
SENATE BILL 5183

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By Senators Hobbs, Stevens, McAuliffe, Brandland, Hargrove, Carrell, Pflug, Hewitt, Parlette, Swecker, Shin, Benton, Roach, Haugen, and Holmquist; by request of Attorney General

Read first time 01/15/09. Referred to Committee on Judiciary.

1 AN ACT Relating to viewing sexually explicit depictions of minors
2 on the internet; amending RCW 9.68A.110 and 9.68A.070; reenacting and
3 amending RCW 9.94A.030 and 9.94A.515; creating a new section;
4 prescribing penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** Due to the changing nature of technology,
7 offenders are now able to access child pornography in different ways,
8 including in ways that may not constitute possession of depictions of
9 a minor engaged in sexually explicit conduct, as that term is presently
10 defined. by amending the current statute governing possession of
11 depictions of a minor engaged in sexually explicit conduct, it is the
12 intent of the legislature to ensure that intentional viewing of child
13 pornography over the internet is subject to criminal penalty without
14 limiting the scope of existing prohibitions on the possession of child
15 pornography, including the possession of electronic depictions of a
16 minor engaged in sexually explicit conduct.

17 **Sec. 2.** RCW 9.68A.110 and 2007 c 368 s 3 are each amended to read
18 as follows:

1 (1) In a prosecution under RCW 9.68A.040, it is not a defense that
2 the defendant was involved in activities of law enforcement and
3 prosecution agencies in the investigation and prosecution of criminal
4 offenses. Law enforcement and prosecution agencies shall not employ
5 minors to aid in the investigation of a violation of RCW 9.68A.090 or
6 9.68A.100. This chapter does not apply to lawful conduct between
7 spouses.

8 (2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or
9 9.68A.080, it is not a defense that the defendant did not know the age
10 of the child depicted in the visual or printed matter: PROVIDED, That
11 it is a defense, which the defendant must prove by a preponderance of
12 the evidence, that at the time of the offense the defendant was not in
13 possession of any facts on the basis of which he or she should
14 reasonably have known that the person depicted was a minor.

15 (3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.101, or
16 9.68A.102, it is not a defense that the defendant did not know the
17 alleged victim's age: PROVIDED, That it is a defense, which the
18 defendant must prove by a preponderance of the evidence, that at the
19 time of the offense, the defendant made a reasonable bona fide attempt
20 to ascertain the true age of the minor by requiring production of a
21 driver's license, marriage license, birth certificate, or other
22 governmental or educational identification card or paper and did not
23 rely solely on the oral allegations or apparent age of the minor.

24 (4) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070,
25 it shall be an affirmative defense that the defendant was a law
26 enforcement officer or a person specifically authorized, in writing, to
27 assist a law enforcement officer and acting at the direction of a law
28 enforcement officer in the process of conducting an official
29 investigation of a sex-related crime against a minor, or that the
30 defendant was providing individual case treatment as a recognized
31 medical facility or as a psychiatrist or psychologist licensed under
32 Title 18 RCW.

33 (5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070,
34 the state is not required to establish the identity of the alleged
35 victim.

36 **Sec. 3.** RCW 9.68A.070 and 2006 c 139 s 3 are each amended to read
37 as follows:

1 (1) A person who knowingly possesses visual depictions or printed
2 matter depicting a minor engaged in sexually explicit conduct is guilty
3 of possession of depictions of a minor engaged in sexually explicit
4 conduct in the first degree, a class B felony.

5 (2) A person who intentionally views over the internet visual
6 depictions or copies thereof of depicting a minor engaged in sexually
7 explicit conduct is guilty of possession of depictions of a minor
8 engaged in sexually explicit conduct in the second degree, a class C
9 felony. In a prosecution under this subsection, "intentionally views"
10 requires a pattern of viewing visual depiction(s) of a minor(s) engaged
11 in sexually explicit conduct. For purposes of determining whether a
12 person engaged in a pattern of conduct of intentionally viewing over
13 the internet visual depictions or copies thereof of a minor engaged in
14 sexually explicit conduct, the trier of fact shall consider the title,
15 text, and content of the visual depiction, as well as the internet
16 history, search terms, thumbnail images, downloading activity, expert
17 computer forensic testimony, number of depictions of minors engaged in
18 sexually explicit conduct, defendant's access to and control over the
19 electronic device and its contents upon which the depictions were
20 found, or any other relevant evidence.

21 **Sec. 4.** RCW 9.94A.030 and 2008 c 276 s 309, 2008 c 231 s 23, 2008
22 c 230 s 2, and 2008 c 7 s 1 are each reenacted and amended to read as
23 follows:

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

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

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

36 (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 and served in the community subject to controls
8 placed on the offender's movement and activities by the department.

9 (6) "Community custody range" means the minimum and maximum period
10 of community custody included as part of a sentence under RCW
11 (~~9.94A.715~~) 9.94A.701, as established by the commission or the
12 legislature under RCW 9.94A.850.

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

16 (8) "Community restitution" means compulsory service, without
17 compensation, performed for the benefit of the community by the
18 offender.

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

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

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

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

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

37 (b) A conviction may be removed from a defendant's criminal history

1 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
2 a similar out-of-state statute, or if the conviction has been vacated
3 pursuant to a governor's pardon.

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

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

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

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

- 29 (a) To gain admission, prestige, or promotion within the gang;
- 30 (b) To increase or maintain the gang's size, membership, prestige,
31 dominance, or control in any geographical area;
- 32 (c) To exact revenge or retribution for the gang or any member of
33 the gang;
- 34 (d) To obstruct justice, or intimidate or eliminate any witness
35 against the gang or any member of the gang;
- 36 (e) To directly or indirectly cause any benefit, aggrandizement,
37 gain, profit, or other advantage for the gang, its reputation,
38 influence, or membership; or

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

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

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

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

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

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

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

5 (22) "Drug offense" means:

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

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

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

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

17 (24) "Escape" means:

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

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

27 (25) "Felony traffic offense" means:

28 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
29 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
30 run injury-accident (RCW 46.52.020(4)), felony driving while under the
31 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
32 felony physical control of a vehicle while under the influence of
33 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

37 (26) "Fine" means a specific sum of money ordered by the sentencing

1 court to be paid by the offender to the court over a specific period of
2 time.

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

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

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

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

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

28 (b) Assault in the second degree;

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

30 (d) Child molestation in the second degree;

31 (e) Controlled substance homicide;

32 (f) Extortion in the first degree;

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

34 (h) Indecent liberties;

35 (i) Kidnapping in the second degree;

36 (j) Leading organized crime;

37 (k) Manslaughter in the first degree;

38 (l) Manslaughter in the second degree;

1 (m) Promoting prostitution in the first degree;
2 (n) Rape in the third degree;
3 (o) Robbery in the second degree;
4 (p) Sexual exploitation;
5 (q) Vehicular assault, when caused by the operation or driving of
6 a vehicle by a person while under the influence of intoxicating liquor
7 or any drug or by the operation or driving of a vehicle in a reckless
8 manner;
9 (r) Vehicular homicide, when proximately caused by the driving of
10 any vehicle by any person while under the influence of intoxicating
11 liquor or any drug as defined by RCW 46.61.502, or by the operation of
12 any vehicle in a reckless manner;
13 (s) Any other class B felony offense with a finding of sexual
14 motivation;
15 (t) Any other felony with a deadly weapon verdict under RCW
16 9.94A.602;
17 (u) Any felony offense in effect at any time prior to December 2,
18 1993, that is comparable to a most serious offense under this
19 subsection, or any federal or out-of-state conviction for an offense
20 that under the laws of this state would be a felony classified as a
21 most serious offense under this subsection;
22 (v)(i) A prior conviction for indecent liberties under RCW
23 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
24 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
25 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
26 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
27 (ii) A prior conviction for indecent liberties under RCW
28 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
29 if: (A) The crime was committed against a child under the age of
30 fourteen; or (B) the relationship between the victim and perpetrator is
31 included in the definition of indecent liberties under RCW
32 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
33 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
34 through July 27, 1997;
35 (w) Any out-of-state conviction for a felony offense with a finding
36 of sexual motivation if the minimum sentence imposed was ten years or
37 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 (31) "Nonviolent offense" means an offense which is not a violent
5 offense.

6 (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. Throughout this chapter, the terms "offender" and
12 "defendant" are used interchangeably.

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

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

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

25 (i) Any "serious violent" felony offense as defined in RCW
26 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of
27 a Child 1 (RCW 9A.36.120);

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

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

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

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

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

36 (vii) Malicious Harassment (RCW 9A.36.080);

37 (viii) Harassment where a subsequent violation or deadly threat is
38 made (RCW 9A.46.020(2)(b));

1 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
2 (x) Any felony conviction by a person eighteen years of age or
3 older with a special finding of involving a juvenile in a felony
4 offense under RCW 9.94A.833;
5 (xi) Residential Burglary (RCW 9A.52.025);
6 (xii) Burglary 2 (RCW 9A.52.030);
7 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
8 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
9 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
10 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
11 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
12 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
13 9A.56.075);
14 (xix) Extortion 1 (RCW 9A.56.120);
15 (xx) Extortion 2 (RCW 9A.56.130);
16 (xxi) Intimidating a Witness (RCW 9A.72.110);
17 (xxii) Tampering with a Witness (RCW 9A.72.120);
18 (xxiii) Reckless Endangerment (RCW 9A.36.050);
19 (xxiv) Coercion (RCW 9A.36.070);
20 (xxv) Harassment (RCW 9A.46.020); or
21 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
22 (b) That at least one of the offenses listed in (a) of this
23 subsection shall have occurred after July 1, 2008;
24 (c) That the most recent committed offense listed in (a) of this
25 subsection occurred within three years of a prior offense listed in (a)
26 of this subsection; and
27 (d) Of the offenses that were committed in (a) of this subsection,
28 the offenses occurred on separate occasions or were committed by two or
29 more persons.
30 (35) "Persistent offender" is an offender who:
31 (a)(i) Has been convicted in this state of any felony considered a
32 most serious offense; and
33 (ii) Has, before the commission of the offense under (a) of this
34 subsection, been convicted as an offender on at least two separate
35 occasions, whether in this state or elsewhere, of felonies that under
36 the laws of this state would be considered most serious offenses and
37 would be included in the offender score under RCW 9.94A.525; provided

1 that of the two or more previous convictions, at least one conviction
2 must have occurred before the commission of any of the other most
3 serious offenses for which the offender was previously convicted; or

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

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

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

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

5 (37) "Private school" means a school regulated under chapter
6 28A.195 or 28A.205 RCW.

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

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

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

20 (41) "Serious traffic offense" means:

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

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

29 (42) "Serious violent offense" is a subcategory of violent offense
30 and means:

- 31 (a)(i) Murder in the first degree;
- 32 (ii) Homicide by abuse;
- 33 (iii) Murder in the second degree;
- 34 (iv) Manslaughter in the first degree;
- 35 (v) Assault in the first degree;
- 36 (vi) Kidnapping in the first degree;
- 37 (vii) Rape in the first degree;
- 38 (viii) Assault of a child in the first degree; or

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

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

6 (43) "Sex offense" means:

7 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
8 RCW 9A.44.130(12);

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

10 (iii) A felony that is a violation of chapter 9.68A RCW other than
11 RCW 9.68A.070(2) and 9.68A.080; or

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

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

17 (c) A felony with a finding of sexual motivation under RCW
18 9.94A.835 or 13.40.135; or

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

22 (44) "Sexual motivation" means that one of the purposes for which
23 the defendant committed the crime was for the purpose of his or her
24 sexual gratification.

25 (45) "Standard sentence range" means the sentencing court's
26 discretionary range in imposing a nonappealable sentence.

27 (46) "Statutory maximum sentence" means the maximum length of time
28 for which an offender may be confined as punishment for a crime as
29 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
30 crime, or other statute defining the maximum penalty for a crime.

31 (47) "Stranger" means that the victim did not know the offender
32 twenty-four hours before the offense.

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

37 (49) "Transition training" means written and verbal instructions
38 and assistance provided by the department to the offender during the

1 two weeks prior to the offender's successful completion of the work
2 ethic camp program. The transition training shall include instructions
3 in the offender's requirements and obligations during the offender's
4 period of community custody.

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

8 (51) "Violent offense" means:

9 (a) Any of the following felonies:

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

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

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

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

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

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

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

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

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

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

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

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

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

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

14 **Sec. 5.** RCW 9.94A.515 and 2008 c 108 s 23 and 2008 c 38 s 1 are
15 each reenacted and amended to read as follows:
16

17 TABLE 2
18 CRIMES INCLUDED WITHIN
19 EACH SERIOUSNESS LEVEL

20	XVI	Aggravated Murder 1 (RCW
21		10.95.020)
22	XV	Homicide by abuse (RCW 9A.32.055)
23		Malicious explosion 1 (RCW
24		70.74.280(1))
25		Murder 1 (RCW 9A.32.030)
26	XIV	Murder 2 (RCW 9A.32.050)
27		Trafficking 1 (RCW 9A.40.100(1))
28	XIII	Malicious explosion 2 (RCW
29		70.74.280(2))
30		Malicious placement of an explosive 1
31		(RCW 70.74.270(1))
32	XII	Assault 1 (RCW 9A.36.011)
33		Assault of a Child 1 (RCW 9A.36.120)
34		Malicious placement of an imitation
35		device 1 (RCW 70.74.272(1)(a))
36		Rape 1 (RCW 9A.44.040)

1 Rape of a Child 1 (RCW 9A.44.073)
2 Trafficking 2 (RCW 9A.40.100(2))
3 XI Manslaughter 1 (RCW 9A.32.060)
4 Rape 2 (RCW 9A.44.050)
5 Rape of a Child 2 (RCW 9A.44.076)
6 X Child Molestation 1 (RCW 9A.44.083)
7 Criminal Mistreatment 1 (RCW
8 9A.42.020)
9 Indecent Liberties (with forcible
10 compulsion) (RCW
11 9A.44.100(1)(a))
12 Kidnapping 1 (RCW 9A.40.020)
13 Leading Organized Crime (RCW
14 9A.82.060(1)(a))
15 Malicious explosion 3 (RCW
16 70.74.280(3))
17 Sexually Violent Predator Escape
18 (RCW 9A.76.115)
19 IX Abandonment of Dependent Person 1
20 (RCW 9A.42.060)
21 Assault of a Child 2 (RCW 9A.36.130)
22 Explosive devices prohibited (RCW
23 70.74.180)
24 Hit and Run--Death (RCW
25 46.52.020(4)(a))
26 Homicide by Watercraft, by being
27 under the influence of intoxicating
28 liquor or any drug (RCW
29 79A.60.050)
30 Inciting Criminal Profiteering (RCW
31 9A.82.060(1)(b))
32 Malicious placement of an explosive 2
33 (RCW 70.74.270(2))
34 Robbery 1 (RCW 9A.56.200)
35 Sexual Exploitation (RCW 9.68A.040)

1 Vehicular Homicide, by being under
2 the influence of intoxicating liquor
3 or any drug (RCW 46.61.520)
4 VIII Arson 1 (RCW 9A.48.020)
5 Homicide by Watercraft, by the
6 operation of any vessel in a
7 reckless manner (RCW
8 79A.60.050)
9 Manslaughter 2 (RCW 9A.32.070)
10 Promoting Commercial Sexual Abuse
11 of a Minor (RCW 9.68A.101)
12 Promoting Prostitution 1 (RCW
13 9A.88.070)
14 Theft of Ammonia (RCW 69.55.010)
15 Vehicular Homicide, by the operation
16 of any vehicle in a reckless manner
17 (RCW 46.61.520)
18 VII Burglary 1 (RCW 9A.52.020)
19 Child Molestation 2 (RCW 9A.44.086)
20 Civil Disorder Training (RCW
21 9A.48.120)
22 Dealing in depictions of minor engaged
23 in sexually explicit conduct (RCW
24 9.68A.050)
25 Drive-by Shooting (RCW 9A.36.045)
26 Homicide by Watercraft, by disregard
27 for the safety of others (RCW
28 79A.60.050)
29 Indecent Liberties (without forcible
30 compulsion) (RCW 9A.44.100(1)
31 (b) and (c))
32 Introducing Contraband 1 (RCW
33 9A.76.140)
34 Malicious placement of an explosive 3
35 (RCW 70.74.270(3))

1 Negligently Causing Death By Use of a
2 Signal Preemption Device (RCW
3 46.37.675)
4 Sending, bringing into state depictions
5 of minor engaged in sexually
6 explicit conduct (RCW 9.68A.060)
7 Unlawful Possession of a Firearm in
8 the first degree (RCW 9.41.040(1))
9 Use of a Machine Gun in Commission
10 of a Felony (RCW 9.41.225)
11 Vehicular Homicide, by disregard for
12 the safety of others (RCW
13 46.61.520)
14 VI Bail Jumping with Murder 1 (RCW
15 9A.76.170(3)(a))
16 Bribery (RCW 9A.68.010)
17 Incest 1 (RCW 9A.64.020(1))
18 Intimidating a Judge (RCW 9A.72.160)
19 Intimidating a Juror/Witness (RCW
20 9A.72.110, 9A.72.130)
21 Malicious placement of an imitation
22 device 2 (RCW 70.74.272(1)(b))
23 Possession of Depictions of a Minor
24 Engaged in Sexually Explicit
25 Conduct 1 (RCW 9.68A.070(1))
26 Rape of a Child 3 (RCW 9A.44.079)
27 Theft of a Firearm (RCW 9A.56.300)
28 Unlawful Storage of Ammonia (RCW
29 69.55.020)
30 V Abandonment of Dependent Person 2
31 (RCW 9A.42.070)
32 Advancing money or property for
33 extortionate extension of credit
34 (RCW 9A.82.030)
35 Bail Jumping with class A Felony
36 (RCW 9A.76.170(3)(b))
37 Child Molestation 3 (RCW 9A.44.089)

1 Criminal Mistreatment 2 (RCW
2 9A.42.030)
3 Custodial Sexual Misconduct 1 (RCW
4 9A.44.160)
5 Domestic Violence Court Order
6 Violation (RCW 10.99.040,
7 10.99.050, 26.09.300, 26.10.220,
8 26.26.138, 26.50.110, 26.52.070,
9 or 74.34.145)
10 Driving While Under the Influence
11 (RCW 46.61.502(6))
12 Extortion 1 (RCW 9A.56.120)
13 Extortionate Extension of Credit (RCW
14 9A.82.020)
15 Extortionate Means to Collect
16 Extensions of Credit (RCW
17 9A.82.040)
18 Incest 2 (RCW 9A.64.020(2))
19 Kidnapping 2 (RCW 9A.40.030)
20 Perjury 1 (RCW 9A.72.020)
21 Persistent prison misbehavior (RCW
22 9.94.070)
23 Physical Control of a Vehicle While
24 Under the Influence (RCW
25 46.61.504(6))
26 Possession of a Stolen Firearm (RCW
27 9A.56.310)
28 Rape 3 (RCW 9A.44.060)
29 Rendering Criminal Assistance 1
30 (RCW 9A.76.070)
31 Sexual Misconduct with a Minor 1
32 (RCW 9A.44.093)
33 Sexually Violating Human Remains
34 (RCW 9A.44.105)
35 Stalking (RCW 9A.46.110)
36 Taking Motor Vehicle Without
37 Permission 1 (RCW 9A.56.070)

1 IV Arson 2 (RCW 9A.48.030)
2 Assault 2 (RCW 9A.36.021)
3 Assault 3 (of a Peace Officer with a
4 Projectile Stun Gun) (RCW
5 9A.36.031(1)(h))
6 Assault by Watercraft (RCW
7 79A.60.060)
8 Bribing a Witness/Bribe Received by
9 Witness (RCW 9A.72.090,
10 9A.72.100)
11 Cheating 1 (RCW 9.46.1961)
12 Commercial Bribery (RCW 9A.68.060)
13 Counterfeiting (RCW 9.16.035(4))
14 Endangerment with a Controlled
15 Substance (RCW 9A.42.100)
16 Escape 1 (RCW 9A.76.110)
17 Hit and Run--Injury (RCW
18 46.52.020(4)(b))
19 Hit and Run with Vessel--Injury
20 Accident (RCW 79A.60.200(3))
21 Identity Theft 1 (RCW 9.35.020(2))
22 Indecent Exposure to Person Under
23 Age Fourteen (subsequent sex
24 offense) (RCW 9A.88.010)
25 Influencing Outcome of Sporting Event
26 (RCW 9A.82.070)
27 Malicious Harassment (RCW
28 9A.36.080)
29 Residential Burglary (RCW
30 9A.52.025)
31 Robbery 2 (RCW 9A.56.210)
32 Theft of Livestock 1 (RCW 9A.56.080)
33 Threats to Bomb (RCW 9.61.160)
34 Trafficking in Stolen Property 1 (RCW
35 9A.82.050)

1 Unlawful factoring of a credit card or
2 payment card transaction (RCW
3 9A.56.290(4)(b))
4 Unlawful transaction of health
5 coverage as a health care service
6 contractor (RCW 48.44.016(3))
7 Unlawful transaction of health
8 coverage as a health maintenance
9 organization (RCW 48.46.033(3))
10 Unlawful transaction of insurance
11 business (RCW 48.15.023(3))
12 Unlicensed practice as an insurance
13 professional (RCW
14 48.17.063(~~(3)~~)(2))
15 Use of Proceeds of Criminal
16 Profiteering (RCW 9A.82.080 (1)
17 and (2))
18 Vehicular Assault, by being under the
19 influence of intoxicating liquor or
20 any drug, or by the operation or
21 driving of a vehicle in a reckless
22 manner (RCW 46.61.522)
23 Willful Failure to Return from
24 Furlough (RCW 72.66.060)
25 III Animal Cruelty 1 (Sexual Conduct or
26 Contact) (RCW 16.52.205(3))
27 Assault 3 (Except Assault 3 of a Peace
28 Officer With a Projectile Stun
29 Gun) (RCW 9A.36.031 except
30 subsection (1)(h))
31 Assault of a Child 3 (RCW 9A.36.140)
32 Bail Jumping with class B or C Felony
33 (RCW 9A.76.170(3)(c))
34 Burglary 2 (RCW 9A.52.030)
35 Commercial Sexual Abuse of a Minor
36 (RCW 9.68A.100)

1 Communication with a Minor for
2 Immoral Purposes (RCW
3 9.68A.090)
4 Criminal Gang Intimidation (RCW
5 9A.46.120)
6 Custodial Assault (RCW 9A.36.100)
7 Cyberstalking (subsequent conviction
8 or threat of death) (RCW
9 9.61.260(3))
10 Escape 2 (RCW 9A.76.120)
11 Extortion 2 (RCW 9A.56.130)
12 Harassment (RCW 9A.46.020)
13 Intimidating a Public Servant (RCW
14 9A.76.180)
15 Introducing Contraband 2 (RCW
16 9A.76.150)
17 Malicious Injury to Railroad Property
18 (RCW 81.60.070)
19 Mortgage Fraud (RCW 19.144.080)
20 Negligently Causing Substantial Bodily
21 Harm By Use of a Signal
22 Preemption Device (RCW
23 46.37.674)
24 Organized Retail Theft 1 (RCW
25 9A.56.350(2))
26 Perjury 2 (RCW 9A.72.030)
27 Possession of Incendiary Device (RCW
28 9.40.120)
29 Possession of Machine Gun or Short-
30 Barreled Shotgun or Rifle (RCW
31 9.41.190)
32 Promoting Prostitution 2 (RCW
33 9A.88.080)
34 Retail Theft with Extenuating
35 Circumstances 1 (RCW
36 9A.56.360(2))

1 Securities Act violation (RCW
2 21.20.400)
3 Tampering with a Witness (RCW
4 9A.72.120)
5 Telephone Harassment (subsequent
6 conviction or threat of death)
7 (RCW 9.61.230(2))
8 Theft of Livestock 2 (RCW 9A.56.083)
9 Theft with the Intent to Resell 1 (RCW
10 9A.56.340(2))
11 Trafficking in Stolen Property 2 (RCW
12 9A.82.055)
13 Unlawful Imprisonment (RCW
14 9A.40.040)
15 Unlawful possession of firearm in the
16 second degree (RCW 9.41.040(2))
17 Vehicular Assault, by the operation or
18 driving of a vehicle with disregard
19 for the safety of others (RCW
20 46.61.522)
21 Willful Failure to Return from Work
22 Release (RCW 72.65.070)
23 II Computer Trespass 1 (RCW
24 9A.52.110)
25 Counterfeiting (RCW 9.16.035(3))
26 Escape from Community Custody
27 (RCW 72.09.310)
28 Failure to Register as a Sex Offender
29 (second or subsequent offense)
30 (RCW 9A.44.130(11)(a))
31 Health Care False Claims (RCW
32 48.80.030)
33 Identity Theft 2 (RCW 9.35.020(3))
34 Improperly Obtaining Financial
35 Information (RCW 9.35.010)
36 Malicious Mischief 1 (RCW
37 9A.48.070)

1 Organized Retail Theft 2 (RCW
2 9A.56.350(3))
3 Possession of Stolen Property 1 (RCW
4 9A.56.150)
5 Possession of a Stolen Vehicle (RCW
6 9A.56.068)
7 Retail Theft with Extenuating
8 Circumstances 2 (RCW
9 9A.56.360(3))
10 Theft 1 (RCW 9A.56.030)
11 Theft of a Motor Vehicle (RCW
12 9A.56.065)
13 Theft of Rental, Leased, or Lease-
14 purchased Property (valued at one
15 thousand five hundred dollars or
16 more) (RCW 9A.56.096(5)(a))
17 Theft with the Intent to Resell 2 (RCW
18 9A.56.340(3))
19 Trafficking in Insurance Claims (RCW
20 48.30A.015)
21 Unlawful factoring of a credit card or
22 payment card transaction (RCW
23 9A.56.290(4)(a))
24 Unlawful Practice of Law (RCW
25 2.48.180)
26 Unlicensed Practice of a Profession or
27 Business (RCW 18.130.190(7))
28 Voyeurism (RCW 9A.44.115)
29 I Attempting to Elude a Pursuing Police
30 Vehicle (RCW 46.61.024)
31 False Verification for Welfare (RCW
32 74.08.055)
33 Forgery (RCW 9A.60.020)
34 Fraudulent Creation or Revocation of a
35 Mental Health Advance Directive
36 (RCW 9A.60.060)

1 Malicious Mischief 2 (RCW
2 9A.48.080)
3 Mineral Trespass (RCW 78.44.330)
4 Possession of Stolen Property 2 (RCW
5 9A.56.160)
6 Reckless Burning 1 (RCW 9A.48.040)
7 Taking Motor Vehicle Without
8 Permission 2 (RCW 9A.56.075)
9 Theft 2 (RCW 9A.56.040)
10 Theft of Rental, Leased, or Lease-
11 purchased Property (valued at two
12 hundred fifty dollars or more but
13 less than one thousand five
14 hundred dollars) (RCW
15 9A.56.096(5)(b))
16 Transaction of insurance business
17 beyond the scope of licensure
18 (RCW 48.17.063(((+))))
19 Unlawful Issuance of Checks or Drafts
20 (RCW 9A.56.060)
21 Unlawful Possession of Fictitious
22 Identification (RCW 9A.56.320)
23 Unlawful Possession of Instruments of
24 Financial Fraud (RCW 9A.56.320)
25 Unlawful Possession of Payment
26 Instruments (RCW 9A.56.320)
27 Unlawful Possession of a Personal
28 Identification Device (RCW
29 9A.56.320)
30 Unlawful Production of Payment
31 Instruments (RCW 9A.56.320)
32 Unlawful Trafficking in Food Stamps
33 (RCW 9.91.142)
34 Unlawful Use of Food Stamps (RCW
35 9.91.144)
36 Vehicle Prowl 1 (RCW 9A.52.095)

1 NEW SECTION. **Sec. 6.** Section 4 of this act takes effect August 1,
2 2009.

--- END ---