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HOUSE BILL 2714

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Loomis, Hurst, Lantz, Upthegrove, Conway, Simpson, VanDeWege, and Kelley

Read first time 01/16/08. Referred to Committee on Public Safety & Emergency Preparedness.

1            AN ACT Relating to making failure to register as a sex offender or  
2 kidnapping offender a class B felony; reenacting and amending RCW  
3 9A.44.130 and 9.94A.030; and prescribing penalties.

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

5            **Sec. 1.** RCW 9A.44.130 and 2006 c 129 s 2, 2006 c 128 s 2, 2006 c  
6 127 s 2, and 2006 c 126 s 2 are each reenacted and amended to read as  
7 follows:

8            (1)(a) Any adult or juvenile residing whether or not the person has  
9 a fixed residence, or who is a student, is employed, or carries on a  
10 vocation in this state who has been found to have committed or has been  
11 convicted of any sex offense or kidnapping offense, or who has been  
12 found not guilty by reason of insanity under chapter 10.77 RCW of  
13 committing any sex offense or kidnapping offense, shall register with  
14 the county sheriff for the county of the person's residence, or if the  
15 person is not a resident of Washington, the county of the person's  
16 school, or place of employment or vocation, or as otherwise specified  
17 in this section. Where a person required to register under this  
18 section is in custody of the state department of corrections, the state  
19 department of social and health services, a local division of youth

1 services, or a local jail or juvenile detention facility as a result of  
2 a sex offense or kidnapping offense, the person shall also register at  
3 the time of release from custody with an official designated by the  
4 agency that has jurisdiction over the person.

5 (b) Any adult or juvenile who is required to register under (a) of  
6 this subsection:

7 (i) Who is attending, or planning to attend, a public or private  
8 school regulated under Title 28A RCW or chapter 72.40 RCW shall, within  
9 ten days of enrolling or prior to arriving at the school to attend  
10 classes, whichever is earlier, notify the sheriff for the county of the  
11 person's residence of the person's intent to attend the school, and the  
12 sheriff shall promptly notify the principal of the school;

13 (ii) Who is admitted to a public or private institution of higher  
14 education shall, within ten days of enrolling or by the first business  
15 day after arriving at the institution, whichever is earlier, notify the  
16 sheriff for the county of the person's residence of the person's intent  
17 to attend the institution;

18 (iii) Who gains employment at a public or private institution of  
19 higher education shall, within ten days of accepting employment or by  
20 the first business day after commencing work at the institution,  
21 whichever is earlier, notify the sheriff for the county of the person's  
22 residence of the person's employment by the institution; or

23 (iv) Whose enrollment or employment at a public or private  
24 institution of higher education is terminated shall, within ten days of  
25 such termination, notify the sheriff for the county of the person's  
26 residence of the person's termination of enrollment or employment at  
27 the institution.

28 (c) Persons required to register under this section who are  
29 enrolled in a public or private institution of higher education on June  
30 11, 1998, or a public or private school regulated under Title 28A RCW  
31 or chapter 72.40 RCW on September 1, 2006, must notify the county  
32 sheriff immediately.

33 (d) The sheriff shall notify the school's principal or  
34 institution's department of public safety and shall provide that  
35 department with the same information provided to a county sheriff under  
36 subsection (3) of this section.

37 (e)(i) A principal receiving notice under this subsection must

1 disclose the information received from the sheriff under (b) of this  
2 subsection as follows:

3 (A) If the student who is required to register as a sex offender is  
4 classified as a risk level II or III, the principal shall provide the  
5 information received to every teacher of any student required to  
6 register under (a) of this subsection and to any other personnel who,  
7 in the judgment of the principal, supervises the student or for  
8 security purposes should be aware of the student's record;

9 (B) If the student who is required to register as a sex offender is  
10 classified as a risk level I, the principal shall provide the  
11 information received only to personnel who, in the judgment of the  
12 principal, for security purposes should be aware of the student's  
13 record.

14 (ii) Any information received by a principal or school personnel  
15 under this subsection is confidential and may not be further  
16 disseminated except as provided in RCW 28A.225.330, other statutes or  
17 case law, and the family and educational and privacy rights act of  
18 1994, 20 U.S.C. Sec. 1232g et seq.

19 (2) This section may not be construed to confer any powers pursuant  
20 to RCW 4.24.550 upon the public safety department of any public or  
21 private school or institution of higher education.

22 (3)(a) The person shall provide the following information when  
23 registering: (i) Name; (ii) complete residential address; (iii) date  
24 and place of birth; (iv) place of employment; (v) crime for which  
25 convicted; (vi) date and place of conviction; (vii) aliases used;  
26 (viii) social security number; (ix) photograph; and (x) fingerprints.

27 (b) Any person who lacks a fixed residence shall provide the  
28 following information when registering: (i) Name; (ii) date and place  
29 of birth; (iii) place of employment; (iv) crime for which convicted;  
30 (v) date and place of conviction; (vi) aliases used; (vii) social  
31 security number; (viii) photograph; (ix) fingerprints; and (x) where he  
32 or she plans to stay.

33 (4)(a) Offenders shall register with the county sheriff within the  
34 following deadlines. For purposes of this section the term  
35 "conviction" refers to adult convictions and juvenile adjudications for  
36 sex offenses or kidnapping offenses:

37 (i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex  
38 offense on, before, or after February 28, 1990, and who, on or after

1 July 28, 1991, are in custody, as a result of that offense, of the  
2 state department of corrections, the state department of social and  
3 health services, a local division of youth services, or a local jail or  
4 juvenile detention facility, and (B) kidnapping offenders who on or  
5 after July 27, 1997, are in custody of the state department of  
6 corrections, the state department of social and health services, a  
7 local division of youth services, or a local jail or juvenile detention  
8 facility, must register at the time of release from custody with an  
9 official designated by the agency that has jurisdiction over the  
10 offender. The agency shall within three days forward the registration  
11 information to the county sheriff for the county of the offender's  
12 anticipated residence. The offender must also register within twenty-  
13 four hours from the time of release with the county sheriff for the  
14 county of the person's residence, or if the person is not a resident of  
15 Washington, the county of the person's school, or place of employment  
16 or vocation. The agency that has jurisdiction over the offender shall  
17 provide notice to the offender of the duty to register. Failure to  
18 register at the time of release and within twenty-four hours of release  
19 constitutes a violation of this section and is punishable as provided  
20 in subsection (11) of this section.

21 When the agency with jurisdiction intends to release an offender  
22 with a duty to register under this section, and the agency has  
23 knowledge that the offender is eligible for developmental disability  
24 services from the department of social and health services, the agency  
25 shall notify the division of developmental disabilities of the release.  
26 Notice shall occur not more than thirty days before the offender is to  
27 be released. The agency and the division shall assist the offender in  
28 meeting the initial registration requirement under this section.  
29 Failure to provide such assistance shall not constitute a defense for  
30 any violation of this section.

31 (ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL  
32 JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody  
33 but are under the jurisdiction of the indeterminate sentence review  
34 board or under the department of corrections' active supervision, as  
35 defined by the department of corrections, the state department of  
36 social and health services, or a local division of youth services, for  
37 sex offenses committed before, on, or after February 28, 1990, must  
38 register within ten days of July 28, 1991. Kidnapping offenders who,

1 on July 27, 1997, are not in custody but are under the jurisdiction of  
2 the indeterminate sentence review board or under the department of  
3 corrections' active supervision, as defined by the department of  
4 corrections, the state department of social and health services, or a  
5 local division of youth services, for kidnapping offenses committed  
6 before, on, or after July 27, 1997, must register within ten days of  
7 July 27, 1997. A change in supervision status of a sex offender who  
8 was required to register under this subsection (4)(a)(ii) as of July  
9 28, 1991, or a kidnapping offender required to register as of July 27,  
10 1997, shall not relieve the offender of the duty to register or to  
11 reregister following a change in residence. The obligation to register  
12 shall only cease pursuant to RCW 9A.44.140.

13 (iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on  
14 or after July 23, 1995, and kidnapping offenders who, on or after July  
15 27, 1997, as a result of that offense are in the custody of the United  
16 States bureau of prisons or other federal or military correctional  
17 agency for sex offenses committed before, on, or after February 28,  
18 1990, or kidnapping offenses committed on, before, or after July 27,  
19 1997, must register within twenty-four hours from the time of release  
20 with the county sheriff for the county of the person's residence, or if  
21 the person is not a resident of Washington, the county of the person's  
22 school, or place of employment or vocation. Sex offenders who, on July  
23 23, 1995, are not in custody but are under the jurisdiction of the  
24 United States bureau of prisons, United States courts, United States  
25 parole commission, or military parole board for sex offenses committed  
26 before, on, or after February 28, 1990, must register within ten days  
27 of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not  
28 in custody but are under the jurisdiction of the United States bureau  
29 of prisons, United States courts, United States parole commission, or  
30 military parole board for kidnapping offenses committed before, on, or  
31 after July 27, 1997, must register within ten days of July 27, 1997.  
32 A change in supervision status of a sex offender who was required to  
33 register under this subsection (4)(a)(iii) as of July 23, 1995, or a  
34 kidnapping offender required to register as of July 27, 1997 shall not  
35 relieve the offender of the duty to register or to reregister following  
36 a change in residence, or if the person is not a resident of  
37 Washington, the county of the person's school, or place of employment

1 or vocation. The obligation to register shall only cease pursuant to  
2 RCW 9A.44.140.

3 (iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders  
4 who are convicted of a sex offense on or after July 28, 1991, for a sex  
5 offense that was committed on or after February 28, 1990, and  
6 kidnapping offenders who are convicted on or after July 27, 1997, for  
7 a kidnapping offense that was committed on or after July 27, 1997, but  
8 who are not sentenced to serve a term of confinement immediately upon  
9 sentencing, shall report to the county sheriff to register immediately  
10 upon completion of being sentenced.

11 (v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON  
12 RESIDENTS. Sex offenders and kidnapping offenders who move to  
13 Washington state from another state or a foreign country that are not  
14 under the jurisdiction of the state department of corrections, the  
15 indeterminate sentence review board, or the state department of social  
16 and health services at the time of moving to Washington, must register  
17 within three business days of establishing residence or reestablishing  
18 residence if the person is a former Washington resident. The duty to  
19 register under this subsection applies to sex offenders convicted under  
20 the laws of another state or a foreign country, federal or military  
21 statutes for offenses committed before, on, or after February 28, 1990,  
22 or Washington state for offenses committed before, on, or after  
23 February 28, 1990, and to kidnapping offenders convicted under the laws  
24 of another state or a foreign country, federal or military statutes, or  
25 Washington state for offenses committed before, on, or after July 27,  
26 1997. Sex offenders and kidnapping offenders from other states or a  
27 foreign country who, when they move to Washington, are under the  
28 jurisdiction of the department of corrections, the indeterminate  
29 sentence review board, or the department of social and health services  
30 must register within twenty-four hours of moving to Washington. The  
31 agency that has jurisdiction over the offender shall notify the  
32 offender of the registration requirements before the offender moves to  
33 Washington.

34 (vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult  
35 or juvenile who has been found not guilty by reason of insanity under  
36 chapter 10.77 RCW of (A) committing a sex offense on, before, or after  
37 February 28, 1990, and who, on or after July 23, 1995, is in custody,  
38 as a result of that finding, of the state department of social and

1 health services, or (B) committing a kidnapping offense on, before, or  
2 after July 27, 1997, and who on or after July 27, 1997, is in custody,  
3 as a result of that finding, of the state department of social and  
4 health services, must register within twenty-four hours from the time  
5 of release with the county sheriff for the county of the person's  
6 residence. The state department of social and health services shall  
7 provide notice to the adult or juvenile in its custody of the duty to  
8 register. Any adult or juvenile who has been found not guilty by  
9 reason of insanity of committing a sex offense on, before, or after  
10 February 28, 1990, but who was released before July 23, 1995, or any  
11 adult or juvenile who has been found not guilty by reason of insanity  
12 of committing a kidnapping offense but who was released before July 27,  
13 1997, shall be required to register within twenty-four hours of  
14 receiving notice of this registration requirement. The state  
15 department of social and health services shall make reasonable attempts  
16 within available resources to notify sex offenders who were released  
17 before July 23, 1995, and kidnapping offenders who were released before  
18 July 27, 1997. Failure to register within twenty-four hours of  
19 release, or of receiving notice, constitutes a violation of this  
20 section and is punishable as provided in subsection (11) of this  
21 section.

22 (vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks  
23 a fixed residence and leaves the county in which he or she is  
24 registered and enters and remains within a new county for twenty-four  
25 hours is required to register with the county sheriff not more than  
26 twenty-four hours after entering the county and provide the information  
27 required in subsection (3)(b) of this section.

28 (viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER  
29 SUPERVISION. Offenders who lack a fixed residence and who are under  
30 the supervision of the department shall register in the county of their  
31 supervision.

32 (ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND  
33 SCHOOL IN ANOTHER STATE. Offenders required to register in Washington,  
34 who move to another state, or who work, carry on a vocation, or attend  
35 school in another state shall register a new address, fingerprints, and  
36 photograph with the new state within ten days after establishing  
37 residence, or after beginning to work, carry on a vocation, or attend  
38 school in the new state. The person must also send written notice

1 within ten days of moving to the new state or to a foreign country to  
2 the county sheriff with whom the person last registered in Washington  
3 state. The county sheriff shall promptly forward this information to  
4 the Washington state patrol.

5 (b) Failure to register within the time required under this section  
6 constitutes a per se violation of this section and is punishable as  
7 provided in subsection (11) of this section. The county sheriff shall  
8 not be required to determine whether the person is living within the  
9 county.

10 (c) An arrest on charges of failure to register, service of an  
11 information, or a complaint for a violation of this section, or  
12 arraignment on charges for a violation of this section, constitutes  
13 actual notice of the duty to register. Any person charged with the  
14 crime of failure to register under this section who asserts as a  
15 defense the lack of notice of the duty to register shall register  
16 immediately following actual notice of the duty through arrest,  
17 service, or arraignment. Failure to register as required under this  
18 subsection (4)(c) constitutes grounds for filing another charge of  
19 failing to register. Registering following arrest, service, or  
20 arraignment on charges shall not relieve the offender from criminal  
21 liability for failure to register prior to the filing of the original  
22 charge.

23 (d) The deadlines for the duty to register under this section do  
24 not relieve any sex offender of the duty to register under this section  
25 as it existed prior to July 28, 1991.

26 (5)(a) If any person required to register pursuant to this section  
27 changes his or her residence address within the same county, the person  
28 must send signed written notice of the change of address to the county  
29 sheriff within seventy-two hours of moving. If any person required to  
30 register pursuant to this section moves to a new county, the person  
31 must send signed written notice of the change of address at least  
32 fourteen days before moving to the county sheriff in the new county of  
33 residence and must register with that county sheriff within twenty-four  
34 hours of moving. The person must also send signed written notice  
35 within ten days of the change of address in the new county to the  
36 county sheriff with whom the person last registered. The county  
37 sheriff with whom the person last registered shall promptly forward the  
38 information concerning the change of address to the county sheriff for



1 the county of the person's new residence. Upon receipt of notice of  
2 change of address to a new state, the county sheriff shall promptly  
3 forward the information regarding the change of address to the agency  
4 designated by the new state as the state's offender registration  
5 agency.

6 (b) It is an affirmative defense to a charge that the person failed  
7 to send a notice at least fourteen days in advance of moving as  
8 required under (a) of this subsection that the person did not know the  
9 location of his or her new residence at least fourteen days before  
10 moving. The defendant must establish the defense by a preponderance of  
11 the evidence and, to prevail on the defense, must also prove by a  
12 preponderance that the defendant sent the required notice within  
13 twenty-four hours of determining the new address.

14 (6)(a) Any person required to register under this section who lacks  
15 a fixed residence shall provide signed written notice to the sheriff of  
16 the county where he or she last registered within forty-eight hours  
17 excluding weekends and holidays after ceasing to have a fixed  
18 residence. The notice shall include the information required by  
19 subsection (3)(b) of this section, except the photograph and  
20 fingerprints. The county sheriff may, for reasonable cause, require  
21 the offender to provide a photograph and fingerprints. The sheriff  
22 shall forward this information to the sheriff of the county in which  
23 the person intends to reside, if the person intends to reside in  
24 another county.

25 (b) A person who lacks a fixed residence must report weekly, in  
26 person, to the sheriff of the county where he or she is registered.  
27 The weekly report shall be on a day specified by the county sheriff's  
28 office, and shall occur during normal business hours. The county  
29 sheriff's office may require the person to list the locations where the  
30 person has stayed during the last seven days. The lack of a fixed  
31 residence is a factor that may be considered in determining an  
32 offender's risk level and shall make the offender subject to disclosure  
33 of information to the public at large pursuant to RCW 4.24.550.

34 (c) If any person required to register pursuant to this section  
35 does not have a fixed residence, it is an affirmative defense to the  
36 charge of failure to register, that he or she provided written notice  
37 to the sheriff of the county where he or she last registered within  
38 forty-eight hours excluding weekends and holidays after ceasing to have

1 a fixed residence and has subsequently complied with the requirements  
2 of subsections (4)(a)(vii) or (viii) and (6) of this section. To  
3 prevail, the person must prove the defense by a preponderance of the  
4 evidence.

5 (7) All offenders who are required to register pursuant to this  
6 section who have a fixed residence and who are designated as a risk  
7 level II or III must report, in person, every ninety days to the  
8 sheriff of the county where he or she is registered. Reporting shall  
9 be on a day specified by the county sheriff's office, and shall occur  
10 during normal business hours. An offender who complies with the  
11 ninety-day reporting requirement with no violations for a period of at  
12 least five years in the community may petition the superior court to be  
13 relieved of the duty to report every ninety days. The petition shall  
14 be made to the superior court in the county where the offender resides  
15 or reports under this section. The prosecuting attorney of the county  
16 shall be named and served as respondent in any such petition. The  
17 court shall relieve the petitioner of the duty to report if the  
18 petitioner shows, by a preponderance of the evidence, that the  
19 petitioner has complied with the reporting requirement for a period of  
20 at least five years and that the offender has not been convicted of a  
21 criminal violation of this section for a period of at least five years,  
22 and the court determines that the reporting no longer serves a public  
23 safety purpose. Failure to report, as specified, constitutes a  
24 violation of this section and is punishable as provided in subsection  
25 (11) of this section.

26 (8) A sex offender subject to registration requirements under this  
27 section who applies to change his or her name under RCW 4.24.130 or any  
28 other law shall submit a copy of the application to the county sheriff  
29 of the county of the person's residence and to the state patrol not  
30 fewer than five days before the entry of an order granting the name  
31 change. No sex offender under the requirement to register under this  
32 section at the time of application shall be granted an order changing  
33 his or her name if the court finds that doing so will interfere with  
34 legitimate law enforcement interests, except that no order shall be  
35 denied when the name change is requested for religious or legitimate  
36 cultural reasons or in recognition of marriage or dissolution of  
37 marriage. A sex offender under the requirement to register under this  
38 section who receives an order changing his or her name shall submit a

1 copy of the order to the county sheriff of the county of the person's  
2 residence and to the state patrol within five days of the entry of the  
3 order.

4 (9) The county sheriff shall obtain a photograph of the individual  
5 and shall obtain a copy of the individual's fingerprints. A photograph  
6 may be taken at any time to update an individual's file.

7 (10) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540,  
8 70.48.470, and 72.09.330:

9 (a) "Sex offense" means:

10 (i) Any offense defined as a sex offense by RCW 9.94A.030;

11 (ii) Any violation under RCW 9A.44.096 (sexual misconduct with a  
12 minor in the second degree);

13 (iii) Any violation under RCW 9.68A.090 (communication with a minor  
14 for immoral purposes);

15 (iv) Any federal or out-of-state conviction for an offense that  
16 under the laws of this state would be classified as a sex offense under  
17 this subsection; and

18 (v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a  
19 criminal attempt, criminal solicitation, or criminal conspiracy to  
20 commit an offense that is classified as a sex offense under RCW  
21 9.94A.030 or this subsection.

22 (b) "Kidnapping offense" means: (i) The crimes of kidnapping in  
23 the first degree, kidnapping in the second degree, and unlawful  
24 imprisonment, as defined in chapter 9A.40 RCW, where the victim is a  
25 minor and the offender is not the minor's parent; (ii) any offense that  
26 is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation,  
27 or criminal conspiracy to commit an offense that is classified as a  
28 kidnapping offense under this subsection (10)(b); and (iii) any federal  
29 or out-of-state conviction for an offense that under the laws of this  
30 state would be classified as a kidnapping offense under this subsection  
31 (10)(b).

32 (c) "Employed" or "carries on a vocation" means employment that is  
33 full-time or part-time for a period of time exceeding fourteen days, or  
34 for an aggregate period of time exceeding thirty days during any  
35 calendar year. A person is employed or carries on a vocation whether  
36 the person's employment is financially compensated, volunteered, or for  
37 the purpose of government or educational benefit.

1 (d) "Student" means a person who is enrolled, on a full-time or  
2 part-time basis, in any public or private educational institution. An  
3 educational institution includes any secondary school, trade or  
4 professional institution, or institution of higher education.

5 (11)(a) A person who knowingly fails to comply with any of the  
6 requirements of this section is guilty of a class ((C)) B felony if the  
7 crime for which the individual was convicted was a felony sex offense  
8 as defined in subsection (10)(a) of this section or a federal or out-  
9 of-state conviction for an offense that under the laws of this state  
10 would be a felony sex offense as defined in subsection (10)(a) of this  
11 section.

12 (b) If the crime for which the individual was convicted was other  
13 than a felony or a federal or out-of-state conviction for an offense  
14 that under the laws of this state would be other than a felony,  
15 violation of this section is a gross misdemeanor.

16 (12)(a) A person who knowingly fails to comply with any of the  
17 requirements of this section is guilty of a class ((C)) B felony if the  
18 crime for which the individual was convicted was a felony kidnapping  
19 offense as defined in subsection (10)(b) of this section or a federal  
20 or out-of-state conviction for an offense that under the laws of this  
21 state would be a felony kidnapping offense as defined in subsection  
22 (10)(b) of this section.

23 (b) If the crime for which the individual was convicted was other  
24 than a felony or a federal or out-of-state conviction for an offense  
25 that under the laws of this state would be other than a felony,  
26 violation of this section is a gross misdemeanor.

27 (13) Except as may otherwise be provided by law, nothing in this  
28 section shall impose any liability upon a peace officer, including a  
29 county sheriff, or law enforcement agency, for failing to release  
30 information authorized under this section.

31 **Sec. 2.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c  
32 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and  
33 amended to read as follows:

34 Unless the context clearly requires otherwise, the definitions in  
35 this section apply throughout this chapter.

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

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

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

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

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

24 (6) "Community custody range" means the minimum and maximum period  
25 of community custody included as part of a sentence under RCW  
26 9.94A.715, as established by the commission or the legislature under  
27 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

1 (9) "Community restitution" means compulsory service, without  
2 compensation, performed for the benefit of the community by the  
3 offender.

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

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

15 (12) "Conviction" means an adjudication of guilt pursuant to Titles  
16 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
17 acceptance of a plea of guilty.

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

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

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

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

36 (c) The determination of a defendant's criminal history is distinct  
37 from the determination of an offender score. A prior conviction that

1 was not included in an offender score calculated pursuant to a former  
2 version of the sentencing reform act remains part of the defendant's  
3 criminal history.

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

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

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

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

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

34 (20) "Drug offender sentencing alternative" is a sentencing option  
35 available to persons convicted of a felony offense other than a violent  
36 offense or a sex offense and who are eligible for the option under RCW  
37 9.94A.660.

38 (21) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of  
2 a controlled substance (RCW 69.50.4013) or forged prescription for a  
3 controlled substance (RCW 69.50.403);

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

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

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

12 (23) "Escape" means:

13 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
14 first degree (RCW 9A.76.110), escape in the second degree (RCW  
15 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
16 willful failure to return from work release (RCW 72.65.070), or willful  
17 failure to be available for supervision by the department while in  
18 community custody (RCW 72.09.310); or

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

22 (24) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
24 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
25 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
26 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
27 felony physical control of a vehicle while under the influence of  
28 intoxicating liquor or any drug (RCW 46.61.504(6)); 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, assault of a child in the second degree, or burglary in the  
31 first degree; or (C) an attempt to commit any crime listed in this  
32 subsection (33)(b)(i); and

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

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

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

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

25 (36) "Private school" means a school regulated under chapter  
26 28A.195 or 28A.205 RCW.

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

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

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

1 department by victims. The results of a risk assessment shall not be  
2 based on unconfirmed or unconfirmable allegations.

3 (40) "Serious traffic offense" means:

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

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

12 (41) "Serious violent offense" is a subcategory of violent offense  
13 and means:

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

15 (ii) Homicide by abuse;

16 (iii) Murder in the second degree;

17 (iv) Manslaughter in the first degree;

18 (v) Assault in the first degree;

19 (vi) Kidnapping in the first degree;

20 (vii) Rape in the first degree;

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

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

24 (b) 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 serious  
26 violent offense under (a) of this subsection.

27 (42) "Sex offense" means:

28 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
29 RCW 9A.44.130(~~((11))~~) (12);

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

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

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

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

1 (c) A felony with a finding of sexual motivation under RCW  
2 9.94A.835 or 13.40.135; or

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

6 (43) "Sexual motivation" means that one of the purposes for which  
7 the defendant committed the crime was for the purpose of his or her  
8 sexual gratification.

9 (44) "Standard sentence range" means the sentencing court's  
10 discretionary range in imposing a nonappealable sentence.

11 (45) "Statutory maximum sentence" means the maximum length of time  
12 for which an offender may be confined as punishment for a crime as  
13 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
14 crime, or other statute defining the maximum penalty for a crime.

15 (46) "Stranger" means that the victim did not know the offender  
16 twenty-four hours before the offense.

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

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

27 (49) "Victim" means any person who has sustained emotional,  
28 psychological, physical, or financial injury to person or property as  
29 a direct result of the crime charged.

30 (50) "Violent offense" means:

31 (a) Any of the following felonies:

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

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

36 (iii) Manslaughter in the first degree;

37 (iv) Manslaughter in the second degree;

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

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

--- END ---