
SECOND SUBSTITUTE SENATE BILL 6172

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators McAuliffe, Hargrove, Thibaudeau, Shin, Weinstein, Rockefeller, Keiser, Regala, Eide, Rasmussen and Benton)

READ FIRST TIME 02/7/06.

1 AN ACT Relating to increasing penalties for the crimes of
2 possession of depictions of a minor engaged in sexually explicit
3 conduct; voyeurism; and communication with a minor for an immoral
4 purpose; amending RCW 9.68A.070, 9.94A.030, and 9.94A.030; reenacting
5 and amending RCW 9.68A.090, 9.94A.515, and 9.94A.670; creating a new
6 section; prescribing penalties; providing an effective date; and
7 providing an expiration date.

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

9 **Sec. 1.** RCW 9.68A.090 and 2003 c 53 s 42 and 2003 c 26 s 1 are
10 each reenacted and amended to read as follows:

11 (1) Except as provided in subsection (2) of this section, a person
12 who communicates with a minor for immoral purposes, or a person who
13 communicates with someone the person believes to be a minor for immoral
14 purposes, is guilty of a gross misdemeanor.

15 (2) A person who communicates with a minor for immoral purposes is
16 guilty of a class C felony punishable according to chapter 9A.20 RCW if
17 the person has previously been convicted under this section or of a
18 felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of
19 any other felony sexual offense in this or any other state or if the

1 person communicates with a minor or with someone the person believes to
2 be a minor for immoral purposes through the sending of an electronic
3 communication.

4 **Sec. 2.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are
5 each reenacted and amended to read as follows:

6 TABLE 2

7 CRIMES INCLUDED WITHIN
8 EACH SERIOUSNESS LEVEL

9	XVI	Aggravated Murder 1 (RCW
10		10.95.020)
11	XV	Homicide by abuse (RCW 9A.32.055)
12		Malicious explosion 1 (RCW
13		70.74.280(1))
14		Murder 1 (RCW 9A.32.030)
15	XIV	Murder 2 (RCW 9A.32.050)
16		Trafficking 1 (RCW 9A.40.100(1))
17	XIII	Malicious explosion 2 (RCW
18		70.74.280(2))
19		Malicious placement of an explosive 1
20		(RCW 70.74.270(1))
21	XII	Assault 1 (RCW 9A.36.011)
22		Assault of a Child 1 (RCW 9A.36.120)
23		Malicious placement of an imitation
24		device 1 (RCW 70.74.272(1)(a))
25		Rape 1 (RCW 9A.44.040)
26		Rape of a Child 1 (RCW 9A.44.073)
27		Trafficking 2 (RCW 9A.40.100(2))
28	XI	Manslaughter 1 (RCW 9A.32.060)
29		Rape 2 (RCW 9A.44.050)
30		Rape of a Child 2 (RCW 9A.44.076)
31	X	Child Molestation 1 (RCW 9A.44.083)
32		Indecent Liberties (with forcible
33		compulsion) (RCW
34		9A.44.100(1)(a))
35		Kidnapping 1 (RCW 9A.40.020)

1 Leading Organized Crime (RCW
2 9A.82.060(1)(a))
3 Malicious explosion 3 (RCW
4 70.74.280(3))
5 Sexually Violent Predator Escape
6 (RCW 9A.76.115)
7 IX Assault of a Child 2 (RCW 9A.36.130)
8 Explosive devices prohibited (RCW
9 70.74.180)
10 Hit and Run--Death (RCW
11 46.52.020(4)(a))
12 Homicide by Watercraft, by being
13 under the influence of intoxicating
14 liquor or any drug (RCW
15 79A.60.050)
16 Inciting Criminal Profiteering (RCW
17 9A.82.060(1)(b))
18 Malicious placement of an explosive 2
19 (RCW 70.74.270(2))
20 Robbery 1 (RCW 9A.56.200)
21 Sexual Exploitation (RCW 9.68A.040)
22 Vehicular Homicide, by being under
23 the influence of intoxicating liquor
24 or any drug (RCW 46.61.520)
25 VIII Arson 1 (RCW 9A.48.020)
26 Homicide by Watercraft, by the
27 operation of any vessel in a
28 reckless manner (RCW
29 79A.60.050)
30 Manslaughter 2 (RCW 9A.32.070)
31 Promoting Prostitution 1 (RCW
32 9A.88.070)
33 Theft of Ammonia (RCW 69.55.010)
34 Vehicular Homicide, by the operation
35 of any vehicle in a reckless
36 manner (RCW 46.61.520)
37 VII Burglary 1 (RCW 9A.52.020)

1 Child Molestation 2 (RCW 9A.44.086)
2 Civil Disorder Training (RCW
3 9A.48.120)
4 Dealing in depictions of minor
5 engaged in sexually explicit
6 conduct (RCW 9.68A.050)
7 Drive-by Shooting (RCW 9A.36.045)
8 Homicide by Watercraft, by disregard
9 for the safety of others (RCW
10 79A.60.050)
11 Indecent Liberties (without forcible
12 compulsion) (RCW 9A.44.100(1)
13 (b) and (c))
14 Introducing Contraband 1 (RCW
15 9A.76.140)
16 Malicious placement of an explosive 3
17 (RCW 70.74.270(3))
18 Negligently Causing Death By Use of
19 a Signal Preemption Device
20 (RCW 46.37.675)
21 Sending, bringing into state depictions
22 of minor engaged in sexually
23 explicit conduct (RCW
24 9.68A.060)
25 Unlawful Possession of a Firearm in
26 the first degree (RCW
27 9.41.040(1))
28 Use of a Machine Gun in Commission
29 of a Felony (RCW 9.41.225)
30 Vehicular Homicide, by disregard for
31 the safety of others (RCW
32 46.61.520)
33 VI Bail Jumping with Murder 1 (RCW
34 9A.76.170(3)(a))
35 Bribery (RCW 9A.68.010)
36 Incest 1 (RCW 9A.64.020(1))

1 Intimidating a Judge (RCW
2 9A.72.160)
3 Intimidating a Juror/Witness (RCW
4 9A.72.110, 9A.72.130)
5 Malicious placement of an imitation
6 device 2 (RCW 70.74.272(1)(b))
7 Possession of Depictions of a Minor
8 Engaged in Sexually Explicit
9 Conduct (RCW 9.68A.070)
10 Rape of a Child 3 (RCW 9A.44.079)
11 Theft of a Firearm (RCW 9A.56.300)
12 Unlawful Storage of Ammonia (RCW
13 69.55.020)
14 V Abandonment of dependent person 1
15 (RCW 9A.42.060)
16 Advancing money or property for
17 extortionate extension of credit
18 (RCW 9A.82.030)
19 Bail Jumping with class A Felony
20 (RCW 9A.76.170(3)(b))
21 Child Molestation 3 (RCW 9A.44.089)
22 Criminal Mistreatment 1 (RCW
23 9A.42.020)
24 Custodial Sexual Misconduct 1 (RCW
25 9A.44.160)
26 Domestic Violence Court Order
27 Violation (RCW 10.99.040,
28 10.99.050, 26.09.300, 26.10.220,
29 26.26.138, 26.50.110, 26.52.070,
30 or 74.34.145)
31 Extortion 1 (RCW 9A.56.120)
32 Extortionate Extension of Credit
33 (RCW 9A.82.020)
34 Extortionate Means to Collect
35 Extensions of Credit (RCW
36 9A.82.040)
37 Incest 2 (RCW 9A.64.020(2))

1 Kidnapping 2 (RCW 9A.40.030)
2 Perjury 1 (RCW 9A.72.020)
3 Persistent prison misbehavior (RCW
4 9.94.070)
5 Possession of a Stolen Firearm (RCW
6 9A.56.310)
7 Rape 3 (RCW 9A.44.060)
8 Rendering Criminal Assistance 1
9 (RCW 9A.76.070)
10 Sexual Misconduct with a Minor 1
11 (RCW 9A.44.093)
12 Sexually Violating Human Remains
13 (RCW 9A.44.105)
14 Stalking (RCW 9A.46.110)
15 Taking Motor Vehicle Without
16 Permission 1 (RCW 9A.56.070)
17 IV Arson 2 (RCW 9A.48.030)
18 Assault 2 (RCW 9A.36.021)
19 Assault 3 (of a Peace Officer with a
20 Projectile Stun Gun) (RCW
21 9A.36.031(1)(h))
22 Assault by Watercraft (RCW
23 79A.60.060)
24 Bribing a Witness/Bribe Received by
25 Witness (RCW 9A.72.090,
26 9A.72.100)
27 Cheating 1 (RCW 9.46.1961)
28 Commercial Bribery (RCW
29 9A.68.060)
30 Counterfeiting (RCW 9.16.035(4))
31 Endangerment with a Controlled
32 Substance (RCW 9A.42.100)
33 Escape 1 (RCW 9A.76.110)
34 Hit and Run--Injury (RCW
35 46.52.020(4)(b))
36 Hit and Run with Vessel--Injury
37 Accident (RCW 79A.60.200(3))

1 Identity Theft 1 (RCW 9.35.020(2))
2 Indecent Exposure to Person Under
3 Age Fourteen (subsequent sex
4 offense) (RCW 9A.88.010)
5 Influencing Outcome of Sporting
6 Event (RCW 9A.82.070)
7 Malicious Harassment (RCW
8 9A.36.080)
9 Residential Burglary (RCW
10 9A.52.025)
11 Robbery 2 (RCW 9A.56.210)
12 Theft of Livestock 1 (RCW 9A.56.080)
13 Threats to Bomb (RCW 9.61.160)
14 Trafficking in Stolen Property 1 (RCW
15 9A.82.050)
16 Unlawful factoring of a credit card or
17 payment card transaction (RCW
18 9A.56.290(4)(b))
19 Unlawful transaction of health
20 coverage as a health care service
21 contractor (RCW 48.44.016(3))
22 Unlawful transaction of health
23 coverage as a health maintenance
24 organization (RCW 48.46.033(3))
25 Unlawful transaction of insurance
26 business (RCW 48.15.023(3))
27 Unlicensed practice as an insurance
28 professional (RCW 48.17.063(3))
29 Use of Proceeds of Criminal
30 Profiteering (RCW 9A.82.080 (1)
31 and (2))
32 Vehicular Assault, by being under the
33 influence of intoxicating liquor or
34 any drug, or by the operation or
35 driving of a vehicle in a reckless
36 manner (RCW 46.61.522)

1 Willful Failure to Return from
2 Furlough (RCW 72.66.060)
3 III Abandonment of dependent person 2
4 (RCW 9A.42.070)
5 Assault 3 (Except Assault 3 of a Peace
6 Officer With a Projectile Stun
7 Gun) (RCW 9A.36.031 except
8 subsection (1)(h))
9 Assault of a Child 3 (RCW 9A.36.140)
10 Bail Jumping with class B or C Felony
11 (RCW 9A.76.170(3)(c))
12 Burglary 2 (RCW 9A.52.030)
13 Communication with a Minor for
14 Immoral Purposes (RCW
15 9.68A.090)
16 Criminal Gang Intimidation (RCW
17 9A.46.120)
18 Criminal Mistreatment 2 (RCW
19 9A.42.030)
20 Custodial Assault (RCW 9A.36.100)
21 Cyberstalking (subsequent conviction
22 or threat of death) (RCW
23 9.61.260(3))
24 Escape 2 (RCW 9A.76.120)
25 Extortion 2 (RCW 9A.56.130)
26 Harassment (RCW 9A.46.020)
27 Intimidating a Public Servant (RCW
28 9A.76.180)
29 Introducing Contraband 2 (RCW
30 9A.76.150)
31 Malicious Injury to Railroad Property
32 (RCW 81.60.070)
33 Negligently Causing Substantial Bodily
34 Harm By Use of a Signal
35 Preemption Device (RCW
36 46.37.674)

1 Patronizing a Juvenile Prostitute
2 (RCW 9.68A.100)
3 Perjury 2 (RCW 9A.72.030)
4 Possession of Incendiary Device (RCW
5 9.40.120)
6 Possession of Machine Gun or Short-
7 Barreled Shotgun or Rifle (RCW
8 9.41.190)
9 Promoting Prostitution 2 (RCW
10 9A.88.080)
11 Securities Act violation (RCW
12 21.20.400)
13 Tampering with a Witness (RCW
14 9A.72.120)
15 Telephone Harassment (subsequent
16 conviction or threat of death)
17 (RCW 9.61.230(2))
18 Theft of Livestock 2 (RCW 9A.56.083)
19 Trafficking in Stolen Property 2 (RCW
20 9A.82.055)
21 Unlawful Imprisonment (RCW
22 9A.40.040)
23 Unlawful possession of firearm in the
24 second degree (RCW 9.41.040(2))
25 Vehicular Assault, by the operation or
26 driving of a vehicle with disregard
27 for the safety of others (RCW
28 46.61.522)
29 Willful Failure to Return from Work
30 Release (RCW 72.65.070)
31 II Computer Trespass 1 (RCW
32 9A.52.110)
33 Counterfeiting (RCW 9.16.035(3))
34 Escape from Community Custody
35 (RCW 72.09.310)
36 Health Care False Claims (RCW
37 48.80.030)

1 Identity Theft 2 (RCW 9.35.020(3))
2 Improperly Obtaining Financial
3 Information (RCW 9.35.010)
4 Malicious Mischief 1 (RCW
5 9A.48.070)
6 Possession of Stolen Property 1 (RCW
7 9A.56.150)
8 Theft 1 (RCW 9A.56.030)
9 Theft of Rental, Leased, or Lease-
10 purchased Property (valued at one
11 thousand five hundred dollars or
12 more) (RCW 9A.56.096(5)(a))
13 Trafficking in Insurance Claims (RCW
14 48.30A.015)
15 Unlawful factoring of a credit card or
16 payment card transaction (RCW
17 9A.56.290(4)(a))
18 Unlawful Practice of Law (RCW
19 2.48.180)
20 Unlicensed Practice of a Profession or
21 Business (RCW 18.130.190(7))
22 Voyeurism (RCW 9A.44.115)
23 I Attempting to Elude a Pursuing Police
24 Vehicle (RCW 46.61.024)
25 False Verification for Welfare (RCW
26 74.08.055)
27 Forgery (RCW 9A.60.020)
28 Fraudulent Creation or Revocation of a
29 Mental Health Advance Directive
30 (RCW 9A.60.060)
31 Malicious Mischief 2 (RCW
32 9A.48.080)
33 Mineral Trespass (RCW 78.44.330)
34 Possession of Stolen Property 2 (RCW
35 9A.56.160)
36 Reckless Burning 1 (RCW 9A.48.040)

1 Taking Motor Vehicle Without
2 Permission 2 (RCW 9A.56.075)
3 Theft 2 (RCW 9A.56.040)
4 Theft of Rental, Leased, or Lease-
5 purchased Property (valued at two
6 hundred fifty dollars or more but
7 less than one thousand five
8 hundred dollars) (RCW
9 9A.56.096(5)(b))
10 Transaction of insurance business
11 beyond the scope of licensure
12 (RCW 48.17.063(4))
13 Unlawful Issuance of Checks or Drafts
14 (RCW 9A.56.060)
15 Unlawful Possession of Fictitious
16 Identification (RCW 9A.56.320)
17 Unlawful Possession of Instruments of
18 Financial Fraud (RCW
19 9A.56.320)
20 Unlawful Possession of Payment
21 Instruments (RCW 9A.56.320)
22 Unlawful Possession of a Personal
23 Identification Device (RCW
24 9A.56.320)
25 Unlawful Production of Payment
26 Instruments (RCW 9A.56.320)
27 Unlawful Trafficking in Food Stamps
28 (RCW 9.91.142)
29 Unlawful Use of Food Stamps (RCW
30 9.91.144)
31 Vehicle Prowl 1 (RCW 9A.52.095)

32 **Sec. 3.** RCW 9.68A.070 and 1990 c 155 s 1 are each amended to read
33 as follows:

34 A person who knowingly possesses visual or printed matter depicting
35 a minor engaged in sexually explicit conduct is guilty of a class ((C))
36 B felony.

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

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

5 (a) "Sex offender treatment provider" or "treatment provider" means
6 a certified sex offender treatment provider or a certified affiliate
7 sex offender treatment provider as defined in RCW 18.155.020.

8 (b) "Substantial bodily harm" means bodily injury that involves a
9 temporary but substantial disfigurement, or that causes a temporary but
10 substantial loss or impairment of the function of any body part or
11 organ, or that causes a fracture of any body part or organ.

12 (c) "Victim" means any person who has sustained emotional,
13 psychological, physical, or financial injury to person or property as
14 a result of the crime charged. "Victim" also means a parent or
15 guardian of a victim who is a minor child unless the parent or guardian
16 is the perpetrator of the offense.

17 (2) An offender is eligible for the special sex offender sentencing
18 alternative if:

19 (a) The offender has been convicted of a sex offense other than a
20 violation of RCW 9A.44.050 or a sex offense that is also a serious
21 violent offense. For the purposes of this subsection (2)(a), "sex
22 offense" includes a conviction for a violation of RCW 9.68A.070;

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

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

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

31 (e) The offender had an established relationship with, or
32 connection to, the victim such that the sole connection with the victim
33 was not the commission of the crime; and

34 (f) The offender's standard sentence range for the offense includes
35 the possibility of confinement for less than eleven years.

36 (3) If the court finds the offender is eligible for this
37 alternative, the court, on its own motion or the motion of the state or

1 the offender, may order an examination to determine whether the
2 offender is amenable to treatment.

3 (a) The report of the examination shall include at a minimum the
4 following:

5 (i) The offender's version of the facts and the official version of
6 the facts;

7 (ii) The offender's offense history;

8 (iii) An assessment of problems in addition to alleged deviant
9 behaviors;

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

11 (v) Other evaluation measures used.

12 The report shall set forth the sources of the examiner's
13 information.

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

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

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

21 (iii) Monitoring plans, including any requirements regarding living
22 conditions, lifestyle requirements, and monitoring by family members
23 and others;

24 (iv) Anticipated length of treatment; and

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

31 (c) The court on its own motion may order, or on a motion by the
32 state shall order, a second examination regarding the offender's
33 amenability to treatment. The examiner shall be selected by the party
34 making the motion. The offender shall pay the cost of any second
35 examination ordered unless the court finds the defendant to be indigent
36 in which case the state shall pay the cost.

37 (4) After receipt of the reports, the court shall consider whether
38 the offender and the community will benefit from use of this

1 alternative, consider whether the alternative is too lenient in light
2 of the extent and circumstances of the offense, consider whether the
3 offender has victims in addition to the victim of the offense, consider
4 whether the offender is amenable to treatment, consider the risk the
5 offender would present to the community, to the victim, or to persons
6 of similar age and circumstances as the victim, and consider the
7 victim's opinion whether the offender should receive a treatment
8 disposition under this section. The court shall give great weight to
9 the victim's opinion whether the offender should receive a treatment
10 disposition under this section. If the sentence imposed is contrary to
11 the victim's opinion, the court shall enter written findings stating
12 its reasons for imposing the treatment disposition. The fact that the
13 offender admits to his or her offense does not, by itself, constitute
14 amenability to treatment. If the court determines that this
15 alternative is appropriate, the court shall then impose a sentence or,
16 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
17 standard sentence range. If the sentence imposed is less than eleven
18 years of confinement, the court may suspend the execution of the
19 sentence and impose the following conditions of suspension:

20 (a) The court shall order the offender to serve a term of
21 confinement of up to twelve months or the maximum term within the
22 standard range, whichever is less. The court may order the offender to
23 serve a term of confinement greater than twelve months or the maximum
24 term within the standard range based on the presence of an aggravating
25 circumstance listed in RCW 9.94A.535(~~((+2))~~) (3). In no case shall the
26 term of confinement exceed the statutory maximum sentence for the
27 offense. The court may order the offender to serve all or part of his
28 or her term of confinement in partial confinement. An offender
29 sentenced to a term of confinement under this subsection is not
30 eligible for earned release under RCW 9.92.151 or 9.94A.728.

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

36 (c) The court shall order treatment for any period up to five years
37 in duration. The court, in its discretion, shall order outpatient sex
38 offender treatment or inpatient sex offender treatment, if available.

1 A community mental health center may not be used for such treatment
2 unless it has an appropriate program designed for sex offender
3 treatment. The offender shall not change sex offender treatment
4 providers or treatment conditions without first notifying the
5 prosecutor, the community corrections officer, and the court. If any
6 party or the court objects to a proposed change, the offender shall not
7 change providers or conditions without court approval after a hearing.

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

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

15 (a) Crime-related prohibitions;

16 (b) Require the offender to devote time to a specific employment or
17 occupation;

18 (c) Require the offender to remain within prescribed geographical
19 boundaries and notify the court or the community corrections officer
20 prior to any change in the offender's address or employment;

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

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

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

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

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

31 (7)(a) The sex offender treatment provider shall submit quarterly
32 reports on the offender's progress in treatment to the court and the
33 parties. The report shall reference the treatment plan and include at
34 a minimum the following: Dates of attendance, offender's compliance
35 with requirements, treatment activities, the offender's relative
36 progress in treatment, and any other material specified by the court at
37 sentencing.

1 (b) The court shall conduct a hearing on the offender's progress in
2 treatment at least once a year. At least fourteen days prior to the
3 hearing, notice of the hearing shall be given to the victim. The
4 victim shall be given the opportunity to make statements to the court
5 regarding the offender's supervision and treatment. At the hearing,
6 the court may modify conditions of community custody including, but not
7 limited to, crime-related prohibitions and affirmative conditions
8 relating to activities and behaviors identified as part of, or relating
9 to precursor activities and behaviors in, the offender's offense cycle
10 or revoke the suspended sentence.

11 (8) At least fourteen days prior to the treatment termination
12 hearing, notice of the hearing shall be given to the victim. The
13 victim shall be given the opportunity to make statements to the court
14 regarding the offender's supervision and treatment. Prior to the
15 treatment termination hearing, the treatment provider and community
16 corrections officer shall submit written reports to the court and
17 parties regarding the offender's compliance with treatment and
18 monitoring requirements, and recommendations regarding termination from
19 treatment, including proposed community custody conditions. The court
20 may order an evaluation regarding the advisability of termination from
21 treatment by a sex offender treatment provider who may not be the same
22 person who treated the offender under subsection (4) of this section or
23 any person who employs, is employed by, or shares profits with the
24 person who treated the offender under subsection (4) of this section
25 unless the court has entered written findings that such evaluation is
26 in the best interest of the victim and that a successful evaluation of
27 the offender would otherwise be impractical. The offender shall pay
28 the cost of the evaluation. At the treatment termination hearing the
29 court may: (a) Modify conditions of community custody, and either (b)
30 terminate treatment, or (c) extend treatment in two-year increments for
31 up to the remaining period of community custody.

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

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

7 (10) The court may revoke the suspended sentence at any time during
8 the period of community custody and order execution of the sentence if:

9 (a) The offender violates the conditions of the suspended sentence, or
10 (b) the court finds that the offender is failing to make satisfactory
11 progress in treatment. All confinement time served during the period
12 of community custody shall be credited to the offender if the suspended
13 sentence is revoked.

14 (11) The offender's sex offender treatment provider may not be the
15 same person who examined the offender under subsection (3) of this
16 section or any person who employs, is employed by, or shares profits
17 with the person who examined the offender under subsection (3) of this
18 section, unless the court has entered written findings that such
19 treatment is in the best interests of the victim and that successful
20 treatment of the offender would otherwise be impractical. Examinations
21 and treatment ordered pursuant to this subsection shall only be
22 conducted by certified sex offender treatment providers or certified
23 affiliate sex offender treatment providers under chapter 18.155 RCW
24 unless the court finds that:

25 (a) The offender has already moved to another state or plans to
26 move to another state for reasons other than circumventing the
27 certification requirements; or

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

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

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

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

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

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

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

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

32 (7) "Community placement" means that period during which the
33 offender is subject to the conditions of community custody and/or
34 postrelease supervision, which begins either upon completion of the
35 term of confinement (postrelease supervision) or at such time as the
36 offender is transferred to community custody in lieu of earned release.
37 Community placement may consist of entirely community custody, entirely
38 postrelease supervision, or a combination of the two.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (20) "Drug offender sentencing alternative" is a sentencing option
37 available to persons convicted of a felony offense other than a violent

1 offense or a sex offense and who are eligible for the option under RCW
2 9.94A.660.

3 (21) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of
5 a controlled substance (RCW 69.50.4013) or forged prescription for a
6 controlled substance (RCW 69.50.403);

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

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

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

15 (23) "Escape" means:

16 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
17 first degree (RCW 9A.76.110), escape in the second degree (RCW
18 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
19 willful failure to return from work release (RCW 72.65.070), or willful
20 failure to be available for supervision by the department while in
21 community custody (RCW 72.09.310); or

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

25 (24) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
27 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
28 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

20 (a) Any felony defined under any law as a class A felony or
21 criminal solicitation of or criminal conspiracy to commit a class A
22 felony;

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (39) "Serious traffic offense" means:

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

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

32 (40) "Serious violent offense" is a subcategory of violent offense
33 and means:

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

35 (ii) Homicide by abuse;

36 (iii) Murder in the second degree;

37 (iv) Manslaughter in the first degree;

38 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;
2 (vii) Rape in the first degree;
3 (viii) Assault of a child in the first degree; or
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to
5 commit one of these felonies; or
6 (b) Any federal or out-of-state conviction for an offense that
7 under the laws of this state would be a felony classified as a serious
8 violent offense under (a) of this subsection.
9 (41) "Sex offense" means:
10 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
11 RCW 9A.44.130(11);
12 (ii) A violation of RCW 9A.64.020;
13 (iii) A felony that is a violation of chapter 9.68A RCW other than
14 RCW ((~~9.68A.070 or~~) 9.68A.080; or
15 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
16 criminal solicitation, or criminal conspiracy to commit such crimes;
17 (b) Any conviction for a felony offense in effect at any time prior
18 to July 1, 1976, that is comparable to a felony classified as a sex
19 offense in (a) of this subsection;
20 (c) A felony with a finding of sexual motivation under RCW
21 9.94A.835 or 13.40.135; or
22 (d) Any federal or out-of-state conviction for an offense that
23 under the laws of this state would be a felony classified as a sex
24 offense under (a) of this subsection.
25 (42) "Sexual motivation" means that one of the purposes for which
26 the defendant committed the crime was for the purpose of his or her
27 sexual gratification.
28 (43) "Standard sentence range" means the sentencing court's
29 discretionary range in imposing a nonappealable sentence.
30 (44) "Statutory maximum sentence" means the maximum length of time
31 for which an offender may be confined as punishment for a crime as
32 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
33 crime, or other statute defining the maximum penalty for a crime.
34 (45) "Total confinement" means confinement inside the physical
35 boundaries of a facility or institution operated or utilized under
36 contract by the state or any other unit of government for twenty-four
37 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

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

10 (48) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

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

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

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

37 (c) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a violent
2 offense under (a) or (b) of this subsection.

3 (49) "Work crew" means a program of partial confinement consisting
4 of civic improvement tasks for the benefit of the community that
5 complies with RCW 9.94A.725.

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

13 (51) "Work release" means a program of partial confinement
14 available to offenders who are employed or engaged as a student in a
15 regular course of study at school.

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

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

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

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

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

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

35 (5) "Community custody" means that portion of an offender's
36 sentence of confinement in lieu of earned release time or imposed
37 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,

1 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
2 community subject to controls placed on the offender's movement and
3 activities by the department. For offenders placed on community
4 custody for crimes committed on or after July 1, 2000, the department
5 shall assess the offender's risk of reoffense and may establish and
6 modify conditions of community custody, in addition to those imposed by
7 the court, based upon the risk to community safety.

8 (6) "Community custody range" means the minimum and maximum period
9 of community custody included as part of a sentence under RCW
10 9.94A.715, as established by the commission or the legislature under
11 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

22 (9) "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 (10) "Confinement" means total or partial confinement.

33 (11) "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 (12) "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 (13) "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 (14) "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 (15) "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 (16) "Department" means the department of corrections.

31 (17) "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 (18) "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 (19) "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 (20) "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 (21) "Earned release" means earned release from confinement as
28 provided in RCW 9.94A.728.

29 (22) "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 (23) "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 (24) "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 (25) "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 (26) "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 (27) "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 (28) "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 (29) "Nonviolent offense" means an offense which is not a violent
6 offense.

7 (30) "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 (31) "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 (32) "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 (32)(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 (33) "Postrelease supervision" is that portion of an offender's
18 community placement that is not community custody.

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

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

31 (36) "Serious traffic offense" means:

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

37 (b) Any federal, out-of-state, county, or municipal conviction for

1 an offense that under the laws of this state would be classified as a
2 serious traffic offense under (a) of this subsection.

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

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

6 (ii) Homicide by abuse;

7 (iii) Murder in the second degree;

8 (iv) Manslaughter in the first degree;

9 (v) Assault in the first degree;

10 (vi) Kidnapping in the first degree;

11 (vii) Rape in the first degree;

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

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

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

18 (38) "Sex offense" means:

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

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

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

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

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

29 (c) A felony with a finding of sexual motivation under RCW
30 9.94A.835 or 13.40.135; or

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

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

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

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

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

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

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

18 (45) "Violent offense" means:

19 (a) Any of the following felonies:

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

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

24 (iii) Manslaughter in the first degree;

25 (iv) Manslaughter in the second degree;

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

27 (vi) Kidnapping in the second degree;

28 (vii) Arson in the second degree;

29 (viii) Assault in the second degree;

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

31 (x) Extortion in the first degree;

32 (xi) Robbery in the second degree;

33 (xii) Drive-by shooting;

34 (xiii) Vehicular assault, when caused by the operation or driving
35 of a vehicle by a person while under the influence of intoxicating
36 liquor or any drug or by the operation or driving of a vehicle in a
37 reckless manner; and

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

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

8 (c) 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 violent
10 offense under (a) or (b) of this subsection.

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

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

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

24 NEW SECTION. **Sec. 7.** Section 5 of this act expires July 1, 2006.

25 NEW SECTION. **Sec. 8.** Section 6 of this act takes effect July 1,
26 2006.

27 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
28 section 2 of this act, referencing section 2 of this act by bill or
29 chapter number and section number, is not provided by June 30, 2006, in
30 the omnibus appropriations act, section 2 of this act is null and void.

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