
37 sentence and impose the following conditions of suspension:

1 (a) The court shall order the offender to serve a term of  
2 confinement of up to twelve months or the maximum term within the  
3 standard range, whichever is less. The court may order the offender to  
4 serve a term of confinement greater than twelve months or the maximum  
5 term within the standard range based on the presence of an aggravating  
6 circumstance listed in RCW 9.94A.535(~~(+2)~~) (3). In no case shall the  
7 term of confinement exceed the statutory maximum sentence for the  
8 offense. The court may order the offender to serve all or part of his  
9 or her term of confinement in partial confinement. An offender  
10 sentenced to a term of confinement under this subsection is not  
11 eligible for earned release under RCW 9.92.151 or 9.94A.728.

12 (b) The court shall place the offender on community custody for the  
13 length of the suspended sentence, the length of the maximum term  
14 imposed pursuant to RCW 9.94A.712, or three years, whichever is  
15 greater, and require the offender to comply with any conditions imposed  
16 by the department under RCW 9.94A.720.

17 (c) The court shall order treatment for any period up to five years  
18 in duration. The court, in its discretion, shall order outpatient sex  
19 offender treatment or inpatient sex offender treatment, if available.  
20 A community mental health center may not be used for such treatment  
21 unless it has an appropriate program designed for sex offender  
22 treatment. The offender shall not change sex offender treatment  
23 providers or treatment conditions without first notifying the  
24 prosecutor, the community corrections officer, and the court. If any  
25 party or the court objects to a proposed change, the offender shall not  
26 change providers or conditions without court approval after a hearing.

27 (d) As conditions of the suspended sentence, the court shall impose  
28 specific prohibitions and affirmative conditions relating to the known  
29 precursor activities or behaviors identified in the proposed treatment  
30 plan under subsection (3)(b)(v) of this section or identified in an  
31 annual review under subsection (7)(b) of this section.

32 (5) As conditions of the suspended sentence, the court may impose  
33 one or more of the following:

34 (a) Crime-related prohibitions;

35 (b) Require the offender to devote time to a specific employment or  
36 occupation;

37 (c) Require the offender to remain within prescribed geographical

1 boundaries and notify the court or the community corrections officer  
2 prior to any change in the offender's address or employment;

3 (d) Require the offender to report as directed to the court and a  
4 community corrections officer;

5 (e) Require the offender to pay all court-ordered legal financial  
6 obligations as provided in RCW 9.94A.030;

7 (f) Require the offender to perform community restitution work; or

8 (g) Require the offender to reimburse the victim for the cost of  
9 any counseling required as a result of the offender's crime.

10 (6) At the time of sentencing, the court shall set a treatment  
11 termination hearing for three months prior to the anticipated date for  
12 completion of treatment.

13 (7)(a) The sex offender treatment provider shall submit quarterly  
14 reports on the offender's progress in treatment to the court and the  
15 parties. The report shall reference the treatment plan and include at  
16 a minimum the following: Dates of attendance, offender's compliance  
17 with requirements, treatment activities, the offender's relative  
18 progress in treatment, and any other material specified by the court at  
19 sentencing.

20 (b) The court shall conduct a hearing on the offender's progress in  
21 treatment at least once a year. At least fourteen days prior to the  
22 hearing, notice of the hearing shall be given to the victim. The  
23 victim shall be given the opportunity to make statements to the court  
24 regarding the offender's supervision and treatment. At the hearing,  
25 the court may modify conditions of community custody including, but not  
26 limited to, crime-related prohibitions and affirmative conditions  
27 relating to activities and behaviors identified as part of, or relating  
28 to precursor activities and behaviors in, the offender's offense cycle  
29 or revoke the suspended sentence.

30 (8) At least fourteen days prior to the treatment termination  
31 hearing, notice of the hearing shall be given to the victim. The  
32 victim shall be given the opportunity to make statements to the court  
33 regarding the offender's supervision and treatment. Prior to the  
34 treatment termination hearing, the treatment provider and community  
35 corrections officer shall submit written reports to the court and  
36 parties regarding the offender's compliance with treatment and  
37 monitoring requirements, and recommendations regarding termination from  
38 treatment, including proposed community custody conditions. The court

1 may order an evaluation regarding the advisability of termination from  
2 treatment by a sex offender treatment provider who may not be the same  
3 person who treated the offender under subsection (4) of this section or  
4 any person who employs, is employed by, or shares profits with the  
5 person who treated the offender under subsection (4) of this section  
6 unless the court has entered written findings that such evaluation is  
7 in the best interest of the victim and that a successful evaluation of  
8 the offender would otherwise be impractical. The offender shall pay  
9 the cost of the evaluation. At the treatment termination hearing the  
10 court may: (a) Modify conditions of community custody, and either (b)  
11 terminate treatment, or (c) extend treatment in two-year increments for  
12 up to the remaining period of community custody.

13 (9)(a) If a violation of conditions other than a second violation  
14 of the prohibitions or affirmative conditions relating to precursor  
15 behaviors or activities imposed under subsection (4)(d) or (7)(b) of  
16 this section occurs during community custody, the department shall  
17 either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer  
18 the violation to the court and recommend revocation of the suspended  
19 sentence as provided for in subsections (6) and (8) of this section.

20 (b) If a second violation of the prohibitions or affirmative  
21 conditions relating to precursor behaviors or activities imposed under  
22 subsection (4)(d) or (7)(b) of this section occurs during community  
23 custody, the department shall refer the violation to the court and  
24 recommend revocation of the suspended sentence as provided in  
25 subsection (10) of this section.

26 (10) The court may revoke the suspended sentence at any time during  
27 the period of community custody and order execution of the sentence if:  
28 (a) The offender violates the conditions of the suspended sentence, or  
29 (b) the court finds that the offender is failing to make satisfactory  
30 progress in treatment. All confinement time served during the period  
31 of community custody shall be credited to the offender if the suspended  
32 sentence is revoked.

33 (11) The offender's sex offender treatment provider may not be the  
34 same person who examined the offender under subsection (3) of this  
35 section or any person who employs, is employed by, or shares profits  
36 with the person who examined the offender under subsection (3) of this  
37 section, unless the court has entered written findings that such  
38 treatment is in the best interests of the victim and that successful

1 treatment of the offender would otherwise be impractical. Examinations  
2 and treatment ordered pursuant to this subsection shall only be  
3 conducted by certified sex offender treatment providers or certified  
4 affiliate sex offender treatment providers under chapter 18.155 RCW  
5 unless the court finds that:

6 (a) The offender has already moved to another state or plans to  
7 move to another state for reasons other than circumventing the  
8 certification requirements; or

9 (b)(i) No certified sex offender treatment providers or certified  
10 affiliate sex offender treatment providers are available for treatment  
11 within a reasonable geographical distance of the offender's home; and

12 (ii) The evaluation and treatment plan comply with this section and  
13 the rules adopted by the department of health.

14 (12) If the offender is less than eighteen years of age when the  
15 charge is filed, the state shall pay for the cost of initial evaluation  
16 and treatment.

17 NEW SECTION. **Sec. 10.** Sections 5 and 7 of this act expire July 1,  
18 2006.

19 NEW SECTION. **Sec. 11.** Sections 6 and 8 of this act take effect  
20 July 1, 2006.

21 NEW SECTION. **Sec. 12.** Sections 1 through 5, 7, and 9 of this act  
22 are necessary for the immediate preservation of the public peace,  
23 health, or safety, or support of the state government and its existing  
24 public institutions, and take effect immediately.

--- END ---