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HOUSE BILL 3113

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Klippert, O'Brien, McCune, Wallace, and Roach

Read first time 01/25/10. Referred to Committee on Public Safety & Emergency Preparedness.

1            AN ACT Relating to body armor; amending RCW 9.94A.030 and  
2 9.94A.533; reenacting and amending RCW 9.94A.728; adding a new section  
3 to chapter 9.94A RCW; prescribing penalties; and providing an effective  
4 date.

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

6            **Sec. 1.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read  
7 as follows:

8            Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

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

12           (2) "Body armor" means any clothing or equipment designed, in whole  
13 or in part, to minimize the risk of injury or death from a deadly  
14 weapon.

15           (3) "Collect," or any derivative thereof, "collect and remit," or  
16 "collect and deliver," when used with reference to the department,  
17 means that the department, either directly or through a collection  
18 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
19 and enforcing the offender's sentence with regard to the legal

1 financial obligation, receiving payment thereof from the offender, and,  
2 consistent with current law, delivering daily the entire payment to the  
3 superior court clerk without depositing it in a departmental account.

4 ~~((+3))~~ (4) "Commission" means the sentencing guidelines  
5 commission.

6 ~~((+4))~~ (5) "Community corrections officer" means an employee of  
7 the department who is responsible for carrying out specific duties in  
8 supervision of sentenced offenders and monitoring of sentence  
9 conditions.

10 ~~((+5))~~ (6) "Community custody" means that portion of an offender's  
11 sentence of confinement in lieu of earned release time or imposed as  
12 part of a sentence under this chapter and served in the community  
13 subject to controls placed on the offender's movement and activities by  
14 the department.

15 ~~((+6))~~ (7) "Community protection zone" means the area within eight  
16 hundred eighty feet of the facilities and grounds of a public or  
17 private school.

18 ~~((+7))~~ (8) "Community restitution" means compulsory service,  
19 without compensation, performed for the benefit of the community by the  
20 offender.

21 ~~((+8))~~ (9) "Confinement" means total or partial confinement.

22 ~~((+9))~~ (10) "Conviction" means an adjudication of guilt pursuant  
23 to Title 10 or 13 RCW and includes a verdict of guilty, a finding of  
24 guilty, and acceptance of a plea of guilty.

25 ~~((+10))~~ (11) "Crime-related prohibition" means an order of a court  
26 prohibiting conduct that directly relates to the circumstances of the  
27 crime for which the offender has been convicted, and shall not be  
28 construed to mean orders directing an offender affirmatively to  
29 participate in rehabilitative programs or to otherwise perform  
30 affirmative conduct. However, affirmative acts necessary to monitor  
31 compliance with the order of a court may be required by the department.

32 ~~((+11))~~ (12) "Criminal history" means the list of a defendant's  
33 prior convictions and juvenile adjudications, whether in this state, in  
34 federal court, or elsewhere.

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

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

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

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

20 ~~((13))~~ (14) "Criminal street gang associate or member" means any  
21 person who actively participates in any criminal street gang and who  
22 intentionally promotes, furthers, or assists in any criminal act by the  
23 criminal street gang.

24 ~~((14))~~ (15) "Criminal street gang-related offense" means any  
25 felony or misdemeanor offense, whether in this state or elsewhere, that  
26 is committed for the benefit of, at the direction of, or in association  
27 with any criminal street gang, or is committed with the intent to  
28 promote, further, or assist in any criminal conduct by the gang, or is  
29 committed for one or more of the following reasons:

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

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

33 (c) To exact revenge or retribution for the gang or any member of  
34 the gang;

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

37 (e) To directly or indirectly cause any benefit, aggrandizement,

1 gain, profit, or other advantage for the gang, its reputation,  
2 influence, or membership; or

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

10 ~~((+15+))~~ (16) "Day fine" means a fine imposed by the sentencing  
11 court that equals the difference between the offender's net daily  
12 income and the reasonable obligations that the offender has for the  
13 support of the offender and any dependents.

14 ~~((+16+))~~ (17) "Day reporting" means a program of enhanced  
15 supervision designed to monitor the offender's daily activities and  
16 compliance with sentence conditions, and in which the offender is  
17 required to report daily to a specific location designated by the  
18 department or the sentencing court.

19 ~~((+17+))~~ (18) "Department" means the department of corrections.

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

28 ~~((+19+))~~ (20) "Disposable earnings" means that part of the earnings  
29 of an offender remaining after the deduction from those earnings of any  
30 amount required by law to be withheld. For the purposes of this  
31 definition, "earnings" means compensation paid or payable for personal  
32 services, whether denominated as wages, salary, commission, bonuses, or  
33 otherwise, and, notwithstanding any other provision of law making the  
34 payments exempt from garnishment, attachment, or other process to  
35 satisfy a court-ordered legal financial obligation, specifically  
36 includes periodic payments pursuant to pension or retirement programs,  
37 or insurance policies of any type, but does not include payments made

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
2 or Title 74 RCW.

3 ~~((+20))~~ (21) "Drug offender sentencing alternative" is a  
4 sentencing option available to persons convicted of a felony offense  
5 other than a violent offense or a sex offense and who are eligible for  
6 the option under RCW 9.94A.660.

7 ~~((+21))~~ (22) "Drug offense" means:

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

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

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

17 ~~((+22))~~ (23) "Earned release" means earned release from  
18 confinement as provided in RCW 9.94A.728.

19 ~~((+23))~~ (24) "Escape" means:

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

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

29 ~~((+24))~~ (25) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
31 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
32 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
33 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
34 felony physical control of a vehicle while under the influence of  
35 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

1        ~~((+25+))~~ (26) "Fine" means a specific sum of money ordered by the  
2 sentencing court to be paid by the offender to the court over a  
3 specific period of time.

4        ~~((+26+))~~ (27) "First-time offender" means any person who has no  
5 prior convictions for a felony and is eligible for the first-time  
6 offender waiver under RCW 9.94A.650.

7        ~~((+27+))~~ (28) "Home detention" means a program of partial  
8 confinement available to offenders wherein the offender is confined in  
9 a private residence subject to electronic surveillance.

10        ~~((+28+))~~ (29) "Legal financial obligation" means a sum of money  
11 that is ordered by a superior court of the state of Washington for  
12 legal financial obligations which may include restitution to the  
13 victim, statutorily imposed crime victims' compensation fees as  
14 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
15 drug funds, court-appointed attorneys' fees, and costs of defense,  
16 fines, and any other financial obligation that is assessed to the  
17 offender as a result of a felony conviction. Upon conviction for  
18 vehicular assault while under the influence of intoxicating liquor or  
19 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
20 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
21 legal financial obligations may also include payment to a public agency  
22 of the expense of an emergency response to the incident resulting in  
23 the conviction, subject to RCW 38.52.430.

24        ~~((+29+))~~ (30) "Most serious offense" means any of the following  
25 felonies or a felony attempt to commit any of the following felonies:

26        (a) Any felony defined under any law as a class A felony or  
27 criminal solicitation of or criminal conspiracy to commit a class A  
28 felony;

29        (b) Assault in the second degree;

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

31        (d) Child molestation in the second degree;

32        (e) Controlled substance homicide;

33        (f) Extortion in the first degree;

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

35        (h) Indecent liberties;

36        (i) Kidnapping in the second degree;

37        (j) Leading organized crime;

38        (k) Manslaughter in the first degree;

- 1 (l) Manslaughter in the second degree;
- 2 (m) Promoting prostitution in the first degree;
- 3 (n) Rape in the third degree;
- 4 (o) Robbery in the second degree;
- 5 (p) Sexual exploitation;
- 6 (q) Vehicular assault, when caused by the operation or driving of  
7 a vehicle by a person while under the influence of intoxicating liquor  
8 or any drug or by the operation or driving of a vehicle in a reckless  
9 manner;
- 10 (r) Vehicular homicide, when proximately caused by the driving of  
11 any vehicle by any person while under the influence of intoxicating  
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
13 any vehicle in a reckless manner;
- 14 (s) Any other class B felony offense with a finding of sexual  
15 motivation;
- 16 (t) Any other felony with a deadly weapon verdict under RCW  
17 9.94A.825;
- 18 (u) Any felony offense in effect at any time prior to December 2,  
19 1993, that is comparable to a most serious offense under this  
20 subsection, or any federal or out-of-state conviction for an offense  
21 that under the laws of this state would be a felony classified as a  
22 most serious offense under this subsection;
- 23 (v)(i) A prior conviction for indecent liberties under RCW  
24 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
25 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
26 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
27 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 28 (ii) A prior conviction for indecent liberties under RCW  
29 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
30 if: (A) The crime was committed against a child under the age of  
31 fourteen; or (B) the relationship between the victim and perpetrator is  
32 included in the definition of indecent liberties under RCW  
33 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
34 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
35 through July 27, 1997;
- 36 (w) Any out-of-state conviction for a felony offense with a finding  
37 of sexual motivation if the minimum sentence imposed was ten years or  
38 more; provided that the out-of-state felony offense must be comparable

1 to a felony offense under Title 9 or 9A RCW and the out-of-state  
2 definition of sexual motivation must be comparable to the definition of  
3 sexual motivation contained in this section.

4 ~~((+30+))~~ (31) "Nonviolent offense" means an offense which is not a  
5 violent offense.

6 ~~((+31+))~~ (32) "Offender" means a person who has committed a felony  
7 established by state law and is eighteen years of age or older or is  
8 less than eighteen years of age but whose case is under superior court  
9 jurisdiction under RCW 13.04.030 or has been transferred by the  
10 appropriate juvenile court to a criminal court pursuant to RCW  
11 13.40.110. In addition, for the purpose of community custody  
12 requirements under this chapter, "offender" also means a misdemeanor or  
13 gross misdemeanor probationer convicted of an offense included in RCW  
14 9.94A.501(1) and ordered by a superior court to probation under the  
15 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or  
16 9.95.210. Throughout this chapter, the terms "offender" and  
17 "defendant" are used interchangeably.

18 ~~((+32+))~~ (33) "Partial confinement" means confinement for no more  
19 than one year in a facility or institution operated or utilized under  
20 contract by the state or any other unit of government, or, if home  
21 detention or work crew has been ordered by the court, in an approved  
22 residence, for a substantial portion of each day with the balance of  
23 the day spent in the community. Partial confinement includes work  
24 release, home detention, work crew, and a combination of work crew and  
25 home detention.

26 ~~((+33+))~~ (34) "Pattern of criminal street gang activity" means:

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

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

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

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

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



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

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

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

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

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

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

10 ~~((+36+))~~ (37) "Private school" means a school regulated under  
11 chapter 28A.195 or 28A.205 RCW.

12 ~~((+37+))~~ (38) "Public school" has the same meaning as in RCW  
13 28A.150.010.

14 ~~((+38+))~~ (39) "Restitution" means a specific sum of money ordered  
15 by the sentencing court to be paid by the offender to the court over a  
16 specified period of time as payment of damages. The sum may include  
17 both public and private costs.

18 ~~((+39+))~~ (40) "Risk assessment" means the application of the risk  
19 instrument recommended to the department by the Washington state  
20 institute for public policy as having the highest degree of predictive  
21 accuracy for assessing an offender's risk of reoffense.

22 ~~((+40+))~~ (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 ~~((+41+))~~ (42) "Serious violent offense" is a subcategory of violent  
32 offense 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 ((+42+)) (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 ((+43+)) (44) "Sexual motivation" means that one of the purposes  
25 for which the defendant committed the crime was for the purpose of his  
26 or her sexual gratification.  
27 ((+44+)) (45) "Standard sentence range" means the sentencing  
28 court's discretionary range in imposing a nonappealable sentence.  
29 ((+45+)) (46) "Statutory maximum sentence" means the maximum length  
30 of time for which an offender may be confined as punishment for a crime  
31 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
32 the crime, or other statute defining the maximum penalty for a crime.  
33 ((+46+)) (47) "Stranger" means that the victim did not know the  
34 offender twenty-four hours before the offense.  
35 ((+47+)) (48) "Total confinement" means confinement inside the  
36 physical boundaries of a facility or institution operated or utilized  
37 under contract by the state or any other unit of government for twenty-  
38 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

1       (~~(48)~~) (49) "Transition training" means written and verbal  
2 instructions and assistance provided by the department to the offender  
3 during the two weeks prior to the offender's successful completion of  
4 the work ethic camp program. The transition training shall include  
5 instructions in the offender's requirements and obligations during the  
6 offender's period of community custody.

7       (~~(49)~~) (50) "Victim" means any person who has sustained  
8 emotional, psychological, physical, or financial injury to person or  
9 property as a direct result of the crime charged.

10       (~~(50)~~) (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 of  
31 any vehicle by any person while under the influence of intoxicating  
32 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
33 any vehicle in a reckless manner;

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

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

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

3 ~~((+51+))~~ (52) "Work crew" means a program of partial confinement  
4 consisting of civic improvement tasks for the benefit of the community  
5 that complies with RCW 9.94A.725.

6 ~~((+52+))~~ (53) "Work ethic camp" means an alternative incarceration  
7 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
8 lower 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 ~~((+53+))~~ (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. 2.** RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read  
17 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 for felony crimes committed on or after July 26, 2010,  
23 if the offender or an accomplice was armed with a firearm as defined in  
24 RCW 9.41.010, the offender or an accomplice was wearing body armor at  
25 the time of the offense, and the offender is being sentenced for one of  
26 the crimes listed in this subsection as eligible for any body armor  
27 enhancements based on the classification of the completed felony crime.  
28 If the offender is being sentenced for more than one offense, the body  
29 armor enhancement or enhancements must be added to the total period of  
30 confinement for all offenses, regardless of which underlying offense is  
31 subject to a body armor enhancement. If the offender or an accomplice  
32 was armed with a firearm as defined in RCW 9.41.010, the offender or an  
33 accomplice was wearing body armor at the time of the offense, and the  
34 offender is being sentenced for an anticipatory offense under chapter  
35 9A.28 RCW to commit one of the crimes listed in this subsection as  
36 eligible for any body armor enhancements, the following additional  
37 times shall be added to the standard sentence range determined under

1 subsection (2) of this section based on the felony crime of conviction  
2 as classified under RCW 9A.28.020:

3 (a) Five years for any felony defined under any law as a class A  
4 felony or with a statutory maximum sentence of at least twenty years,  
5 or both;

6 (b) Three years for any felony defined under any law as a class B  
7 felony or with a statutory maximum sentence of ten years, or both;

8 (c) Eighteen months for any felony defined under any law as a class  
9 C felony or with a statutory maximum sentence of five years, or both;

10 (d) If the offender is being sentenced for any body armor  
11 enhancements under (a), (b), and/or (c) of this subsection and the  
12 offender has previously been sentenced for any body armor enhancements  
13 on or after July 26, 2010, under (a), (b), and/or (c) of this  
14 subsection, all body armor enhancements under this subsection shall be  
15 twice the amount of the enhancement listed;

16 (e) Notwithstanding any other provision of law, all body armor  
17 enhancements under this subsection are mandatory, shall be served in  
18 total confinement, and shall run consecutively to all other sentencing  
19 provisions, including other body armor enhancements, for all offenses  
20 sentenced under this chapter. However, whether or not a mandatory  
21 minimum term has expired, an offender serving a sentence under this  
22 subsection may be granted an extraordinary medical placement when  
23 authorized under RCW 9.94A.728(3);

24 (f) The body armor enhancements in this subsection apply to all  
25 felony crimes;

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

33 (6) The following additional times shall be added to the standard  
34 sentence range if the offender or an accomplice committed the offense  
35 while in a county jail or state correctional facility and the offender  
36 is being sentenced for one of the crimes listed in this subsection. If  
37 the offender or an accomplice committed one of the crimes listed in  
38 this subsection while in a county jail or state correctional facility,

1 and the offender is being sentenced for an anticipatory offense under  
2 chapter 9A.28 RCW to commit one of the crimes listed in this  
3 subsection, the following additional times shall be added to the  
4 standard sentence range determined under subsection (2) of this  
5 section:

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

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

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

11 For the purposes of this subsection, all of the real property of a  
12 state correctional facility or county jail shall be deemed to be part  
13 of that facility or county jail.

14 (~~(+6)~~) (7) An additional twenty-four months shall be added to the  
15 standard sentence range for any ranked offense involving a violation of  
16 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435  
17 or (~~(9.94A.605)~~) 9.94A.827. All enhancements under this subsection  
18 shall run consecutively to all other sentencing provisions, for all  
19 offenses sentenced under this chapter.

20 (~~(+7)~~) (8) An additional two years shall be added to the standard  
21 sentence range for vehicular homicide committed while under the  
22 influence of intoxicating liquor or any drug as defined by RCW  
23 46.61.502 for each prior offense as defined in RCW 46.61.5055.

24 (~~(+8)~~) (9)(a) The following additional times shall be added to the  
25 standard sentence range for felony crimes committed on or after July 1,  
26 2006, if the offense was committed with sexual motivation, as that term  
27 is defined in RCW 9.94A.030. If the offender is being sentenced for  
28 more than one offense, the sexual motivation enhancement must be added  
29 to the total period of total confinement for all offenses, regardless  
30 of which underlying offense is subject to a sexual motivation  
31 enhancement. If the offender committed the offense with sexual  
32 motivation and the offender is being sentenced for an anticipatory  
33 offense under chapter 9A.28 RCW, the following additional times shall  
34 be added to the standard sentence range determined under subsection (2)  
35 of this section based on the felony crime of conviction as classified  
36 under RCW 9A.28.020:

37 (i) Two years for any felony defined under the law as a class A

1 felony or with a statutory maximum sentence of at least twenty years,  
2 or both;

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

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

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

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

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

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

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

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

37 ~~((+9))~~ (10) An additional one-year enhancement shall be added to  
38 the standard sentence range for the felony crimes of RCW 9A.44.073,

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

16 ~~((+10))~~ (11)(a) For a person age eighteen or older convicted of  
17 any criminal street gang-related felony offense for which the person  
18 compensated, threatened, or solicited a minor in order to involve the  
19 minor in the commission of the felony offense, the standard sentence  
20 range is determined by locating the sentencing grid sentence range  
21 defined by the appropriate offender score and the seriousness level of  
22 the completed crime, and multiplying the range by one hundred twenty-  
23 five percent. If the standard sentence range under this subsection  
24 exceeds the statutory maximum sentence for the offense, the statutory  
25 maximum sentence is the presumptive sentence unless the offender is a  
26 persistent offender.

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

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

34 ~~((+11))~~ (12) An additional twelve months and one day shall be  
35 added to the standard sentence range for a conviction of attempting to  
36 elude a police vehicle as defined by RCW 46.61.024, if the conviction  
37 included a finding by special allegation of endangering one or more  
38 persons under RCW 9.94A.834.

1        (~~(12)~~) (13) An additional twelve months shall be added to the  
2 standard sentence range for an offense that is also a violation of RCW  
3 9.94A.831.

4        **Sec. 3.** RCW 9.94A.728 and 2009 c 455 s 2, 2009 c 441 s 1, and 2009  
5 c 399 s 1 are each reenacted and amended to read as follows:

6        No person serving a sentence imposed pursuant to this chapter and  
7 committed to the custody of the department shall leave the confines of  
8 the correctional facility or be released prior to the expiration of the  
9 sentence except as follows:

10        (1) Except as otherwise provided for in subsection (2) of this  
11 section, the term of the sentence of an offender committed to a  
12 correctional facility operated by the department may be reduced by  
13 earned release time in accordance with procedures that shall be  
14 developed and promulgated by the correctional agency having  
15 jurisdiction in which the offender is confined. The earned release  
16 time shall be for good behavior and good performance, as determined by  
17 the correctional agency having jurisdiction. The correctional agency  
18 shall not credit the offender with earned release credits in advance of  
19 the offender actually earning the credits. Any program established  
20 pursuant to this section shall allow an offender to earn early release  
21 credits for presentence incarceration. If an offender is transferred  
22 from a county jail to the department, the administrator of a county  
23 jail facility shall certify to the department the amount of time spent  
24 in custody at the facility and the amount of earned release time. The  
25 department may approve a jail certification from a correctional agency  
26 that calculates earned release time based on the actual amount of  
27 confinement time served by the offender before sentencing when an  
28 erroneous calculation of confinement time served by the offender before  
29 sentencing appears on the judgment and sentence. An offender who has  
30 been convicted of a felony committed after July 23, 1995, that involves  
31 any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or  
32 (4), or both, shall not receive any good time credits or earned release  
33 time for that portion of his or her sentence that results from any  
34 deadly weapon enhancements. An offender who has been convicted of a  
35 felony committed on or after July 26, 2010, that involves any  
36 applicable body armor enhancements under RCW 9.94A.533(5), shall not

1 receive any good time credits or earned release time for that portion  
2 of his or her sentence that results from any body armor enhancements.

3 (a) In the case of an offender convicted of a serious violent  
4 offense, or a sex offense that is a class A felony, committed on or  
5 after July 1, 1990, and before July 1, 2003, the aggregate earned  
6 release time may not exceed fifteen percent of the sentence. In the  
7 case of an offender convicted of a serious violent offense, or a sex  
8 offense that is a class A felony, committed on or after July 1, 2003,  
9 the aggregate earned release time may not exceed ten percent of the  
10 sentence.

11 (b)(i) In the case of an offender who qualifies under (b)(ii) of  
12 this subsection, the aggregate earned release time may not exceed fifty  
13 percent of the sentence.

14 (ii) An offender is qualified to earn up to fifty percent of  
15 aggregate earned release time under this subsection (1)(b) if he or  
16 she:

17 (A) Is classified in one of the two lowest risk categories under  
18 (b)(iii) of this subsection;

19 (B) Is not confined pursuant to a sentence for:

20 (I) A sex offense;

21 (II) A violent offense;

22 (III) A crime against persons as defined in RCW 9.94A.411;

23 (IV) A felony that is domestic violence as defined in RCW  
24 10.99.020;

25 (V) A violation of RCW 9A.52.025 (residential burglary);

26 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
27 violate, RCW 69.50.401 by manufacture or delivery or possession with  
28 intent to deliver methamphetamine; or

29 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
30 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

31 (C) Has no prior conviction for:

32 (I) A sex offense;

33 (II) A violent offense;

34 (III) A crime against persons as defined in RCW 9.94A.411;

35 (IV) A felony that is domestic violence as defined in RCW  
36 10.99.020;

37 (V) A violation of RCW 9A.52.025 (residential burglary);

1 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
2 violate, RCW 69.50.401 by manufacture or delivery or possession with  
3 intent to deliver methamphetamine; or

4 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
5 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

6 (D) Participates in programming or activities as directed by the  
7 offender's individual reentry plan as provided under RCW 72.09.270 to  
8 the extent that such programming or activities are made available by  
9 the department; and

10 (E) Has not committed a new felony after July 22, 2007, while under  
11 community custody.

12 (iii) For purposes of determining an offender's eligibility under  
13 this subsection (1)(b), the department shall perform a risk assessment  
14 of every offender committed to a correctional facility operated by the  
15 department who has no current or prior conviction for a sex offense, a  
16 violent offense, a crime against persons as defined in RCW 9.94A.411,  
17 a felony that is domestic violence as defined in RCW 10.99.020, a  
18 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
19 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
20 manufacture or delivery or possession with intent to deliver  
21 methamphetamine, or a violation of, or an attempt, solicitation, or  
22 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
23 substance to a minor). The department must classify each assessed  
24 offender in one of four risk categories between highest and lowest  
25 risk.

26 (iv) The department shall recalculate the earned release time and  
27 reschedule the expected release dates for each qualified offender under  
28 this subsection (1)(b).

29 (v) This subsection (1)(b) applies retroactively to eligible  
30 offenders serving terms of total confinement in a state correctional  
31 facility as of July 1, 2003.

32 (vi) This subsection (1)(b) does not apply to offenders convicted  
33 after July 1, 2010.

34 (c) In no other case shall the aggregate earned release time exceed  
35 one-third of the total sentence;

36 (2)(a) A person convicted of a sex offense, a violent offense, any  
37 crime against persons under RCW 9.94A.411(2), or a felony offense under  
38 chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a



1 program developed by the department, for transfer to community custody  
2 in lieu of earned release time pursuant to subsection (1) of this  
3 section;

4 (b) The department shall, as a part of its program for release to  
5 the community in lieu of earned release, require the offender to  
6 propose a release plan that includes an approved residence and living  
7 arrangement. All offenders with community custody terms eligible for  
8 release to community custody in lieu of earned release shall provide an  
9 approved residence and living arrangement prior to release to the  
10 community;

11 (c) The department may deny transfer to community custody in lieu  
12 of earned release time pursuant to subsection (1) of this section if  
13 the department determines an offender's release plan, including  
14 proposed residence location and living arrangements, may violate the  
15 conditions of the sentence or conditions of supervision, place the  
16 offender at risk to violate the conditions of the sentence, place the  
17 offender at risk to reoffend, or present a risk to victim safety or  
18 community safety. The department's authority under this section is  
19 independent of any court-ordered condition of sentence or statutory  
20 provision regarding conditions for community custody;

21 (d) If the department denies transfer to community custody in lieu  
22 of earned early release pursuant to (c) of this subsection, the  
23 department may transfer an offender to partial confinement in lieu of  
24 earned early release up to three months. The three months in partial  
25 confinement is in addition to that portion of the offender's term of  
26 confinement that may be served in partial confinement as provided in  
27 this section;

28 (e) An offender serving a term of confinement imposed under RCW  
29 9.94A.670(5)(a) is not eligible for earned release credits under this  
30 section;

31 (f) An offender may earn early release time as authorized by RCW  
32 9.94A.729;

33 (3) An offender may leave a correctional facility pursuant to an  
34 authorized furlough or leave of absence. In addition, offenders may  
35 leave a correctional facility when in the custody of a corrections  
36 officer or officers;

37 (4)(a) The secretary may authorize an extraordinary medical  
38 placement for an offender when all of the following conditions exist:

1 (i) The offender has a medical condition that is serious and is  
2 expected to require costly care or treatment;

3 (ii) The offender poses a low risk to the community because he or  
4 she is currently physically incapacitated due to age or the medical  
5 condition or is expected to be so at the time of release; and

6 (iii) It is expected that granting the extraordinary medical  
7 placement will result in a cost savings to the state.

8 (b) An offender sentenced to death or to life imprisonment without  
9 the possibility of release or parole is not eligible for an  
10 extraordinary medical placement.

11 (c) The secretary shall require electronic monitoring for all  
12 offenders in extraordinary medical placement unless the electronic  
13 monitoring equipment interferes with the function of the offender's  
14 medical equipment or results in the loss of funding for the offender's  
15 medical care, in which case, an alternative type of monitoring shall be  
16 utilized. The secretary shall specify who shall provide the monitoring  
17 services and the terms under which the monitoring shall be performed.

18 (d) The secretary may revoke an extraordinary medical placement  
19 under this subsection at any time.

20 (e) Persistent offenders are not eligible for extraordinary medical  
21 placement;

22 (5) The governor, upon recommendation from the clemency and pardons  
23 board, may grant an extraordinary release for reasons of serious health  
24 problems, senility, advanced age, extraordinary meritorious acts, or  
25 other extraordinary circumstances;

26 (6) No more than the final six months of the offender's term of  
27 confinement may be served in partial confinement designed to aid the  
28 offender in finding work and reestablishing himself or herself in the  
29 community. This is in addition to that period of earned early release  
30 time that may be exchanged for partial confinement pursuant to RCW  
31 9.94A.729(5)(d);

32 (7) The governor may pardon any offender;

33 (8) The department may release an offender from confinement any  
34 time within ten days before a release date calculated under this  
35 section;

36 (9) An offender may leave a correctional facility prior to  
37 completion of his or her sentence if the sentence has been reduced as  
38 provided in RCW 9.94A.870; and

1 (10) Notwithstanding any other provisions of this section, an  
2 offender sentenced for a felony crime listed in RCW 9.94A.540 as  
3 subject to a mandatory minimum sentence of total confinement shall not  
4 be released from total confinement before the completion of the listed  
5 mandatory minimum sentence for that felony crime of conviction unless  
6 allowed under RCW 9.94A.540.

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

9 In a criminal case wherein there has been a special allegation and  
10 evidence establishing that the accused or an accomplice was armed with  
11 a firearm as defined in RCW 9.41.010 and the offender or an accomplice  
12 was wearing body armor as defined in RCW 9.94A.030 at the time of the  
13 commission of the crime, the court shall make a finding of fact of  
14 whether or not the accused or an accomplice was armed with a firearm  
15 and wearing body armor at the time of the commission of the crime, or  
16 if a jury trial is had, the jury shall, if it finds the defendant  
17 guilty, also find a special verdict as to whether or not the defendant  
18 or an accomplice was armed with a firearm and wearing body armor at the  
19 time of the commission of the crime.

20 NEW SECTION. **Sec. 5.** Sections 1 and 3 of this act take effect  
21 August 1, 2010.

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