
SUBSTITUTE HOUSE BILL 2497

State of Washington 61st Legislature 2010 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives White, Orwall, Goodman, Kenney, Kessler, and Darneille)

READ FIRST TIME 01/26/10.

1 AN ACT Relating to victimization of homeless persons; amending RCW
2 9.94A.030; and reenacting and amending RCW 9.94A.535.

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

4 **Sec. 1.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
5 each reenacted and amended to read as follows:

6 The court may impose a sentence outside the standard sentence range
7 for an offense if it finds, considering the purpose of this chapter,
8 that there are substantial and compelling reasons justifying an
9 exceptional sentence. Facts supporting aggravated sentences, other
10 than the fact of a prior conviction, shall be determined pursuant to
11 the provisions of RCW 9.94A.537.

12 Whenever a sentence outside the standard sentence range is imposed,
13 the court shall set forth the reasons for its decision in written
14 findings of fact and conclusions of law. A sentence outside the
15 standard sentence range shall be a determinate sentence.

16 If the sentencing court finds that an exceptional sentence outside
17 the standard sentence range should be imposed, the sentence is subject
18 to review only as provided for in RCW 9.94A.585(4).

1 A departure from the standards in RCW 9.94A.589 (1) and (2)
2 governing whether sentences are to be served consecutively or
3 concurrently is an exceptional sentence subject to the limitations in
4 this section, and may be appealed by the offender or the state as set
5 forth in RCW 9.94A.585 (2) through (6).

6 (1) Mitigating Circumstances - Court to Consider

7 The court may impose an exceptional sentence below the standard
8 range if it finds that mitigating circumstances are established by a
9 preponderance of the evidence. The following are illustrative only and
10 are not intended to be exclusive reasons for exceptional sentences.

11 (a) To a significant degree, the victim was an initiator, willing
12 participant, aggressor, or provoker of the incident.

13 (b) Before detection, the defendant compensated, or made a good
14 faith effort to compensate, the victim of the criminal conduct for any
15 damage or injury sustained.

16 (c) The defendant committed the crime under duress, coercion,
17 threat, or compulsion insufficient to constitute a complete defense but
18 which significantly affected his or her conduct.

19 (d) The defendant, with no apparent predisposition to do so, was
20 induced by others to participate in the crime.

21 (e) The defendant's capacity to appreciate the wrongfulness of his
22 or her conduct, or to conform his or her conduct to the requirements of
23 the law, was significantly impaired. Voluntary use of drugs or alcohol
24 is excluded.

25 (f) The offense was principally accomplished by another person and
26 the defendant manifested extreme caution or sincere concern for the
27 safety or well-being of the victim.

28 (g) The operation of the multiple offense policy of RCW 9.94A.589
29 results in a presumptive sentence that is clearly excessive in light of
30 the purpose of this chapter, as expressed in RCW 9.94A.010.

31 (h) The defendant or the defendant's children suffered a continuing
32 pattern of physical or sexual abuse by the victim of the offense and
33 the offense is a response to that abuse.

34 (2) Aggravating Circumstances - Considered and Imposed by the Court

35 The trial court may impose an aggravated exceptional sentence
36 without a finding of fact by a jury under the following circumstances:

37 (a) The defendant and the state both stipulate that justice is best
38 served by the imposition of an exceptional sentence outside the

1 standard range, and the court finds the exceptional sentence to be
2 consistent with and in furtherance of the interests of justice and the
3 purposes of the sentencing reform act.

4 (b) The defendant's prior unscored misdemeanor or prior unscored
5 foreign criminal history results in a presumptive sentence that is
6 clearly too lenient in light of the purpose of this chapter, as
7 expressed in RCW 9.94A.010.

8 (c) The defendant has committed multiple current offenses and the
9 defendant's high offender score results in some of the current offenses
10 going unpunished.

11 (d) The failure to consider the defendant's prior criminal history
12 which was omitted from the offender score calculation pursuant to RCW
13 9.94A.525 results in a presumptive sentence that is clearly too
14 lenient.

15 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
16 the Court

17 Except for circumstances listed in subsection (2) of this section,
18 the following circumstances are an exclusive list of factors that can
19 support a sentence above the standard range. Such facts should be
20 determined by procedures specified in RCW 9.94A.537.

21 (a) The defendant's conduct during the commission of the current
22 offense manifested deliberate cruelty to the victim.

23 (b) The defendant knew or should have known that the victim of the
24 current offense was particularly vulnerable or incapable of resistance.

25 (c) The current offense was a violent offense, and the defendant
26 knew that the victim of the current offense was pregnant.

27 (d) The current offense was a major economic offense or series of
28 offenses, so identified by a consideration of any of the following
29 factors:

30 (i) The current offense involved multiple victims or multiple
31 incidents per victim;

32 (ii) The current offense involved attempted or actual monetary loss
33 substantially greater than typical for the offense;

34 (iii) The current offense involved a high degree of sophistication
35 or planning or occurred over a lengthy period of time; or

36 (iv) The defendant used his or her position of trust, confidence,
37 or fiduciary responsibility to facilitate the commission of the current
38 offense.

1 (e) The current offense was a major violation of the Uniform
2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
3 trafficking in controlled substances, which was more onerous than the
4 typical offense of its statutory definition: The presence of ANY of
5 the following may identify a current offense as a major VUCSA:

6 (i) The current offense involved at least three separate
7 transactions in which controlled substances were sold, transferred, or
8 possessed with intent to do so;

9 (ii) The current offense involved an attempted or actual sale or
10 transfer of controlled substances in quantities substantially larger
11 than for personal use;

12 (iii) The current offense involved the manufacture of controlled
13 substances for use by other parties;

14 (iv) The circumstances of the current offense reveal the offender
15 to have occupied a high position in the drug distribution hierarchy;

16 (v) The current offense involved a high degree of sophistication or
17 planning, occurred over a lengthy period of time, or involved a broad
18 geographic area of disbursement; or

19 (vi) The offender used his or her position or status to facilitate
20 the commission of the current offense, including positions of trust,
21 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
22 other medical professional).

23 (f) The current offense included a finding of sexual motivation
24 pursuant to RCW 9.94A.835.

25 (g) The offense was part of an ongoing pattern of sexual abuse of
26 the same victim under the age of eighteen years manifested by multiple
27 incidents over a prolonged period of time.

28 (h) The current offense involved domestic violence, as defined in
29 RCW 10.99.020, and one or more of the following was present:

30 (i) The offense was part of an ongoing pattern of psychological,
31 physical, or sexual abuse of the victim manifested by multiple
32 incidents over a prolonged period of time;

33 (ii) The offense occurred within sight or sound of the victim's or
34 the offender's minor children under the age of eighteen years; or

35 (iii) The offender's conduct during the commission of the current
36 offense manifested deliberate cruelty or intimidation of the victim.

37 (i) The offense resulted in the pregnancy of a child victim of
38 rape.

1 (j) The defendant knew that the victim of the current offense was
2 a youth who was not residing with a legal custodian and the defendant
3 established or promoted the relationship for the primary purpose of
4 victimization.

5 (k) The offense was committed with the intent to obstruct or impair
6 human or animal health care or agricultural or forestry research or
7 commercial production.

8 (l) The current offense is trafficking in the first degree or
9 trafficking in the second degree and any victim was a minor at the time
10 of the offense.

11 (m) The offense involved a high degree of sophistication or
12 planning.

13 (n) The defendant used his or her position of trust, confidence, or
14 fiduciary responsibility to facilitate the commission of the current
15 offense.

16 (o) The defendant committed a current sex offense, has a history of
17 sex offenses, and is not amenable to treatment.

18 (p) The offense involved an invasion of the victim's privacy.

19 (q) The defendant demonstrated or displayed an egregious lack of
20 remorse.

21 (r) The offense involved a destructive and foreseeable impact on
22 persons other than the victim.

23 (s) The defendant committed the offense to obtain or maintain his
24 or her membership or to advance his or her position in the hierarchy of
25 an organization, association, or identifiable group.

26 (t) The defendant committed the current offense shortly after being
27 released from incarceration.

28 (u) The current offense is a burglary and the victim of the
29 burglary was present in the building or residence when the crime was
30 committed.

31 (v) The offense was committed against a law enforcement officer who
32 was performing his or her official duties at the time of the offense,
33 the offender knew that the victim was a law enforcement officer, and
34 the victim's status as a law enforcement officer is not an element of
35 the offense.

36 (w) The defendant committed the offense against a victim who was
37 acting as a good samaritan.

1 (x) The defendant committed the offense against a public official
2 or officer of the court in retaliation of the public official's
3 performance of his or her duty to the criminal justice system.

4 (y) The victim's injuries substantially exceed the level of bodily
5 harm necessary to satisfy the elements of the offense. This aggravator
6 is not an exception to RCW 9.94A.530(2).

7 (z)(i)(A) The current offense is theft in the first degree, theft
8 in the second degree, possession of stolen property in the first
9 degree, or possession of stolen property in the second degree; (B) the
10 stolen property involved is metal property; and (C) the property damage
11 to the victim caused in the course of the theft of metal property is
12 more than three times the value of the stolen metal property, or the
13 theft of the metal property creates a public hazard.

14 (ii) For purposes of this subsection, "metal property" means
15 commercial metal property, private metal property, or nonferrous metal
16 property, as defined in RCW 19.290.010.

17 (aa) The defendant committed the offense with the intent to
18 directly or indirectly cause any benefit, aggrandizement, gain, profit,
19 or other advantage to or for a criminal street gang as defined in RCW
20 9.94A.030, its reputation, influence, or membership.

21 (bb) The offense was intentionally committed because the defendant
22 perceived the victim to be homeless, as defined in RCW 9.94A.030.

23 **Sec. 2.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read
24 as follows:

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

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

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

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

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

5 (5) "Community custody" means that portion of an offender's
6 sentence of confinement in lieu of earned release time or imposed as
7 part of a sentence under this chapter and served in the community
8 subject to controls placed on the offender's movement and activities by
9 the department.

10 (6) "Community protection zone" means the area within eight hundred
11 eighty feet of the facilities and grounds of a public or private
12 school.

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

16 (8) "Confinement" means total or partial confinement.

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

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

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

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

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

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

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

16 (13) "Criminal street gang associate or member" means any person
17 who actively participates in any criminal street gang and who
18 intentionally promotes, furthers, or assists in any criminal act by the
19 criminal street gang.

20 (14) "Criminal street gang-related offense" means any felony or
21 misdemeanor offense, whether in this state or elsewhere, that is
22 committed for the benefit of, at the direction of, or in association
23 with any criminal street gang, or is committed with the intent to
24 promote, further, or assist in any criminal conduct by the gang, or is
25 committed for one or more of the following reasons:

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

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

29 (c) To exact revenge or retribution for the gang or any member of
30 the gang;

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

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

36 (f) To provide the gang with any advantage in, or any control or
37 dominance over any criminal market sector, including, but not limited
38 to, manufacturing, delivering, or selling any controlled substance

1 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
2 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
3 RCW); human trafficking (RCW 9A.40.100); or promoting pornography
4 (chapter 9.68 RCW).

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

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

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

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

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

35 (20) "Drug offender sentencing alternative" is a sentencing option
36 available to persons convicted of a felony offense other than a violent
37 offense or a sex offense and who are eligible for the option under RCW
38 9.94A.660.

1 (21) "Drug offense" means:
2 (a) Any felony violation of chapter 69.50 RCW except possession of
3 a controlled substance (RCW 69.50.4013) or forged prescription for a
4 controlled substance (RCW 69.50.403);
5 (b) Any offense defined as a felony under federal law that relates
6 to the possession, manufacture, distribution, or transportation of a
7 controlled substance; or
8 (c) Any out-of-state conviction for an offense that under the laws
9 of this state would be a felony classified as a drug offense under (a)
10 of this subsection.

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

13 (23) "Escape" means:
14 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
15 first degree (RCW 9A.76.110), escape in the second degree (RCW
16 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
17 willful failure to return from work release (RCW 72.65.070), or willful
18 failure to be available for supervision by the department while in
19 community custody (RCW 72.09.310); or
20 (b) Any federal or out-of-state conviction for an offense that
21 under the laws of this state would be a felony classified as an escape
22 under (a) of this subsection.

23 (24) "Felony traffic offense" means:
24 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
25 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
26 run injury-accident (RCW 46.52.020(4)), felony driving while under the
27 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
28 felony physical control of a vehicle while under the influence of
29 intoxicating liquor or any drug (RCW 46.61.504(6)); or
30 (b) Any federal or out-of-state conviction for an offense that
31 under the laws of this state would be a felony classified as a felony
32 traffic offense under (a) of this subsection.

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

36 (26) "First-time offender" means any person who has no prior
37 convictions for a felony and is eligible for the first-time offender
38 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) "Homelessness" or "homeless" means a condition where an
5 individual lacks a fixed, regular, and adequate nighttime residence and
6 who has a primary nighttime residence that is:

7 (a) A supervised, publicly or privately operated shelter designed
8 to provide temporary living accommodations;

9 (b) A public or private place not designed for, or ordinarily used
10 as, a regular sleeping accommodation for human beings; or

11 (c) A private residence where the individual stays as a transient
12 invitee.

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 ((+29)) (30) "Most serious offense" means any of the following
28 felonies or 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.825;
- 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 ~~((+30+))~~ (31) "Nonviolent offense" means an offense which is not a
8 violent offense.

9 ~~((+31+))~~ (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. In addition, for the purpose of community custody
15 requirements under this chapter, "offender" also means a misdemeanor or
16 gross misdemeanor probationer convicted of an offense included in RCW
17 9.94A.501(1) and ordered by a superior court to probation under the
18 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or
19 9.95.210. Throughout this chapter, the terms "offender" and
20 "defendant" are used interchangeably.

21 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more
22 than one year in a facility or institution operated or utilized under
23 contract by the state or any other unit of government, or, if home
24 detention or work crew has been ordered by the court, in an approved
25 residence, for a substantial portion of each day with the balance of
26 the day spent in the community. Partial confinement includes work
27 release, home detention, work crew, and a combination of work crew and
28 home detention.

29 ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:

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

33 (i) Any "serious violent" felony offense as defined in this
34 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a
35 Child 1 (RCW 9A.36.120);

36 (ii) Any "violent" offense as defined by this section, excluding
37 Assault of a Child 2 (RCW 9A.36.130);

1 (iii) Deliver or Possession with Intent to Deliver a Controlled
2 Substance (chapter 69.50 RCW);
3 (iv) Any violation of the firearms and dangerous weapon act
4 (chapter 9.41 RCW);
5 (v) Theft of a Firearm (RCW 9A.56.300);
6 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
7 (vii) Malicious Harassment (RCW 9A.36.080);
8 (viii) Harassment where a subsequent violation or deadly threat is
9 made (RCW 9A.46.020(2)(b));
10 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
11 (x) Any felony conviction by a person eighteen years of age or
12 older with a special finding of involving a juvenile in a felony
13 offense under RCW 9.94A.833;
14 (xi) Residential Burglary (RCW 9A.52.025);
15 (xii) Burglary 2 (RCW 9A.52.030);
16 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
17 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
18 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
19 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
20 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
21 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
22 9A.56.075);
23 (xix) Extortion 1 (RCW 9A.56.120);
24 (xx) Extortion 2 (RCW 9A.56.130);
25 (xxi) Intimidating a Witness (RCW 9A.72.110);
26 (xxii) Tampering with a Witness (RCW 9A.72.120);
27 (xxiii) Reckless Endangerment (RCW 9A.36.050);
28 (xxiv) Coercion (RCW 9A.36.070);
29 (xxv) Harassment (RCW 9A.46.020); or
30 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
31 (b) That at least one of the offenses listed in (a) of this
32 subsection shall have occurred after July 1, 2008;
33 (c) That the most recent committed offense listed in (a) of this
34 subsection occurred within three years of a prior offense listed in (a)
35 of this subsection; and
36 (d) Of the offenses that were committed in (a) of this subsection,
37 the offenses occurred on separate occasions or were committed by two or
38 more persons.

1 (~~(+34+)~~) (35) "Persistent offender" is an offender who:

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

4 (ii) Has, before the commission of the offense under (a) of this
5 subsection, been convicted as an offender on at least two separate
6 occasions, whether in this state or elsewhere, of felonies that under
7 the laws of this state would be considered most serious offenses and
8 would be included in the offender score under RCW 9.94A.525; provided
9 that of the two or more previous convictions, at least one conviction
10 must have occurred before the commission of any of the other most
11 serious offenses for which the offender was previously convicted; or

12 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
13 of a child in the first degree, child molestation in the first degree,
14 rape in the second degree, rape of a child in the second degree, or
15 indecent liberties by forcible compulsion; (B) any of the following
16 offenses with a finding of sexual motivation: Murder in the first
17 degree, murder in the second degree, homicide by abuse, kidnapping in
18 the first degree, kidnapping in the second degree, assault in the first
19 degree, assault in the second degree, assault of a child in the first
20 degree, assault of a child in the second degree, or burglary in the
21 first degree; or (C) an attempt to commit any crime listed in this
22 subsection (~~(+34+)~~) (35)(b)(i); and

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

35 (~~(+35+)~~) (36) "Predatory" means: (a) The perpetrator of the crime
36 was a stranger to the victim, as defined in this section; (b) the
37 perpetrator established or promoted a relationship with the victim
38 prior to the offense and the victimization of the victim was a

1 significant reason the perpetrator established or promoted the
2 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
3 volunteer, or other person in authority in any public or private school
4 and the victim was a student of the school under his or her authority
5 or supervision. For purposes of this subsection, "school" does not
6 include home-based instruction as defined in RCW 28A.225.010; (ii) a
7 coach, trainer, volunteer, or other person in authority in any
8 recreational activity and the victim was a participant in the activity
9 under his or her authority or supervision; or (iii) a pastor, elder,
10 volunteer, or other person in authority in any church or religious
11 organization, and the victim was a member or participant of the
12 organization under his or her authority.

13 ~~((+36+))~~ (37) "Private school" means a school regulated under
14 chapter 28A.195 or 28A.205 RCW.

15 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW
16 28A.150.010.

17 ~~((+38+))~~ (39) "Restitution" means a specific sum of money ordered
18 by the sentencing court to be paid by the offender to the court over a
19 specified period of time as payment of damages. The sum may include
20 both public and private costs.

21 ~~((+39+))~~ (40) "Risk assessment" means the application of the risk
22 instrument recommended to the department by the Washington state
23 institute for public policy as having the highest degree of predictive
24 accuracy for assessing an offender's risk of reoffense.

25 ~~((+40+))~~ (41) "Serious traffic offense" means:

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

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

34 ~~((+41+))~~ (42) "Serious violent offense" is a subcategory of violent
35 offense and means:

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

37 (ii) Homicide by abuse;

38 (iii) Murder in the second degree;

1 (iv) Manslaughter in the first degree;
2 (v) Assault in the first degree;
3 (vi) Kidnapping in the first degree;
4 (vii) Rape in the first degree;
5 (viii) Assault of a child in the first degree; or
6 (ix) An attempt, criminal solicitation, or criminal conspiracy to
7 commit one of these felonies; or
8 (b) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a serious
10 violent offense under (a) of this subsection.

11 (~~(42)~~) (43) "Sex offense" means:
12 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
13 RCW 9A.44.130(12);
14 (ii) A violation of RCW 9A.64.020;
15 (iii) A felony that is a violation of chapter 9.68A RCW other than
16 RCW 9.68A.080; or
17 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
18 criminal solicitation, or criminal conspiracy to commit such crimes;
19 (b) Any conviction for a felony offense in effect at any time prior
20 to July 1, 1976, that is comparable to a felony classified as a sex
21 offense in (a) of this subsection;
22 (c) A felony with a finding of sexual motivation under RCW
23 9.94A.835 or 13.40.135; or
24 (d) Any federal or out-of-state conviction for an offense that
25 under the laws of this state would be a felony classified as a sex
26 offense under (a) of this subsection.

27 (~~(43)~~) (44) "Sexual motivation" means that one of the purposes
28 for which the defendant committed the crime was for the purpose of his
29 or her sexual gratification.

30 (~~(44)~~) (45) "Standard sentence range" means the sentencing
31 court's discretionary range in imposing a nonappealable sentence.

32 (~~(45)~~) (46) "Statutory maximum sentence" means the maximum length
33 of time for which an offender may be confined as punishment for a crime
34 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
35 the crime, or other statute defining the maximum penalty for a crime.

36 (~~(46)~~) (47) "Stranger" means that the victim did not know the
37 offender twenty-four hours before the offense.

1 ~~((47))~~ (48) "Total confinement" means confinement inside the
2 physical boundaries of a facility or institution operated or utilized
3 under contract by the state or any other unit of government for twenty-
4 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 ~~((48))~~ (49) "Transition training" means written and verbal
6 instructions and assistance provided by the department to the offender
7 during the two weeks prior to the offender's successful completion of
8 the work ethic camp program. The transition training shall include
9 instructions in the offender's requirements and obligations during the
10 offender's period of community custody.

11 ~~((49))~~ (50) "Victim" means any person who has sustained
12 emotional, psychological, physical, or financial injury to person or
13 property as a direct result of the crime charged.

14 ~~((50))~~ (51) "Violent offense" means:

15 (a) Any of the following felonies:

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

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

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

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

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

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

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

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

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

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

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

7 ~~((+51+))~~ (52) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 that complies with RCW 9.94A.725.

10 ~~((+52+))~~ (53) "Work ethic camp" means an alternative incarceration
11 program as provided in RCW 9.94A.690 designed to reduce recidivism and
12 lower the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 ~~((+53+))~~ (54) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

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