

HOUSE BILL 2028

State of Washington 61st Legislature 2009 Regular Session

By Representatives Smith, O'Brien, Bailey, Pearson, Hope, Johnson, Sullivan, Kristiansen, Takko, Klippert, Short, Blake, Priest, McCune, Kessler, Orcutt, Kelley, Warnick, and Angel

Read first time 02/06/09. Referred to Committee on Judiciary.

1 AN ACT Relating to vehicular homicide and assault; amending RCW
2 46.61.520 and 46.61.522; reenacting and amending RCW 9.94A.515,
3 9.94A.030, 9.94A.533, and 13.04.030; creating a new section;
4 prescribing penalties; and providing an effective date.

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

6 Sec. 1. RCW 9.94A.515 and 2008 c 108 s 23 and 2008 c 38 s 1 are
7 each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN
EACH SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
XV Homicide by abuse (RCW 9A.32.055)
Malicious explosion 1 (RCW 70.74.280(1))
Murder 1 (RCW 9A.32.030)

1 XIV Murder 2 (RCW 9A.32.050)  
2 Trafficking 1 (RCW 9A.40.100(1))  
3 XIII Malicious explosion 2 (RCW  
4 70.74.280(2))  
5 Malicious placement of an explosive 1  
6 (RCW 70.74.270(1))  
7 XII Assault 1 (RCW 9A.36.011)  
8 Assault of a Child 1 (RCW 9A.36.120)  
9 Malicious placement of an imitation  
10 device 1 (RCW 70.74.272(1)(a))  
11 Rape 1 (RCW 9A.44.040)  
12 Rape of a Child 1 (RCW 9A.44.073)  
13 Trafficking 2 (RCW 9A.40.100(2))  
14 XI Manslaughter 1 (RCW 9A.32.060)  
15 Rape 2 (RCW 9A.44.050)  
16 Rape of a Child 2 (RCW 9A.44.076)  
17 Vehicular Homicide, by being under  
18 the influence of intoxicating liquor  
19 or any drug (RCW 46.61.520)  
20 X Child Molestation 1 (RCW 9A.44.083)  
21 Criminal Mistreatment 1 (RCW  
22 9A.42.020)  
23 Indecent Liberties (with forcible  
24 compulsion) (RCW  
25 9A.44.100(1)(a))  
26 Kidnapping 1 (RCW 9A.40.020)  
27 Leading Organized Crime (RCW  
28 9A.82.060(1)(a))  
29 Malicious explosion 3 (RCW  
30 70.74.280(3))  
31 Sexually Violent Predator Escape  
32 (RCW 9A.76.115)  
33 Vehicular Homicide, by the operation  
34 of any vehicle in a reckless manner  
35 (RCW 46.61.520)  
36 IX Abandonment of Dependent Person 1  
37 (RCW 9A.42.060)

1 Assault of a Child 2 (RCW 9A.36.130)  
2 Explosive devices prohibited (RCW  
3 70.74.180)  
4 Hit and Run--Death (RCW  
5 46.52.020(4)(a))  
6 Homicide by Watercraft, by being  
7 under the influence of intoxicating  
8 liquor or any drug (RCW  
9 79A.60.050)  
10 Inciting Criminal Profiteering (RCW  
11 9A.82.060(1)(b))  
12 Malicious placement of an explosive 2  
13 (RCW 70.74.270(2))  
14 Robbery 1 (RCW 9A.56.200)  
15 Sexual Exploitation (RCW 9.68A.040)  
16 ~~((Vehicular Homicide, by being under  
17 the influence of intoxicating liquor  
18 or any drug (RCW 46.61.520)))~~  
19 VIII Arson 1 (RCW 9A.48.020)  
20 Homicide by Watercraft, by the  
21 operation of any vessel in a  
22 reckless manner (RCW  
23 79A.60.050)  
24 Manslaughter 2 (RCW 9A.32.070)  
25 Promoting Commercial Sexual Abuse  
26 of a Minor (RCW 9.68A.101)  
27 Promoting Prostitution 1 (RCW  
28 9A.88.070)  
29 Theft of Ammonia (RCW 69.55.010)  
30 ~~((Vehicular Homicide, by the operation  
31 of any vehicle in a reckless  
32 manner (RCW 46.61.520)))~~  
33 Vehicular Homicide, by disregard for  
34 the safety of others (RCW  
35 46.61.520)  
36 VII Burglary 1 (RCW 9A.52.020)  
37 Child Molestation 2 (RCW 9A.44.086)

1 Civil Disorder Training (RCW  
2 9A.48.120)  
3 Dealing in depictions of minor engaged  
4 in sexually explicit conduct (RCW  
5 9.68A.050)  
6 Drive-by Shooting (RCW 9A.36.045)  
7 Homicide by Watercraft, by disregard  
8 for the safety of others (RCW  
9 79A.60.050)  
10 Indecent Liberties (without forcible  
11 compulsion) (RCW 9A.44.100(1)  
12 (b) and (c))  
13 Introducing Contraband 1 (RCW  
14 9A.76.140)  
15 Malicious placement of an explosive 3  
16 (RCW 70.74.270(3))  
17 Negligently Causing Death By Use of a  
18 Signal Preemption Device (RCW  
19 46.37.675)  
20 Sending, bringing into state depictions  
21 of minor engaged in sexually  
22 explicit conduct (RCW 9.68A.060)  
23 Unlawful Possession of a Firearm in  
24 the first degree (RCW 9.41.040(1))  
25 Use of a Machine Gun in Commission  
26 of a Felony (RCW 9.41.225)  
27 ~~((Vehicular Homicide, by disregard for  
28 the safety of others (RCW  
29 46.61.520)))~~  
30 Vehicular Assault, by being under the  
31 influence of intoxicating liquor or  
32 any drug (RCW 46.61.522)  
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))  
37 Intimidating a Judge (RCW 9A.72.160)

1 Intimidating a Juror/Witness (RCW  
2 9A.72.110, 9A.72.130)  
3 Malicious placement of an imitation  
4 device 2 (RCW 70.74.272(1)(b))  
5 Possession of Depictions of a Minor  
6 Engaged in Sexually Explicit  
7 Conduct (RCW 9.68A.070)  
8 Rape of a Child 3 (RCW 9A.44.079)  
9 Theft of a Firearm (RCW 9A.56.300)  
10 Unlawful Storage of Ammonia (RCW  
11 69.55.020)  
12 Vehicular Assault, by the operation or  
13 driving of a vehicle in a reckless  
14 manner (RCW 46.61.522)  
15 V Abandonment of Dependent Person 2  
16 (RCW 9A.42.070)  
17 Advancing money or property for  
18 extortionate extension of credit  
19 (RCW 9A.82.030)  
20 Bail Jumping with class A Felony  
21 (RCW 9A.76.170(3)(b))  
22 Child Molestation 3 (RCW 9A.44.089)  
23 Criminal Mistreatment 2 (RCW  
24 9A.42.030)  
25 Custodial Sexual Misconduct 1 (RCW  
26 9A.44.160)  
27 Domestic Violence Court Order  
28 Violation (RCW 10.99.040,  
29 10.99.050, 26.09.300, 26.10.220,  
30 26.26.138, 26.50.110, 26.52.070,  
31 or 74.34.145)  
32 Driving While Under the Influence  
33 (RCW 46.61.502(6))  
34 Extortion 1 (RCW 9A.56.120)  
35 Extortionate Extension of Credit (RCW  
36 9A.82.020)

1 Extortionate Means to Collect  
2 Extensions of Credit (RCW  
3 9A.82.040)  
4 Incest 2 (RCW 9A.64.020(2))  
5 Kidnapping 2 (RCW 9A.40.030)  
6 Perjury 1 (RCW 9A.72.020)  
7 Persistent prison misbehavior (RCW  
8 9.94.070)  
9 Physical Control of a Vehicle While  
10 Under the Influence (RCW  
11 46.61.504(6))  
12 Possession of a Stolen Firearm (RCW  
13 9A.56.310)  
14 Rape 3 (RCW 9A.44.060)  
15 Rendering Criminal Assistance 1  
16 (RCW 9A.76.070)  
17 Sexual Misconduct with a Minor 1  
18 (RCW 9A.44.093)  
19 Sexually Violating Human Remains  
20 (RCW 9A.44.105)  
21 Stalking (RCW 9A.46.110)  
22 Taking Motor Vehicle Without  
23 Permission 1 (RCW 9A.56.070)  
24 IV Arson 2 (RCW 9A.48.030)  
25 Assault 2 (RCW 9A.36.021)  
26 Assault 3 (of a Peace Officer with a  
27 Projectile Stun Gun) (RCW  
28 9A.36.031(1)(h))  
29 Assault by Watercraft (RCW  
30 79A.60.060)  
31 Bribing a Witness/Bribe Received by  
32 Witness (RCW 9A.72.090,  
33 9A.72.100)  
34 Cheating 1 (RCW 9.46.1961)  
35 Commercial Bribery (RCW 9A.68.060)  
36 Counterfeiting (RCW 9.16.035(4))

1                               Endangerment with a Controlled  
2                                Substance (RCW 9A.42.100)  
3                               Escape 1 (RCW 9A.76.110)  
4                               Hit and Run--Injury (RCW  
5                                46.52.020(4)(b))  
6                               Hit and Run with Vessel--Injury  
7                                Accident (RCW 79A.60.200(3))  
8                               Identity Theft 1 (RCW 9.35.020(2))  
9                               Indecent Exposure to Person Under  
10                                Age Fourteen (subsequent sex  
11                                offense) (RCW 9A.88.010)  
12                               Influencing Outcome of Sporting Event  
13                                (RCW 9A.82.070)  
14                               Malicious Harassment (RCW  
15                                9A.36.080)  
16                               Residential Burglary (RCW  
17                                9A.52.025)  
18                               Robbery 2 (RCW 9A.56.210)  
19                               Theft of Livestock 1 (RCW 9A.56.080)  
20                               Threats to Bomb (RCW 9.61.160)  
21                               Trafficking in Stolen Property 1 (RCW  
22                                9A.82.050)  
23                               Unlawful factoring of a credit card or  
24                                payment card transaction (RCW  
25                                9A.56.290(4)(b))  
26                               Unlawful transaction of health  
27                                coverage as a health care service  
28                                contractor (RCW 48.44.016(3))  
29                               Unlawful transaction of health  
30                                coverage as a health maintenance  
31                                organization (RCW 48.46.033(3))  
32                               Unlawful transaction of insurance  
33                                business (RCW 48.15.023(3))  
34                               Unlicensed practice as an insurance  
35                                professional (RCW  
36                                48.17.063(~~(3)~~)(2))

1 Use of Proceeds of Criminal  
2 Profiteering (RCW 9A.82.080 (1)  
3 and (2))  
4 (~~Vehicular Assault, by being under the  
5 influence of intoxicating liquor or  
6 any drug, or by the operation or  
7 driving of a vehicle in a reckless  
8 manner (RCW 46.61.522))~~)  
9 Vehicular Assault, by the operation or  
10 driving of a vehicle in a reckless  
11 manner (RCW 46.61.522)  
12 Willful Failure to Return from  
13 Furlough (RCW 72.66.060)  
14 III Animal Cruelty 1 (Sexual Conduct or  
15 Contact) (RCW 16.52.205(3))  
16 Assault 3 (Except Assault 3 of a Peace  
17 Officer With a Projectile Stun  
18 Gun) (RCW 9A.36.031 except  
19 subsection (1)(h))  
20 Assault of a Child 3 (RCW 9A.36.140)  
21 Bail Jumping with class B or C Felony  
22 (RCW 9A.76.170(3)(c))  
23 Burglary 2 (RCW 9A.52.030)  
24 Commercial Sexual Abuse of a Minor  
25 (RCW 9.68A.100)  
26 Communication with a Minor for  
27 Immoral Purposes (RCW  
28 9.68A.090)  
29 Criminal Gang Intimidation (RCW  
30 9A.46.120)  
31 Custodial Assault (RCW 9A.36.100)  
32 Cyberstalking (subsequent conviction  
33 or threat of death) (RCW  
34 9.61.260(3))  
35 Escape 2 (RCW 9A.76.120)  
36 Extortion 2 (RCW 9A.56.130)  
37 Harassment (RCW 9A.46.020)



1 Intimidating a Public Servant (RCW  
2 9A.76.180)  
3 Introducing Contraband 2 (RCW  
4 9A.76.150)  
5 Malicious Injury to Railroad Property  
6 (RCW 81.60.070)  
7 Mortgage Fraud (RCW 19.144.080)  
8 Negligently Causing Substantial Bodily  
9 Harm By Use of a Signal  
10 Preemption Device (RCW  
11 46.37.674)  
12 Organized Retail Theft 1 (RCW  
13 9A.56.350(2))  
14 Perjury 2 (RCW 9A.72.030)  
15 Possession of Incendiary Device (RCW  
16 9.40.120)  
17 Possession of Machine Gun or Short-  
18 Barreled Shotgun or Rifle (RCW  
19 9.41.190)  
20 Promoting Prostitution 2 (RCW  
21 9A.88.080)  
22 Retail Theft with Extenuating  
23 Circumstances 1 (RCW  
24 9A.56.360(2))  
25 Securities Act violation (RCW  
26 21.20.400)  
27 Tampering with a Witness (RCW  
28 9A.72.120)  
29 Telephone Harassment (subsequent  
30 conviction or threat of death)  
31 (RCW 9.61.230(2))  
32 Theft of Livestock 2 (RCW 9A.56.083)  
33 Theft with the Intent to Resell 1 (RCW  
34 9A.56.340(2))  
35 Trafficking in Stolen Property 2 (RCW  
36 9A.82.055)

1 Unlawful Imprisonment (RCW  
2 9A.40.040)  
3 Unlawful possession of firearm in the  
4 second degree (RCW 9A.41.040(2))  
5 (~~Vehicular Assault, by the operation or~~  
6 ~~driving of a vehicle with disregard~~  
7 ~~for the safety of others (RCW~~  
8 ~~46.61.522)))  
9 Willful Failure to Return from Work  
10 Release (RCW 72.65.070)  
11 II Computer Trespass 1 (RCW  
12 9A.52.110)  
13 Counterfeiting (RCW 9.16.035(3))  
14 Escape from Community Custody  
15 (RCW 72.09.310)  
16 Failure to Register as a Sex Offender  
17 (second or subsequent offense)  
18 (RCW 9A.44.130(11)(a))  
19 Health Care False Claims (RCW  
20 48.80.030)  
21 Identity Theft 2 (RCW 9.35.020(3))  
22 Improperly Obtaining Financial  
23 Information (RCW 9.35.010)  
24 Malicious Mischief 1 (RCW  
25 9A.48.070)  
26 Organized Retail Theft 2 (RCW  
27 9A.56.350(3))  
28 Possession of Stolen Property 1 (RCW  
29 9A.56.150)  
30 Possession of a Stolen Vehicle (RCW  
31 9A.56.068)  
32 Retail Theft with Extenuating  
33 Circumstances 2 (RCW  
34 9A.56.360(3))  
35 Theft 1 (RCW 9A.56.030)  
36 Theft of a Motor Vehicle (RCW  
37 9A.56.065)~~

1 Theft of Rental, Leased, or Lease-  
2 purchased Property (valued at one  
3 thousand five hundred dollars or  
4 more) (RCW 9A.56.096(5)(a))  
5 Theft with the Intent to Resell 2 (RCW  
6 9A.56.340(3))  
7 Trafficking in Insurance Claims (RCW  
8 48.30A.015)  
9 Unlawful factoring of a credit card or  
10 payment card transaction (RCW  
11 9A.56.290(4)(a))  
12 Unlawful Practice of Law (RCW  
13 2.48.180)  
14 Unlicensed Practice of a Profession or  
15 Business (RCW 18.130.190(7))  
16 Voyeurism (RCW 9A.44.115)  
17 I Attempting to Elude a Pursuing Police  
18 Vehicle (RCW 46.61.024)  
19 False Verification for Welfare (RCW  
20 74.08.055)  
21 Forgery (RCW 9A.60.020)  
22 Fraudulent Creation or Revocation of a  
23 Mental Health Advance Directive  
24 (RCW 9A.60.060)  
25 Malicious Mischief 2 (RCW  
26 9A.48.080)  
27 Mineral Trespass (RCW 78.44.330)  
28 Possession of Stolen Property 2 (RCW  
29 9A.56.160)  
30 Reckless Burning 1 (RCW 9A.48.040)  
31 Taking Motor Vehicle Without  
32 Permission 2 (RCW 9A.56.075)  
33 Theft 2 (RCW 9A.56.040)

1 Theft of Rental, Leased, or Lease-  
2 purchased Property (valued at two  
3 hundred fifty dollars or more but  
4 less than one thousand five  
5 hundred dollars) (RCW  
6 9A.56.096(5)(b))  
7 Transaction of insurance business  
8 beyond the scope of licensure  
9 (RCW 48.17.063(((4))))  
10 Unlawful Issuance of Checks or Drafts  
11 (RCW 9A.56.060)  
12 Unlawful Possession of Fictitious  
13 Identification (RCW 9A.56.320)  
14 Unlawful Possession of Instruments of  
15 Financial Fraud (RCW 9A.56.320)  
16 Unlawful Possession of Payment  
17 Instruments (RCW 9A.56.320)  
18 Unlawful Possession of a Personal  
19 Identification Device (RCW  
20 9A.56.320)  
21 Unlawful Production of Payment  
22 Instruments (RCW 9A.56.320)  
23 Unlawful Trafficking in Food Stamps  
24 (RCW 9.91.142)  
25 Unlawful Use of Food Stamps (RCW  
26 9.91.144)  
27 Vehicle Prowl 1 (RCW 9A.52.095)

28 **Sec. 2.** RCW 9.94A.030 and 2008 c 276 s 309, 2008 c 231 s 23, 2008  
29 c 230 s 2, and 2008 c 7 s 1 are each reenacted and amended to read as  
30 follows:

31 Unless the context clearly requires otherwise, the definitions in  
32 this section apply throughout this chapter.

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

35 (2) "Collect," or any derivative thereof, "collect and remit," or  
36 "collect and deliver," when used with reference to the department,  
37 means that the department, either directly or through a collection

1 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
2 and enforcing the offender's sentence with regard to the legal  
3 financial obligation, receiving payment thereof from the offender, and,  
4 consistent with current law, delivering daily the entire payment to the  
5 superior court clerk without depositing it in a departmental account.

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

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

11 (5) "Community custody" means that portion of an offender's  
12 sentence of confinement in lieu of earned release time or imposed as  
13 part of a sentence and served in the community subject to controls  
14 placed on the offender's movement and activities by the department.

15 (6) "Community custody range" means the minimum and maximum period  
16 of community custody included as part of a sentence under RCW  
17 (~~9.94A.715~~) 9.94A.701, as established by the commission or the  
18 legislature under RCW 9.94A.850.

19 (7) "Community protection zone" means the area within eight hundred  
20 eighty feet of the facilities and grounds of a public or private  
21 school.

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

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

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

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

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

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

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

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

14 (13) "Criminal street gang" means any ongoing organization,  
15 association, or group of three or more persons, whether formal or  
16 informal, having a common name or common identifying sign or symbol,  
17 having as one of its primary activities the commission of criminal  
18 acts, and whose members or associates individually or collectively  
19 engage in or have engaged in a pattern of criminal street gang  
20 activity. This definition does not apply to employees engaged in  
21 concerted activities for their mutual aid and protection, or to the  
22 activities of labor and bona fide nonprofit organizations or their  
23 members or agents.

24 (14) "Criminal street gang associate or member" means any person  
25 who actively participates in any criminal street gang and who  
26 intentionally promotes, furthers, or assists in any criminal act by the  
27 criminal street gang.

28 (15) "Criminal street gang-related offense" means any felony or  
29 misdemeanor offense, whether in this state or elsewhere, that is  
30 committed for the benefit of, at the direction of, or in association  
31 with any criminal street gang, or is committed with the intent to  
32 promote, further, or assist in any criminal conduct by the gang, or is  
33 committed for one or more of the following reasons:

34 (a) To gain admission, prestige, or promotion within the gang;

35 (b) To increase or maintain the gang's size, membership, prestige,  
36 dominance, or control in any geographical area;

37 (c) To exact revenge or retribution for the gang or any member of  
38 the gang;

1 (d) To obstruct justice, or intimidate or eliminate any witness  
2 against the gang or any member of the gang;

3 (e) To directly or indirectly cause any benefit, aggrandizement,  
4 gain, profit, or other advantage for the gang, its reputation,  
5 influence, or membership; or

6 (f) To provide the gang with any advantage in, or any control or  
7 dominance over any criminal market sector, including, but not limited  
8 to, manufacturing, delivering, or selling any controlled substance  
9 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
10 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
11 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
12 (chapter 9.68 RCW).

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

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

22 (18) "Department" means the department of corrections.

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

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

1 includes periodic payments pursuant to pension or retirement programs,  
2 or insurance policies of any type, but does not include payments made  
3 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
4 or Title 74 RCW.

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

9 (22) "Drug offense" means:

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

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

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

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

21 (24) "Escape" means:

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

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

31 (25) "Felony traffic offense" means:

32 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
33 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
34 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
35 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
36 felony physical control of a vehicle while under the influence of  
37 intoxicating liquor or any drug (RCW 46.61.504(6)); or



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

4 (26) "Fine" means a specific sum of money ordered by the sentencing  
5 court to be paid by the offender to the court over a specific period of  
6 time.

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

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

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

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

29 (a) Any felony defined under any law as a class A felony or  
30 criminal solicitation of or criminal conspiracy to commit a class A  
31 felony;

32 (b) Assault in the second degree;

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

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

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

38 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Robbery in the second degree;
- 8 (p) Sexual exploitation;
- 9 (q) Vehicular assault, when caused by the operation or driving of  
10 a vehicle by a person while under the influence of intoxicating liquor  
11 or any drug or by the operation or driving of a vehicle in a reckless  
12 manner;
- 13 (r) Vehicular homicide, when proximately caused by the driving of  
14 any vehicle by any person while under the influence of intoxicating  
15 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
16 any vehicle in a reckless manner;
- 17 (s) Any other class B felony offense with a finding of sexual  
18 motivation;
- 19 (t) Any other felony with a deadly weapon verdict under RCW  
20 9.94A.602;
- 21 (u) Any felony offense in effect at any time prior to December 2,  
22 1993, that is comparable to a most serious offense under this  
23 subsection, or any federal or out-of-state conviction for an offense  
24 that under the laws of this state would be a felony classified as a  
25 most serious offense under this subsection;
- 26 (v)(i) A prior conviction for indecent liberties under RCW  
27 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
28 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
29 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
30 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 31 (ii) A prior conviction for indecent liberties under RCW  
32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
33 if: (A) The crime was committed against a child under the age of  
34 fourteen; or (B) the relationship between the victim and perpetrator is  
35 included in the definition of indecent liberties under RCW  
36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
37 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
38 through July 27, 1997;

1 (w) Any out-of-state conviction for a felony offense with a finding  
2 of sexual motivation if the minimum sentence imposed was ten years or  
3 more; provided that the out-of-state felony offense must be comparable  
4 to a felony offense under Title 9 or 9A RCW and the out-of-state  
5 definition of sexual motivation must be comparable to the definition of  
6 sexual motivation contained in this section.

7 (31) "Nonviolent offense" means an offense which is not a violent  
8 offense.

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

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

24 (34) "Pattern of criminal street gang activity" means:

25 (a) The commission, attempt, conspiracy, or solicitation of, or any  
26 prior juvenile adjudication of or adult conviction of, two or more of  
27 the following criminal street gang-related offenses:

28 (i) Any "serious violent" felony offense as defined in RCW  
29 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of  
30 a Child 1 (RCW 9A.36.120);

31 (ii) Any "violent" offense as defined by RCW 9.94A.030, excluding  
32 Assault of a Child 2 (RCW 9A.36.130);

33 (iii) Deliver or Possession with Intent to Deliver a Controlled  
34 Substance (chapter 69.50 RCW);

35 (iv) Any violation of the firearms and dangerous weapon act  
36 (chapter 9.41 RCW);

37 (v) Theft of a Firearm (RCW 9A.56.300);

38 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

1 (vii) Malicious Harassment (RCW 9A.36.080);  
2 (viii) Harassment where a subsequent violation or deadly threat is  
3 made (RCW 9A.46.020(2)(b));  
4 (ix) Criminal Gang Intimidation (RCW 9A.46.120);  
5 (x) Any felony conviction by a person eighteen years of age or  
6 older with a special finding of involving a juvenile in a felony  
7 offense under RCW 9.94A.833;  
8 (xi) Residential Burglary (RCW 9A.52.025);  
9 (xii) Burglary 2 (RCW 9A.52.030);  
10 (xiii) Malicious Mischief 1 (RCW 9A.48.070);  
11 (xiv) Malicious Mischief 2 (RCW 9A.48.080);  
12 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);  
13 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
14 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);  
15 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
16 9A.56.075);  
17 (xix) Extortion 1 (RCW 9A.56.120);  
18 (xx) Extortion 2 (RCW 9A.56.130);  
19 (xxi) Intimidating a Witness (RCW 9A.72.110);  
20 (xxii) Tampering with a Witness (RCW 9A.72.120);  
21 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
22 (xxiv) Coercion (RCW 9A.36.070);  
23 (xxv) Harassment (RCW 9A.46.020); or  
24 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
25 (b) That at least one of the offenses listed in (a) of this  
26 subsection shall have occurred after July 1, 2008;  
27 (c) That the most recent committed offense listed in (a) of this  
28 subsection occurred within three years of a prior offense listed in (a)  
29 of this subsection; and  
30 (d) Of the offenses that were committed in (a) of this subsection,  
31 the offenses occurred on separate occasions or were committed by two or  
32 more persons.  
33 (35) "Persistent offender" is an offender who:  
34 (a)(i) Has been convicted in this state of any felony considered a  
35 most serious offense; and  
36 (ii) Has, before the commission of the offense under (a) of this  
37 subsection, been convicted as an offender on at least two separate  
38 occasions, whether in this state or elsewhere, of felonies that under

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

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
7 of a child in the first degree, child molestation in the first degree,  
8 rape in the second degree, rape of a child in the second degree, or  
9 indecent liberties by forcible compulsion; (B) any of the following  
10 offenses with a finding of sexual motivation: Murder in the first  
11 degree, murder in the second degree, homicide by abuse, kidnapping in  
12 the first degree, kidnapping in the second degree, assault in the first  
13 degree, assault in the second degree, assault of a child in the first  
14 degree, assault of a child in the second degree, or burglary in the  
15 first degree; or (C) an attempt to commit any crime listed in this  
16 subsection (35)(b)(i); and

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

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

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

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

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

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

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

22 (41) "Serious traffic offense" means:

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

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

31 (42) "Serious violent offense" is a subcategory of violent offense  
32 and means:

- 33 (a)(i) Murder in the first degree;
- 34 (ii) Homicide by abuse;
- 35 (iii) Murder in the second degree;
- 36 (iv) Manslaughter in the first degree;
- 37 (v) Assault in the first degree;
- 38 (vi) Kidnapping in the first degree;

1 (vii) Rape in the first degree;  
2 (viii) Assault of a child in the first degree; or  
3 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
4 commit one of these felonies; 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 serious  
7 violent offense under (a) of this subsection.  
8 (43) "Sex offense" means:  
9 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
10 RCW 9A.44.130(12);  
11 (ii) A violation of RCW 9A.64.020;  
12 (iii) A felony that is a violation of chapter 9.68A RCW other than  
13 RCW 9.68A.080; or  
14 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
15 criminal solicitation, or criminal conspiracy to commit such crimes;  
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 sex  
18 offense in (a) of this subsection;  
19 (c) A felony with a finding of sexual motivation under RCW  
20 9.94A.835 or 13.40.135; or  
21 (d) Any federal or out-of-state conviction for an offense that  
22 under the laws of this state would be a felony classified as a sex  
23 offense under (a) of this subsection.  
24 (44) "Sexual motivation" means that one of the purposes for which  
25 the defendant committed the crime was for the purpose of his or her  
26 sexual gratification.  
27 (45) "Standard sentence range" means the sentencing court's  
28 discretionary range in imposing a nonappealable sentence.  
29 (46) "Statutory maximum sentence" means the maximum length of time  
30 for which an offender may be confined as punishment for a crime as  
31 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
32 crime, or other statute defining the maximum penalty for a crime.  
33 (47) "Stranger" means that the victim did not know the offender  
34 twenty-four hours before the offense.  
35 (48) "Total confinement" means confinement inside the physical  
36 boundaries of a facility or institution operated or utilized under  
37 contract by the state or any other unit of government for twenty-four  
38 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

1 (49) "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 (50) "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 (51) "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~~  
31 ~~of 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 (52) "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 (53) "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 (54) "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. 3.** RCW 9.94A.533 and 2008 c 276 s 301 and 2008 c 219 s 3 are  
17 each reenacted and amended to read as follows:

18 (1) The provisions of this section apply to the standard sentence  
19 ranges determined by RCW 9.94A.510 or 9.94A.517.

20 (2) For persons convicted of the anticipatory offenses of criminal  
21 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
22 standard sentence range is determined by locating the sentencing grid  
23 sentence range defined by the appropriate offender score and the  
24 seriousness level of the completed crime, and multiplying the range by  
25 seventy-five percent.

26 (3) The following additional times shall be added to the standard  
27 sentence range for felony crimes committed after July 23, 1995, if the  
28 offender or an accomplice was armed with a firearm as defined in RCW  
29 9.41.010 and the offender is being sentenced for one of the crimes  
30 listed in this subsection as eligible for any firearm enhancements  
31 based on the classification of the completed felony crime. If the  
32 offender is being sentenced for more than one offense, the firearm  
33 enhancement or enhancements must be added to the total period of  
34 confinement for all offenses, regardless of which underlying offense is  
35 subject to a firearm enhancement. If the offender or an accomplice was  
36 armed with a firearm as defined in RCW 9.41.010 and the offender is  
37 being sentenced for an anticipatory offense under chapter 9A.28 RCW to

1 commit one of the crimes listed in this subsection as eligible for any  
2 firearm enhancements, the following additional times shall be added to  
3 the standard sentence range determined under subsection (2) of this  
4 section based on the felony crime of conviction as classified under RCW  
5 9A.28.020:

6 (a) Five years for any felony defined under any law as a class A  
7 felony or with a statutory maximum sentence of at least twenty years,  
8 or both, and not covered under (f) of this subsection;

9 (b) Three years for any felony defined under any law as a class B  
10 felony or with a statutory maximum sentence of ten years, or both, and  
11 not covered under (f) of this subsection;

12 (c) Eighteen months for any felony defined under any law as a class  
13 C felony or with a statutory maximum sentence of five years, or both,  
14 and not covered under (f) of this subsection;

15 (d) If the offender is being sentenced for any firearm enhancements  
16 under (a), (b), and/or (c) of this subsection and the offender has  
17 previously been sentenced for any deadly weapon enhancements after July  
18 23, 1995, under (a), (b), and/or (c) of this subsection or subsection  
19 (4)(a), (b), and/or (c) of this section, or both, all firearm  
20 enhancements under this subsection shall be twice the amount of the  
21 enhancement listed;

22 (e) Notwithstanding any other provision of law, all firearm  
23 enhancements under this section are mandatory, shall be served in total  
24 confinement, and shall run consecutively to all other sentencing  
25 provisions, including other firearm or deadly weapon enhancements, for  
26 all offenses sentenced under this chapter. However, whether or not a  
27 mandatory minimum term has expired, an offender serving a sentence  
28 under this subsection may be granted an extraordinary medical placement  
29 when authorized under RCW 9.94A.728(4);

30 (f) The firearm enhancements in this section shall apply to all  
31 felony crimes except the following: Possession of a machine gun,  
32 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
33 unlawful possession of a firearm in the first and second degree, and  
34 use of a machine gun in a felony;

35 (g) If the standard sentence range under this section exceeds the  
36 statutory maximum sentence for the offense, the statutory maximum  
37 sentence shall be the presumptive sentence unless the offender is a  
38 persistent offender. If the addition of a firearm enhancement

1 increases the sentence so that it would exceed the statutory maximum  
2 for the offense, the portion of the sentence representing the  
3 enhancement may not be reduced.

4 (4) The following additional times shall be added to the standard  
5 sentence range for felony crimes committed after July 23, 1995, if the  
6 offender or an accomplice was armed with a deadly weapon other than a  
7 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
8 for one of the crimes listed in this subsection as eligible for any  
9 deadly weapon enhancements based on the classification of the completed  
10 felony crime. If the offender is being sentenced for more than one  
11 offense, the deadly weapon enhancement or enhancements must be added to  
12 the total period of confinement for all offenses, regardless of which  
13 underlying offense is subject to a deadly weapon enhancement. If the  
14 offender or an accomplice was armed with a deadly weapon other than a  
15 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
16 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
17 the crimes listed in this subsection as eligible for any deadly weapon  
18 enhancements, the following additional times shall be added to the  
19 standard sentence range determined under subsection (2) of this section  
20 based on the felony crime of conviction as classified under RCW  
21 9A.28.020:

22 (a) Two years for any felony defined under any law as a class A  
23 felony or with a statutory maximum sentence of at least twenty years,  
24 or both, and not covered under (f) of this subsection;

25 (b) One year for any felony defined under any law as a class B  
26 felony or with a statutory maximum sentence of ten years, or both, and  
27 not covered under (f) of this subsection;

28 (c) Six months for any felony defined under any law as a class C  
29 felony or with a statutory maximum sentence of five years, or both, and  
30 not covered under (f) of this subsection;

31 (d) If the offender is being sentenced under (a), (b), and/or (c)  
32 of this subsection for any deadly weapon enhancements and the offender  
33 has previously been sentenced for any deadly weapon enhancements after  
34 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
35 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly  
36 weapon enhancements under this subsection shall be twice the amount of  
37 the enhancement listed;

1 (e) Notwithstanding any other provision of law, all deadly weapon  
2 enhancements under this section are mandatory, shall be served in total  
3 confinement, and shall run consecutively to all other sentencing  
4 provisions, including other firearm or deadly weapon enhancements, for  
5 all offenses sentenced under this chapter. However, whether or not a  
6 mandatory minimum term has expired, an offender serving a sentence  
7 under this subsection may be granted an extraordinary medical placement  
8 when authorized under RCW 9.94A.728(4);

9 (f) The deadly weapon enhancements in this section shall apply to  
10 all felony crimes except the following: Possession of a machine gun,  
11 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
12 unlawful possession of a firearm in the first and second degree, and  
13 use of a machine gun in a felony;

14 (g) If the standard sentence range under this section exceeds the  
15 statutory maximum sentence for the offense, the statutory maximum  
16 sentence shall be the presumptive sentence unless the offender is a  
17 persistent offender. If the addition of a deadly weapon enhancement  
18 increases the sentence so that it would exceed the statutory maximum  
19 for the offense, the portion of the sentence representing the  
20 enhancement may not be reduced.

21 (5) The following additional times shall be added to the standard  
22 sentence range if the offender or an accomplice committed the offense  
23 while in a county jail or state correctional facility and the offender  
24 is being sentenced for one of the crimes listed in this subsection. If  
25 the offender or an accomplice committed one of the crimes listed in  
26 this subsection while in a county jail or state correctional facility,  
27 and the offender is being sentenced for an anticipatory offense under  
28 chapter 9A.28 RCW to commit one of the crimes listed in this  
29 subsection, the following additional times shall be added to the  
30 standard sentence range determined under subsection (2) of this  
31 section:

32 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
33 (a) or (b) or 69.50.410;

34 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
35 (c), (d), or (e);

36 (c) Twelve months for offenses committed under RCW 69.50.4013.

37 For the purposes of this subsection, all of the real property of a

1 state correctional facility or county jail shall be deemed to be part  
2 of that facility or county jail.

3 (6) An additional twenty-four months shall be added to the standard  
4 sentence range for any ranked offense involving a violation of chapter  
5 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
6 9.94A.605. All enhancements under this subsection shall run  
7 consecutively to all other sentencing provisions, for all offenses  
8 sentenced under this chapter.

9 (7) An additional (~~two~~) four years shall be added to the standard  
10 sentence range for vehicular homicide committed while under the  
11 influence of intoxicating liquor or any drug as defined by RCW  
12 46.61.502, and an additional four years for each prior offense as  
13 defined in RCW 46.61.5055. All enhancements under this subsection are  
14 mandatory, shall be served in total confinement, and shall run  
15 consecutively to all other sentencing provisions for all offenses  
16 sentenced under this chapter. The total enhancement under this  
17 subsection shall not exceed twelve years.

18 (8) An additional two years shall be added to the standard sentence  
19 range for vehicular assault committed while under the influence of  
20 intoxicating liquor or any drug as defined by RCW 46.61.502. All  
21 enhancements under this subsection are mandatory, shall be served in  
22 total confinement, and shall run consecutively to all other sentencing  
23 provisions for all offenses sentenced under this chapter. The total  
24 enhancement under this subsection shall not exceed six years.

25 (9)(a) The following additional times shall be added to the  
26 standard sentence range for felony crimes committed on or after July 1,  
27 2006, if the offense was committed with sexual motivation, as that term  
28 is defined in RCW 9.94A.030. If the offender is being sentenced for  
29 more than one offense, the sexual motivation enhancement must be added  
30 to the total period of total confinement for all offenses, regardless  
31 of which underlying offense is subject to a sexual motivation  
32 enhancement. If the offender committed the offense with sexual  
33 motivation and the offender is being sentenced for an anticipatory  
34 offense under chapter 9A.28 RCW, the following additional times shall  
35 be added to the standard sentence range determined under subsection (2)  
36 of this section based on the felony crime of conviction as classified  
37 under RCW 9A.28.020:

1 (i) Two years for any felony defined under the law as a class A  
2 felony or with a statutory maximum sentence of at least twenty years,  
3 or both;

4 (ii) Eighteen months for any felony defined under any law as a  
5 class B felony or with a statutory maximum sentence of ten years, or  
6 both;

7 (iii) One year for any felony defined under any law as a class C  
8 felony or with a statutory maximum sentence of five years, or both;

9 (iv) If the offender is being sentenced for any sexual motivation  
10 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
11 the offender has previously been sentenced for any sexual motivation  
12 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii)  
13 of this subsection, all sexual motivation enhancements under this  
14 subsection shall be twice the amount of the enhancement listed;

15 (b) Notwithstanding any other provision of law, all sexual  
16 motivation enhancements under this subsection are mandatory, shall be  
17 served in total confinement, and shall run consecutively to all other  
18 sentencing provisions, including other sexual motivation enhancements,  
19 for all offenses sentenced under this chapter. However, whether or not  
20 a mandatory minimum term has expired, an offender serving a sentence  
21 under this subsection may be granted an extraordinary medical placement  
22 when authorized under RCW 9.94A.728(4);

23 (c) The sexual motivation enhancements in this subsection apply to  
24 all felony crimes;

25 (d) If the standard sentence range under this subsection exceeds  
26 the statutory maximum sentence for the offense, the statutory maximum  
27 sentence shall be the presumptive sentence unless the offender is a  
28 persistent offender. If the addition of a sexual motivation  
29 enhancement increases the sentence so that it would exceed the  
30 statutory maximum for the offense, the portion of the sentence  
31 representing the enhancement may not be reduced;

32 (e) The portion of the total confinement sentence which the  
33 offender must serve under this subsection shall be calculated before  
34 any earned early release time is credited to the offender;

35 (f) Nothing in this subsection prevents a sentencing court from  
36 imposing a sentence outside the standard sentence range pursuant to RCW  
37 9.94A.535.

1       (~~(9)~~) (10) An additional one-year enhancement shall be added to  
2 the standard sentence range for the felony crimes of RCW 9A.44.073,  
3 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
4 or after July 22, 2007, if the offender engaged, agreed, or offered to  
5 engage the victim in the sexual conduct in return for a fee. If the  
6 offender is being sentenced for more than one offense, the one-year  
7 enhancement must be added to the total period of total confinement for  
8 all offenses, regardless of which underlying offense is subject to the  
9 enhancement. If the offender is being sentenced for an anticipatory  
10 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,  
11 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,  
12 solicited another, or conspired to engage, agree, or offer to engage  
13 the victim in the sexual conduct in return for a fee, an additional  
14 one-year enhancement shall be added to the standard sentence range  
15 determined under subsection (2) of this section. For purposes of this  
16 subsection, "sexual conduct" means sexual intercourse or sexual  
17 contact, both as defined in chapter 9A.44 RCW.

18       (~~(10)~~) (11)(a) For a person age eighteen or older convicted of  
19 any criminal street gang-related felony offense for which the person  
20 compensated, threatened, or solicited a minor in order to involve the  
21 minor in the commission of the felony offense, the standard sentence  
22 range is determined by locating the sentencing grid sentence range  
23 defined by the appropriate offender score and the seriousness level of  
24 the completed crime, and multiplying the range by one hundred twenty-  
25 five percent. If the standard sentence range under this subsection  
26 exceeds the statutory maximum sentence for the offense, the statutory  
27 maximum sentence is the presumptive sentence unless the offender is a  
28 persistent offender.

29       (b) This subsection does not apply to any criminal street gang-  
30 related felony offense for which involving a minor in the commission of  
31 the felony offense is an element of the offense.

32       (c) The increased penalty specified in (a) of this subsection is  
33 unavailable in the event that the prosecution gives notice that it will  
34 seek an exceptional sentence based on an aggravating factor under RCW  
35 9.94A.535.

36       (~~(11)~~) (12) An additional twelve months and one day shall be  
37 added to the standard sentence range for a conviction of attempting to

1 elude a police vehicle as defined by RCW 46.61.024, if the conviction  
2 included a finding by special allegation of endangering one or more  
3 persons under RCW 9.94A.834.

4 **Sec. 4.** RCW 46.61.520 and 1998 c 211 s 2 are each amended to read  
5 as follows:

6 (1) When the death of any person ensues within three years as a  
7 proximate result of injury proximately caused by the driving of any  
8 vehicle by any person, the driver is guilty of vehicular homicide if  
9 the driver was operating a motor vehicle:

10 (a) While under the influence of intoxicating liquor or any drug,  
11 as defined by RCW 46.61.502; or

12 (b) In a reckless manner; or

13 (c) With disregard for the safety of others.

14 (2) Vehicular homicide is a class A felony punishable under chapter  
15 9A.20 RCW, except that, for a conviction under subsection (1)(a) of  
16 this section, there is a mandatory enhancement of four years for the  
17 first offense and an additional ((two)) four years shall be added to  
18 the sentence for each prior offense as defined in RCW 46.61.5055. The  
19 total enhancement shall not exceed twelve years.

20 **Sec. 5.** RCW 46.61.522 and 2001 c 300 s 1 are each amended to read  
21 as follows:

22 (1) A person is guilty of vehicular assault if he or she operates  
23 or drives any vehicle:

24 (a) In a reckless manner and causes substantial bodily harm to  
25 another; or

26 (b) While under the influence of intoxicating liquor or any drug,  
27 as defined by RCW 46.61.502, and causes substantial bodily harm to  
28 another; or

29 (c) With disregard for the safety of others and causes substantial  
30 bodily harm to another.

31 (2) Vehicular assault is a class B felony punishable under chapter  
32 9A.20 RCW, except that, for a conviction under subsection (1)(b) of  
33 this section, there is a mandatory enhancement of two years for the  
34 first offense and an additional two years shall be added to the  
35 sentence for each prior offense as defined in RCW 46.61.5055. The  
36 total enhancement shall not exceed six years.



1 (3) As used in this section, "substantial bodily harm" has the same  
2 meaning as in RCW 9A.04.110.

3 **Sec. 6.** RCW 13.04.030 and 2005 c 290 s 1 and 2005 c 238 s 1 are  
4 each reenacted and amended to read as follows:

5 (1) Except as provided in this section, the juvenile courts in this  
6 state shall have exclusive original jurisdiction over all proceedings:

7 (a) Under the interstate compact on placement of children as  
8 provided in chapter 26.34 RCW;

9 (b) Relating to children alleged or found to be dependent as  
10 provided in chapter 26.44 RCW and in RCW 13.34.030 through  
11 (~~(13.34.170)~~) 13.34.161;

12 (c) Relating to the termination of a parent and child relationship  
13 as provided in RCW 13.34.180 through 13.34.210;

14 (d) To approve or disapprove out-of-home placement as provided in  
15 RCW 13.32A.170;

16 (e) Relating to juveniles alleged or found to have committed  
17 offenses, traffic or civil infractions, or violations as provided in  
18 RCW 13.40.020 through 13.40.230, unless:

19 (i) The juvenile court transfers jurisdiction of a particular  
20 juvenile to adult criminal court pursuant to RCW 13.40.110;

21 (ii) The statute of limitations applicable to adult prosecution for  
22 the offense, traffic or civil infraction, or violation has expired;

23 (iii) The alleged offense or infraction is a traffic, fish,  
24 boating, or game offense, or traffic or civil infraction committed by  
25 a juvenile sixteen years of age or older and would, if committed by an  
26 adult, be tried or heard in a court of limited jurisdiction, in which  
27 instance the appropriate court of limited jurisdiction shall have  
28 jurisdiction over the alleged offense or infraction, and no guardian ad  
29 litem is required in any such proceeding due to the juvenile's age:

30 PROVIDED, That if such an alleged offense or infraction and an alleged  
31 offense or infraction subject to juvenile court jurisdiction arise out  
32 of the same event or incident, the juvenile court may have jurisdiction  
33 of both matters: PROVIDED FURTHER, That the jurisdiction under this  
34 subsection does not constitute "transfer" or a "decline" for purposes  
35 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,  
36 That courts of limited jurisdiction which confine juveniles for an  
37 alleged offense or infraction may place juveniles in juvenile detention

1 facilities under an agreement with the officials responsible for the  
2 administration of the juvenile detention facility in RCW 13.04.035 and  
3 13.20.060;

4 (iv) The alleged offense is a traffic or civil infraction, a  
5 violation of compulsory school attendance provisions under chapter  
6 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has  
7 assumed concurrent jurisdiction over those offenses as provided in RCW  
8 13.04.0301; ((~~or~~))

9 (v) The juvenile is sixteen or seventeen years old on the date the  
10 alleged offense is committed and the alleged offense is:

11 (A) A serious violent offense as defined in RCW 9.94A.030;

12 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile  
13 has a criminal history consisting of: (I) One or more prior serious  
14 violent offenses; (II) two or more prior violent offenses; or (III)  
15 three or more of any combination of the following offenses: Any class  
16 A felony, any class B felony, vehicular assault, or manslaughter in the  
17 second degree, all of which must have been committed after the  
18 juvenile's thirteenth birthday and prosecuted separately;

19 (C) Robbery in the first degree, rape of a child in the first  
20 degree, or drive-by shooting, committed on or after July 1, 1997;

21 (D) Burglary in the first degree committed on or after July 1,  
22 1997, and the juvenile has a criminal history consisting of one or more  
23 prior felony or misdemeanor offenses; or

24 (E) Any violent offense as defined in RCW 9.94A.030 committed on or  
25 after July 1, 1997, and the juvenile is alleged to have been armed with  
26 a firearm.

27 (I) In such a case the adult criminal court shall have exclusive  
28 original jurisdiction, except as provided in (e)(v)(E)(II) of this  
29 subsection.

30 (II) The juvenile court shall have exclusive jurisdiction over the  
31 disposition of any remaining charges in any case in which the juvenile  
32 is found not guilty in the adult criminal court of the charge or  
33 charges for which he or she was transferred, or is convicted in the  
34 adult criminal court of a lesser included offense that is not also an  
35 offense listed in (e)(v) of this subsection. The juvenile court shall  
36 enter an order extending juvenile court jurisdiction if the juvenile  
37 has turned eighteen years of age during the adult criminal court  
38 proceedings pursuant to RCW 13.40.300. However, once the case is

1 returned to juvenile court, the court may hold a decline hearing  
2 pursuant to RCW 13.40.110 to determine whether to retain the case in  
3 juvenile court for the purpose of disposition or return the case to  
4 adult criminal court for sentencing.

5 If the juvenile challenges the state's determination of the  
6 juvenile's criminal history under (e)(v) of this subsection, the state  
7 may establish the offender's criminal history by a preponderance of the  
8 evidence. If the criminal history consists of adjudications entered  
9 upon a plea of guilty, the state shall not bear a burden of  
10 establishing the knowing and voluntariness of the plea; or

11 (vi) The alleged offense is vehicular assault under RCW  
12 46.61.522(1)(b) or vehicular homicide under RCW 46.61.520;

13 (f) Under the interstate compact on juveniles as provided in  
14 chapter 13.24 RCW;

15 (g) Relating to termination of a diversion agreement under RCW  
16 13.40.080, including a proceeding in which the divertee has attained  
17 eighteen years of age;

18 (h) Relating to court validation of a voluntary consent to an out-  
19 of-home placement under chapter 13.34 RCW, by the parent or Indian  
20 custodian of an Indian child, except if the parent or Indian custodian  
21 and child are residents of or domiciled within the boundaries of a  
22 federally recognized Indian reservation over which the tribe exercises  
23 exclusive jurisdiction;

24 (i) Relating to petitions to compel disclosure of information filed  
25 by the department of social and health services pursuant to RCW  
26 74.13.042; and

27 (j) Relating to judicial determinations and permanency planning  
28 hearings involving (~~developmentally disabled~~) children who are  
29 developmentally disabled and who have been placed in out-of-home care  
30 pursuant to a voluntary placement agreement between the child's parent,  
31 guardian, or legal custodian and the department of social and health  
32 services.

33 (2) The family court shall have concurrent original jurisdiction  
34 with the juvenile court over all proceedings under this section if the  
35 superior court judges of a county authorize concurrent jurisdiction as  
36 provided in RCW 26.12.010.

37 (3) The juvenile court shall have concurrent original jurisdiction

1 with the family court over child custody proceedings under chapter  
2 26.10 RCW as provided for in RCW 13.34.155.

3 (4) A juvenile subject to adult superior court jurisdiction under  
4 subsection (1)(e)(i) through ~~((v))~~ (vi) of this section, who is  
5 detained pending trial, may be detained in a detention facility as  
6 defined in RCW 13.40.020 pending sentencing or a dismissal.

7 NEW SECTION. **Sec. 7.** If specific funding for the purposes of this  
8 act, referencing this act by bill or chapter number, is not provided by  
9 June 30, 2009, in the omnibus appropriations act, this act is null and  
10 void.

11 NEW SECTION. **Sec. 8.** This act takes effect August 1, 2009.

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